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REP 1989/90
Director of Investigation
Report Director of

for the year ended March 31, 1990

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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, 1990
to the Hon. Pierre Blais, Minister

Queen
AD
2807
.A34
1989/90

**Director of Investigation
and Research**

Competition Act



Consumer and
Corporate Affairs
Canada

Consommation
et Corporations
Canada

Cette publication est également disponible en français

© Minister of Supply and Services Canada 1990
ISBN 0-662-57981-X
Catalogue No. RG 51-1990
CCAC No. 189 11066 B 90-12



Text pages printed
on recycled paper

Hull, Quebec

Mailing Address:
Ottawa, Ontario
K1A 0C9

January 22, 1991

The Honourable Pierre Blais, P.C. M.P.,
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, 1990.

Yours truly,

Howard I. Wetston, 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, 1990.

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The Director's Overview

During this year, perhaps more than ever before, Canadians have come to know the Bureau of Competition Policy. Several high profile mergers in the oil and gas, beer and airline industries have enlarged the Bureau's national profile. However, few Canadians know exactly what it is that we do and fewer know why we do these things in the first place.

The Bureau of Competition Policy reviews mergers; we also investigate anti-competitive business practices such as price-fixing, bid-rigging, misleading advertising and abuse of dominant market position.

Why we do this is quite simple. Competition law touches the everyday life of all Canadians by maintaining and encouraging competition in the marketplace and thereby providing Canadians with competitive prices and product choices. The application and administration of the Competition Act by the Bureau of Competition Policy enhances efficiency in the marketplace. This in turn leads to the creation of wealth in the economy.

Competition policy is a fundamental element of the federal government's economic framework for Canada. A competitive Canadian presence in the global economy must have a solid foundation in an efficient and competitive domestic economy. This principle is intrinsic to the enforcement and administration of competition law in Canada: our country simply cannot afford the high costs that would be forced on the economy as a whole by restrictive trade practices and by mergers that substantially lessened competition.

During the past hundred years legislation governing competition has evolved significantly in reaction to the changing political and economic environment. Nevertheless, its overall objective continues to be the prohibition of certain practices in restraint of trade which prevent the nation's resources from being most effectively utilized.

The updated competition law passed in 1986 has certainly been put to the test. Several major merger and restraint of trade cases have been dealt with, and considerable experience has been gained with the new provisions and procedures. Important legal questions have been considered, and several fundamental questions are now before the courts. The Bureau of Competition Policy faced a very heavy workload in this past year, and there is every expectation that the next year will be even more challenging.

Over the course of the year the Mergers Branch of the Bureau commenced the examination of 219 merger transactions requiring two days or more of examination.

The Imperial Oil/Texaco Canada merger was the most significant. This transaction raised important questions about the general consent order process before the Competition Tribunal. It underlined the fact that there is a clear need to balance timely decision-making with a thorough review and full participation by affected parties. The Bureau is currently exploring ways to expedite the consent order review process.

In the reviewable practices sector, the Chrysler case led to some important jurisprudence. This was the first contested case brought before the Competition Tribunal and the first one brought under the provisions of the Competition Act dealing with refusal to supply. The Tribunal's ruling that the Director can claim privilege on documents prepared for litigation purposes was an important decision from the Bureau's perspective. The Tribunal's decision on the merits supports the Director's view that certain restrictive non-price distribution practices should be questioned. Given its importance, efforts will be made to enunciate an enforcement policy in this area.

During the year, two further applications were made to the Tribunal, one relating to NutraSweet's activities in the Canadian aspartame market and the other to Xerox Canada Inc.'s refusal to supply repair parts to an independent service organization. The NutraSweet case is the first application to the Tribunal under the provisions of the Act relating to abuse of a dominant position by a firm that substantially or completely controls a class of business in Canada.

A significant precedent was established during the year under the criminal provisions of the Act relating to price maintenance. On February 9, 1990 the Manitoba Court of Appeal upheld the conviction of Shell Canada Products Limited for price maintenance and increased the fine to \$200 000. This is the largest financial penalty ever imposed by a Canadian court for a single incident of price maintenance. This case also has significance for the law on corporate liability in that it serves to remind business people that they may be criminally liable for the actions of their subordinates. It is also the first case in which a higher court in Canada has enunciated the legal test to identify a "threat" under the price maintenance laws. From a policy perspective, this decision signals the importance of the prohibition against price maintenance in Canada, particularly in concentrated industries selling price-sensitive consumer products.

There were also a number of major developments during the year relating to misleading advertising and

deceptive marketing practices. Preliminary consultations on a four-point framework for reform were concluded. This framework has been developed on the basis of the Report on the Subject of Misleading Advertising (the Collins Report), which was issued by the Parliamentary Standing Committee on Consumer and Corporate Affairs in June, 1988. One of the elements of this framework, the shift in emphasis from criminal prosecutions to alternative case resolution where appropriate, is illustrated by an undertaking recently obtained from Sears Canada Inc.

Another important development in the misleading advertising area was the decision of the Ontario Court of Appeal in the Wholesale Travel Group case, which has a potentially far-reaching effect on the Bureau's mandate and on the law of strict liability in general.

The provision of advice to senior levels of government and participation with various federal and provincial departments and agencies in the design of government policies affecting the competitive market system are important activities of the Bureau. One example was our contribution to the Agriculture Canada policy review this year. Our approach has been to encourage procompetitive options, which lead to flexibility and efficiency for the benefit of consumers and other market participants. These options include the reduction of inter-provincial trade barriers, increased regulatory flexibility and more transparent regulatory intervention.

Another important policy initiative involved working with regulated industries to encourage a more competitive environment. During the year, representations were made before regulatory hearings and boards relating to a number of industry sectors. One example was the Bureau's response to the CRTC's proposed changes to the regulation of cable subscriber fees, which included detailed recommendations designed to promote the efficient regulation of subscriber fees. However, we also emphasized that structural change, namely greater reliance on competition from alternative programming delivery services in cable television markets, may be the most effective regulatory approach in the long run.

We continued throughout the year to devote significant resources to our communication and education program. In June, 1989, we issued our third bulletin, entitled "Program of Compliance", which provides practical guidance on the Bureau's current compliance policy. We are now working on the Bureau's first merger enforcement guidelines and on bulletins on price discrimination and predatory pricing, and we hope to publish these within the next fiscal year. Our principal objectives in pursuing the merger enforcement guidelines are to promote public understanding of and confidence in the Bureau's merger review process and to facilitate and influence business planning and practices. We hope that our bulletins on predatory pricing and price discrimination will facilitate the Bureau's compliance-oriented approach to the enforcement of the Competition Act. Throughout the year we also con-

tinued to make use of speaking engagements by the Director and senior staff and the Director's Consultative Forum to communicate with the public on important competition policy issues. Copies of certain speeches are distributed widely to the business, legal and academic communities, and are available to the general public on request. Consultative forums provide an opportunity for representatives from business, the legal profession and consumer groups to discuss competition law issues of mutual interest.

The Bureau's compliance approach is designed to give businesses every opportunity to arrange their affairs to ensure compliance with the Act. Advisory opinions, information contacts and advance ruling certificates all help to facilitate compliance. The resolution of appropriate cases through alternative case resolution instruments is also an important element of our compliance approach. However, there is less scope for alternative resolutions in cases involving unambiguous economic harm. For example, conspiracies in restraint of competition and bid-rigging will normally be addressed through prosecution or an order of the courts. Such practices can impose very significant costs on consumers in the form of higher prices, reduced output and restricted product choices. As well, public confidence in the competitive market system is seriously undermined. Canadian businesses and consumers cannot afford the high cost of collusion in the market place and any such activity will attract vigorous enforcement.

Following my appointment as Director I outlined, in an address to the Canadian Club in Montréal, a number of priority items which will require attention in the next decade. These priority items include clarification of our enforcement policies in the areas of predatory pricing, price discrimination and merger review, as well as increased attention to the state of competition in Canada's regulated industries. I intend to report on these matters in the years ahead.

It would be remiss to close without a note of tribute to my predecessor, Calvin S. Goldman, Q.C. His tenure in the Director's office will be remembered for the sound implementation of complex new legislation and in particular for the development of an effective and equitable compliance-oriented approach to the enforcement of the Competition Act.

Howard I. Wetston, Q.C.

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 reported 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 Canadian 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 be-

cause 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 di-

rects. 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 now being placed 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*)**

	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
Total complaints received	N/A	381	692	839	1 075	1 013	1 028	930	820	988
Preliminary examinations commenced requiring two or more days of review	N/A	199	218	223	269	237	237 **	328	371 **	403
Applications for inquiries under section 9	8	9	8	2	2	8	13	9	6	4
Inquiries in progress at the end of the year	69	69 **	71	58	54	58	78	80 **	55 **	57
Inquiries formally discontinued	26	20	19	19	12	11	11	17	32	5
Matters referred to the Attorney General of Canada	21	33 **	24	20	27	21	9	15	19	7
Matters referred where the Attorney General decides no further action warranted	5	6	5	6	4	11	4	3	-	2
Matters in which prosecutions or other proceedings commenced	6	24	21	16	17	19	14	12 **	14 ***	7
Applications to the Competition Tribunal****	-	-	1	-	-	1	1	2	3	4
Interventions before federal regulatory bodies	4	6	4	15	17	15	8	7	6	5
Interventions before provincial regulatory bodies	-	9	7	8	6	7	10	9	3	5

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

** Revised.

*** Includes 9 matters forming one proceeding.

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

Chapter III

Mergers

The significant merger and acquisition activity experienced in the fiscal year is expected to continue, particularly in respect to large mergers (notifiable matters). This expectation is attributable in part to trade liberalization and global positioning, which provide incentives to achieve economics of scale for efficient access to new markets.

Globalization has not only brought about an increase in cross-border investment and the development of strategic alliances, but has affected also the emergence of a readily available large capital market for major international firms.

Regulatory reform and privatization initiatives have prompted ongoing competitive restructuring in various sectors. In addition, a continuing renewed emphasis on core activities by large diversified firms and succession considerations by significant family controlled firms have effected merger activity in various sectors.

Following from the foregoing, the Director may consider all mergers, proposed or otherwise, in all sectors of the economy, which come to his attention. In satisfying himself whether any of the matters prevent or lessen or are likely to prevent or lessen competition substantially in Canada, slightly in excess of 10% thereof require 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 will provide 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 the 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 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 concerning 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 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 fulfil-

ment 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.

Bureau policy regarding advisory opinions is outlined in *Information Bulletin No. 3* relating to the Program of Compliance. This document was issued in June, 1989, and is available upon request.

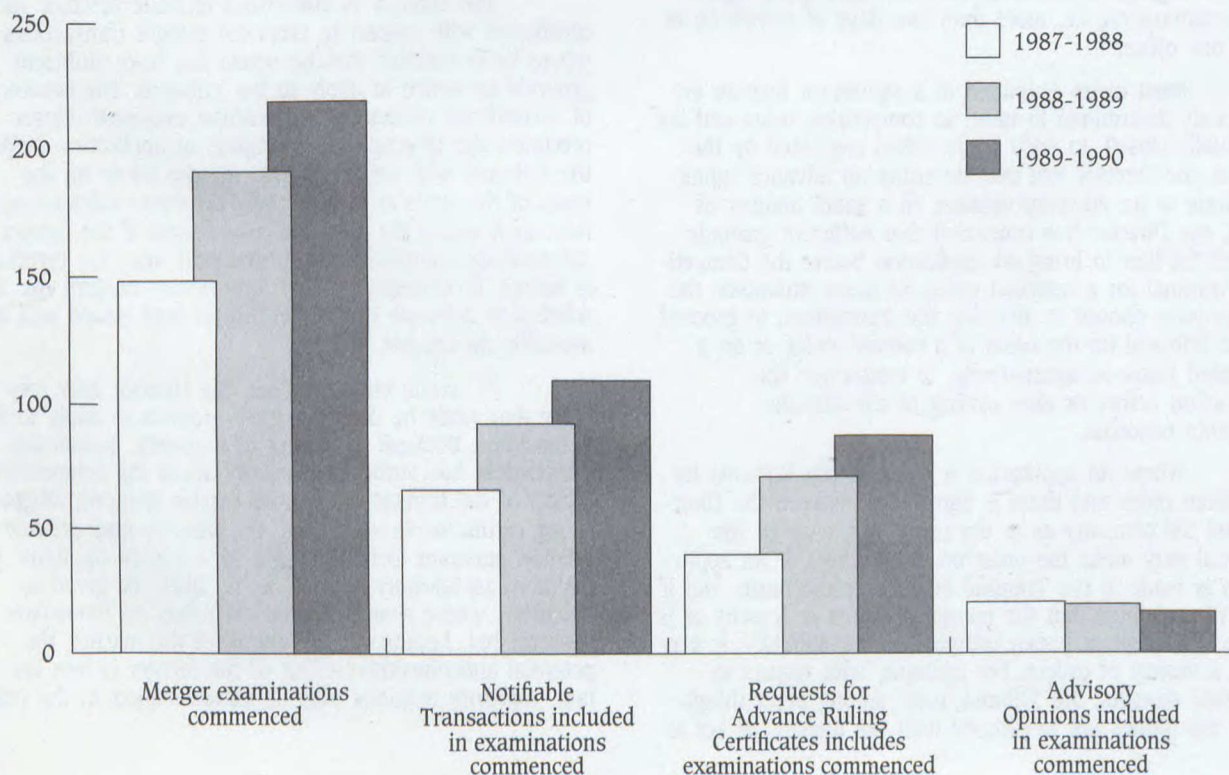
During the fiscal year, the Director publicly announced his intention to prepare and subsequently release during the 1990-91 fiscal year Merger Enforcement Guidelines which will describe his enforcement policy in relation to merger review under the Act. The principal objective in issuing the guidelines is to provide insight and guidance regarding the manner in which the Bureau approaches key substantive and process related matters that arise in connection with the assessment of mergers under the Act. In addition, it is hoped that in turn this will promote a better understanding of the merger review process, promote public confidence in the process, assist business planning and improve the quality of information that is supplied to the Bureau with respect to particular matters.

As Tables 1 and 2 illustrate, the Director commenced the examination of 219 merger transactions requiring two days or more of examination during the year

which included, in part, 109 prenotifications and 87 Advance Ruling Certificate requests. In addition, he continued his examination of 32 matters commenced in the previous year. Of the 251 mergers examined during the year, one proposed merger was concluded with a post-closing undertaking (the proposed merger of the Composers, Authors and Publishers Association of Canada Ltd. and the Performing Rights Organization of Canada Ltd. which is commented on elsewhere in the chapter). Two mergers were abandoned as a result of the Director's position and three were concluded by a consent order issued by the Competition Tribunal. The three consent orders obtained relate to the acquisition by Asea Brown Boveri Inc. of the electric power transmission and distribution business of Westinghouse Canada Inc., the acquisition by Imperial Oil Limited of Texaco Canada Inc., and the merger of the computer reservation systems of Air Canada and Canadian Airlines International. Because of their varying nature, these three complex matters are commented on in some detail under the caption "Applications to the Competition Tribunal"

Information on the total number of mergers which have been reported publicly as having taken place in Canada in calendar 1989 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.

Table 1: Details of Merger Examinations commenced



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 addi-

tion 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% in the case of a public corporation or 35% in the case of a private corporation. If the acquiror(s) has, or have collectively, already surpassed either the 20% or 35% threshold, the application threshold for both public and private shares acquisitions is 50%. Parties who notify with respect to the lower acquisitions threshold must make a second notification 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

Table 2: Merger Examinations

	1986-1987 ¹	1987-1988	1988-1989	1989-1990
Examinations commenced (2 or more days of review)	40	146	191	219
Examinations concluded				
As posing no issue under the Act	17	120	166	204
With monitoring only	5	7	10	13
With preclosing restructuring	—	2	1	—
With post-closing restructuring/undertakings	1	2	3	1
With Consent Order	—	—	—	—
Parties abandoned proposed merger, in whole or in part, as a result of Director's position	3	2	2	2
Total examinations concluded	26 ²	133 ³	182 ⁴	223 ⁵
Examinations ongoing at year end	14	25	32	31
Total Examinations during the year ⁶	40	160	216	251
Applications and notice of application before Tribunal				
Concluded or withdrawn ⁷	1	—	2	3
Ongoing	—	2	2	1
Intent to file	—	—	2	—

¹ Statistics commence as of June 19, 1986.

² Includes 3 Advance Ruling Certificates and 8 Advisory Opinions.

³ Includes 26 Advance Ruling Certificates and 21 Advisory Opinions but excludes the 2 ongoing matters before the Competition Tribunal.

⁴ Includes 59 Advance Ruling Certificates and 20 Advisory Opinions but excludes the 2 ongoing matters before the Competition Tribunal.

⁵ Includes 72 Advance Ruling Certificates and 17 Advisory Opinions but excludes the ongoing matter before the Competition Tribunal.

⁶ Includes the examinations commenced during the year and those ongoing at the end of the previous year.

⁷ 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 1989, see Appendix II.

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 advised and those who complete the transaction do so at the risk of a possible subsequent application to the Competition Tribunal by the Director.

Where there has been failure to notify 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 Competition 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 notification, 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 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, the availability and quality of information, the co-operation of the parties to the transaction, and whether the parties wish to maintain the cloak of confidentiality. Generally speaking, the information provided with respect to the various section 93 factors and

any other factors that may be pertinent are assessed to determine whether the merger is likely to prevent or lessen competition substantially in a relevant market. Such a finding is likely where it is established that the merger will result in higher prices or lower benefits of non-price competition (eg service, quality, variety, innovation, etc.) than in absence of the merger. 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 efficiency exception embodied in the Act.

In cases where substantive competition issues are raised, a period of four to eight weeks is typically required for Bureau staff to complete their initial assessment. 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 to the Director 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 or other communiqué indicating his intention to file an application before the Competition 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 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 Competition Tribunal, to propose changes in the transaction that would address the Director's competition concerns. Such proposed changes are considered by the Director in consultation with industry and other experts. 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 the designation of a trustee with respect to divestiture and 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 Table 2.

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 on which the Director did not publicly comment and which are not being separately commented on below. These include: Allied Van Lines Ltd./Aero Mayflower Transit Company Ltd.; Bristol-Myers Canada Inc./Squibb Canada Inc.; Campbell Soup Company Ltd. and Borden Company, Limited/Catelli Inc.; Deloitte, Haskins & Sells/Touche Ross & Co.; Dominion Textiles Inc./Textiles Dionne Inc.; Dow Chemical Canada Inc./Eli Lilly & Co.; Laurier Life Holdings Limited/Annuity Life Insurance Company Ltd.; Proctor & Gamble Company Limited/Noxell Corporation; Security Pacific Corporation/Burns Fry Holdings Corporation; Thorne Ernst & Whinney Inc./Peat Marwick Mitchell & Co; Uarco Incorporated/RL Crain Inc.; and WCI Canada Inc./General Freezer Division of CMIL Industries Inc.

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

Baxter Foods Limited/McKay's Dairy Limited

In December, 1988, the Director was informed that Baxter Foods Limited of Saint John, New Brunswick, intended to acquire McKay's Dairy, an established family dairy business located in Moncton, New Brunswick. Baxter Foods was the largest processor of fluid milk and dairy products in New Brunswick. The merger was allowed to close on January 3, 1989. However, undertakings were provided to the Director by Baxter Foods Limited which held the operations of McKay's Dairy Limited separate and apart until the completion of the Bureau's examination of the transaction.

Following an exhaustive examination of the transaction, the Director announced on April 20, 1989, that he had concluded that the merger would likely prevent or lessen competition substantially in the dairy processing 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, a family-run dairy based in Prince Edward Island with dairy operations located in New Brunswick. This action alleviated the Director's concerns regarding the impact on competition in the New Brunswick dairy market. On June 15, 1989, the Director announced that he would not be applying to the Competition Tribunal for an order in respect of the earlier acquisition by Baxter Foods Limited of McKay's Dairy.

Canada Safeway Limited

As reported on page 12 of the Annual Report for 1989, Canada Safeway Limited (Safeway), subsequent to its acquisition of the food outlets of Woodward stores, had complied with all the undertakings which it had given to the Director to divest itself of 12 supermarkets in 6 Alberta and British Columbia cities, with the exception of that relating to Red Deer, Alberta.

Safeway subsequently requested that the Director waive the final undertaking with respect to Red Deer, given the significant changes that had taken place in that market since May, 1987, the date of the undertaking. The Director examined the current market situation and determined that there had been the recent entry of two new supermarkets in the Red Deer area which provided additional competition and choice to the consumers in that market and also demonstrated that entry into this market was not difficult. As such, he was of the view that the initial concerns that had been identified in this market had been ameliorated by the new entry and that therefore the divestiture of one supermarket was no longer necessary.

CAPAC/PROCAN

On December 22, 1988, the Director commenced an examination of the effects of the proposed merger of the Composers, Authors and Publishers Association of Canada Ltd. (CAPAC) and the Performing Rights Organization of Canada Ltd. (PROCAN) on the membership of the two performing rights societies.

CAPAC and PROCAN were two of the three organizations in Canada which collected performing rights fees for the public use of music. The third organization is L'ESPAC, a Quebec based performing rights society which provides similar services to artists in Quebec and operates primarily in the French radio and television market.

The Director had concerns about the potential impact of the proposed transaction on entry of new societies. Both organizations utilized long term contracts (five years) with members, which constrained movement from one society to the other and which could preclude the possibility of entry of a new performing rights society. To address the Director's concern, CAPAC and PROCAN undertook to amend the term of the contract with members from five years to three years, with an option to terminate the contract with notice after the second year. Accordingly, should a new society be created, members of CAPAC and PROCAN could more easily move to the new organization. Notification of this change in policy has been made to all members of the two societies.

On the basis of the information obtained during the course of his examination, the Director concluded that the proposed transaction was not likely to substantially lessen competition and, therefore, he would not have grounds to proceed to the Competition Tribunal.

Central Soya of Canada Inc./Canadian Vegetable Oil Processing Division of Canada Packers Inc.

On June 29, 1989, Counsel for Central Soya of Canada Inc (Central Soya) wrote to the Director requesting an Advance Ruling Certificate concerning a proposed purchase of the Canadian Vegetable Oil Processing Operations (CVOP) of Canada Packers Inc. The parties are, respectively, Canada's second and third largest oil seed crushers processing raw canola seed and soyabean into industrial level products. Canola and soyabean meal is sold to feed mills, grain merchants and pet food processors, whereas canola and soyabean oil are sold to food refiners engaged in the processing of salad oils, margarines, shortenings and cooking oils. A by-product of soyabean crushing, lecithin, is an emulsifier in various pharmaceuticals, bakery goods and confectioneries, and paint.

After conducting a preliminary examination of the matter, the Director concluded that sufficient concerns about the competitive effects of the transaction existed which would preclude him from issuing an Advance Ruling Certificate.

In arriving at his decision, the Director considered a number of specific factors including the recognition that the transaction would result in the removal of an effective competitor and would result in an increase of Central Soya's market share in the soyabean oil and meal market in Canada. However, after further examination of the transaction which included extensive contact with industry participants, the Director was satisfied that imported soyabean meal, and to some extent oil, would be readily available from suppliers located in proximity to the Canadian border and that canola oil and meal had been making competitive inroads into soyabean oil and meal markets. In addition, a significant number of customers with countervailing purchasing power did not express concern that the merger would likely have serious anticompetitive effects in the industry.

As a result of his examination, the Director informed the parties in August, 1989, that he did not have sufficient grounds to proceed to the Competition Tribunal for an order in respect of this transaction. However, there remained concern about the resulting increase in concentration in the Canadian soya oil market together with the loss of an effective competitor. The Director will, therefore, monitor this matter for the three year period permitted by the Act.

Consumers Packaging Inc./Domglas Inc.

In November, 1988, Consumers Packaging Inc. (Consumers) and Domglas Inc. reached an agreement to merge their glass container manufacturing operations. A detailed analysis of the proposed merger was conducted and on April 25, 1989, the Director announced that the merger would not be challenged before the Competition Tribunal at that time.

Consumers and Domglas were major Canadian producers of glass containers used primarily as packaging by the food and beverage industries. Available information indicated that the two companies accounted for approximately 90% of Canadian glass container sales. However, analysis of the proposed merger's competitive effects indicated that for many end uses other rigid-wall containers, particularly plastic bottles and metal cans, are effective substitutes. Available evidence also indicated that imports of glass containers, particularly from the United States, act as a competitive restraint on Canadian producers. This pressure is expected to rise as the tariff on such imports is reduced under the United States/Canada Free Trade Agreement.

An important factor in the decision not to challenge this transaction was the submissions of the parties concerning substantial efficiency gains expected to result from the merger. Available evidence, which was reviewed by an industry expert, indicated that savings in excess of \$50 million per year, representing up to 10% of operating costs, could be achieved through the merger. The parties submitted that the attainment of such gains was essential to the long term survival of the Canadian industry in the face of competitive pressure from United States imports and competing plastic and metal rigid-wall containers. Customers contacted in the course of the examination of this transaction generally confirmed these claims.

One area of concern arising from the merger was that of customers who, for functional or marketing reasons, are committed to glass containers. However, available information indicated that the parties to the merger had assured these customers of long-term supply of glass containers at equitable terms and conditions.

Prior to the public announcement of the Director, the parties had also applied to have glass containers subject to accelerated tariff reduction under the Free Trade Agreement. As of March 31, 1990, the status of that request was unknown.

Crown Cork & Seal Canada, Inc./Continental Can Canada, Inc.

In November, 1989, the proposed acquisition of Continental Can Canada, Inc. by Crown Cork & Seal Canada, Inc. came to the attention of the Director. An analysis of the transaction was conducted and on December 21, 1989, the Director concluded that he would not challenge the merger before the Competition Tribunal at that time.

Crown Cork & Seal and Continental Can were both major producers in Canada of metal can containers and container closures for glass products. While each company manufactured a range of products, the only market in which the two had significant production overlap was that of beverage can production for the beer and soft drink industries. The two companies had a substantial combined market share. In this market, however, analysis of the likely competitive impact of the transaction indicated that effective product substitutes exist, including glass bottles for beer and both glass and plastic bottles for soft drinks. In addition, strong evidence was found that pricing on beverage cans imported from the United States exerts substantial competitive pressure on Canadian producers. This situation is expected to intensify as the United States/Canada Free Trade Agreement allows for continued tariff reductions on such imports.

Efficiency gains expected to result from the transaction were also an important factor in the decision not to challenge. Information obtained from customers contacted during the course of the examination, generally substantiated the parties' claim that such gains were essential to the long term survival of the Canadian industry, especially in light of competitive pressure from highly efficient producers in the United States.

Institut Mérieux International S.A./ Connaught Bio Sciences Inc.

In April, 1988, Institut Mérieux International S.A. (Mérieux) made an offer to increase its ownership in CDC Life-Sciences Inc. to 32.6% of the latter's common shares. Both companies were engaged in the production of vaccines and related biological pharmaceuticals. Mérieux is based in Lyon, France, while Connaught maintains production facilities in Toronto, Ontario and Swiftwater, Pennsylvania. This proposed transaction was the subject of an application by the Director to the Competition Tribunal under section 100 of the Act for an interim order enjoining the transaction for 21 days following notification pursuant to the notifiable transactions provisions under Part IV of the Act. These events are described in the Annual Report of the Director for the year ended March 31, 1989.

In May, 1988, Mérieux applied for an Advance Ruling Certificate (ARC) in respect of a proposed acquisition of control of CDC Life-Sciences Inc. In June, 1988, the shareholders of CDC Life-Sciences Inc. voted to change the company's name to Connaught Bio Sciences Inc. (Connaught).

Following Mérieux's ARC request, a detailed analysis of the proposed acquisition was undertaken. Numerous parties involved in the manufacture and sale of human vaccines and related biological pharmaceuticals, as well as government purchasing and regulatory officials, were contacted. Further information from Mérieux and Connaught was also provided to the Director's staff.

An examination of the information assembled indicated that Connaught and Mérieux are the only suppliers of rabies vaccines that are administered to Canadians. Mérieux also holds a license to an influenza vaccine, but it does not distribute its product in Canada. There was no evidence to suggest that Mérieux was any more likely to enter the Canadian market with additional vaccines than any other vaccine producer based in the United States or Europe.

In November, 1988, the Director advised Mérieux that he would not institute proceedings in respect of the proposed transaction before the Competition Tribunal, even though the transaction would eliminate competition in the rabies vaccine market. The factors considered in respect of this decision include the relatively small size of the rabies vaccine market in Canada, which had sales of less than \$1.5 million, and the fact that Mérieux's effectiveness as a competitor was limited by the buying practices of a number of the provincial health authorities which consider Canadian content in awarding contracts. An ARC was not issued in respect of the proposed transaction and the Director advised Mérieux that he would monitor the impact of the transaction over the three year review period provided in the Act.

In March, 1989, Mérieux announced the proposed merger of Mérieux's and Connaught's human biological pharmaceutical and vaccine operations by way of a share exchange between the companies. As a result of the transaction, Mérieux's interest in Connaught would have increased from approximately 12.6% to 56%.

On September 6, 1989, the Director reiterated his previous conclusions to Mérieux that, other than the form of the transaction, no substantive facts had changed from the previous year that would cause the Director to alter his position. On September 15, 1989, J.V. Vax, Inc., a company incorporated for the purpose of acquiring Connaught, made a cash tender offer at \$30 per share for all of the common shares of Connaught. Ciba Geigy Limited, a major pharmaceutical producer based in Basel, Switzerland, controlled 87% of J.V. Vax, Inc.; Chiron Corporation of California, a U.S. firm engaged in biotechnology-genetic engineering industry, controlled the remaining 13%. On October 4, 1989, the cash tender offer by J.V. Vax, Inc. was withdrawn. Mérieux acquired all of the common shares of Connaught by October 17, 1989.

Lake Ontario Cement Limited/Gormley Aggregates Limited

In June, 1989, the Director became aware of the proposed acquisition of Gormley Aggregates Limited (GAL) by Lake Ontario Cement Limited (LOCL). LOCL operates a cement plant in Picton, Ontario, and numerous ready-mix concrete and related construction products facilities located throughout the major population centres of Ontario. LOCL operates a major construction aggregates facility in Wingham, Ontario, and held a minority position in United

Aggregates Limited near Brampton, Ontario. GAL, a privately held Ontario corporation, operates a number of stone quarries and sand and gravel aggregate pits located northeast of Toronto, Ontario. Two distribution yards of GAL serve customers in the Greater Metropolitan Toronto area. The firm entered the ready-mix concrete business in Newmarket, Ontario, on a small scale in April, 1989.

Construction aggregates are primarily used in road building, and in the production of ready-mix concrete along with hydraulic cement powder and water. GAL is one of the three large aggregate suppliers supplying the Greater Metropolitan Toronto area that is not affiliated with one of the four cement producers in Ontario. The transaction raised a number of concerns about the continued ability of independent concrete producers to maintain access to aggregate supplies, as well as the impact of further vertical integration by cement producers into concrete and aggregate production in the region. The extent of direct competition between LOCL and GAL in aggregates and concrete was quite limited due to the geographic distance between their respective operations and the relatively minor scale of GAL's entry into the ready-mix concrete business.

After an extensive examination of the information provided by the parties and assembled from industry contacts, the Director concluded that he would not initiate proceedings before the Competition Tribunal to prohibit all or part of the transaction from proceeding. In arriving at this decision, the Director considered the absence of any evidence that LOCL had planned to withhold aggregate from independent concrete producers. Moreover, he was satisfied that a new entrant into the Ontario cement market would not have to integrate into aggregate production in order to compete successfully with the incumbent cement producers. The Director also considered the fact that the vast majority of GAL's production was devoted to the road building industry, and the fact that two significant and numerous small independent aggregate producers would remain in the market following the acquisition.

The transaction was completed in September, 1989, and the Director's staff is monitoring the aggregate market in the Greater Metropolitan Toronto area in accordance with the three year review period provided in the Act.

Lake Ontario Cement Limited/Miron Inc.

On January 20, 1989, Lake Ontario Cement Limited (LOCL) announced its intention in the media to acquire Miron Inc. (Miron). LOCL is engaged in the production and sale of hydraulic cement powder, ready-mix concrete and related products. LOCL products are primarily distributed in Ontario and the Great Lakes region of the United States.

Miron was primarily involved in the import of cement through their terminal facilities at the Port of Montréal for redistribution through this facility as well as terminals in Ottawa, Quebec City and Palmer, Massachu-

setts. Miron also operated 15 ready-mix concrete plants in various locations throughout Quebec, as well as one in Ottawa.

An examination of the areas of competition between the parties revealed that LOCL and Miron were competitors in the supply of cement in the Greater Metropolitan Toronto and Ottawa-Hull areas and both supplied ready-mix concrete in the Ottawa-Hull area.

Following an extensive examination, the Director concluded that the transaction would not likely prevent or lessen competition substantially. This decision was reached following consideration of the minimal market share of LOCL in the Quebec cement market and Miron in the Ontario market, as well as the fact that four remaining producers constituted effective competition remaining in both the Quebec and Ontario cement markets. In the Ottawa-Hull ready-mix concrete market, the transaction enabled LOCL to become the largest supplier in the area. However, effective competition remained in the market in the form of affiliates of the major cement producers, as well as a number of independent suppliers. Moreover, Miron's long-term effectiveness as a competitor in the ready-mix concrete business was in doubt because of customer resistance to imported cement of reportedly inconsistent quality.

Due to the high degree of vertical integration among cement, concrete and aggregate producers in the major population centres of Canada and the effect this may have on prices, competitive rivalry and barriers to entry, the impact of this transaction on competition is being monitored.

The Molson Companies Limited/Elders IXL Limited

As reported in last year's Annual Report, the Director undertook an extensive examination of the proposed merger of the North American brewing operations of The Molson Companies Limited (Molson) and Elders IXL Limited to form a new company to be called Molson Breweries. The new company would be the largest brewer in Canada, number six in North America and number twenty world-wide. The examination included considerable consultation with industry participants in Canada and the United States and with provincial regulators and federal officials. On July 9, 1989, the Director announced that the proposed merger would be allowed to proceed with no challenge at that time.

The Director announced that he had established a detailed monitoring programme, under which Molson will provide substantial information on a regular basis. The monitoring programme will enable the Director to assess the impact of the transaction on competition in the Canadian brewing industry. It will concentrate primarily on the impact of the transaction on competition within the provinces of Alberta and Quebec, where the most significant potential concerns were raised by the merger. In addition, 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.

Messageries Dynamiques, division of Groupe Quebecor Inc./Benjamin News Inc.

On July 14, 1989, the parties announced a proposal to combine their distribution operations in a new company.

Benjamin News Inc. (Benjamin News) and Messageries Dynamiques, a division of Groupe Quebecor Inc. (Quebecor), are the two remaining distributors of periodicals and magazines in the province of Quebec. The majority of the shares of the merged entity were to be owned by Quebecor. Quebecor is the largest publisher of French language magazines in the province of Quebec and is also the largest printer in Canada. Through Messageries Dynamiques, Quebecor distributes its own and other publishers' magazines and periodicals. In this latter role, it competes with Benjamin News.

During the course of the Director's examination of the proposed merger, extensive information was provided by Benjamin News, Quebecor, and numerous industry participants. The Director's staff identified serious concerns with respect to the effect of the merger on the magazine and periodical distribution business in Quebec. After extensive discussions, but prior to the Director reaching a final conclusion on this matter, the parties advised the Director of the decision to abandon the proposed merger. Consequently, the Director decided to discontinue his examination.

Corporation d'acquisition Socanav- Caisse Inc./Steinberg Inc.

On July 14, 1989, the Director was informed of the proposed acquisition by Corporation d'acquisition Socanav-Caisse Inc. (CASC) of all the outstanding common shares, Class A Shares and Convertible Fourth Preferred Share Series I of Steinberg Inc.

Steinberg is engaged in wholesale and retail distribution of food and general merchandise and has interests in real estate through Ivanhoe Inc. Steinberg is the third largest food wholesaler in the province of Quebec, after Provigo Inc. and Métro Richelieu Inc.

CASC is 85% owned by Socanav Inc. and 15% owned by the Caisse de dépôt et placement du Québec (CDPQ). Socanav is engaged in the bulk maritime transportation of liquid petroleum and chemical products. In addition, it operates a fleet of some 400 school buses; distributes petroleum products; designs, manufactures and sells heavy equipment for the construction, mining, quarry and pulp and paper industries and repairs ships.

CDPQ was formed in 1965 to manage the funds arising from various public pension and insurance plans. CDPQ holds investments in the food distribution sector

in several major companies including Provigo Inc., Metro-Richelieu Inc., Loblaw's Companies Ltd. and Oshawa Group Ltd.

The parties requested an Advance Ruling Certificate (ARC) under section 102 of the Act. The Director, following his review of the transaction, did not consider it appropriate to issue an ARC in relation to this proposed transaction. He was prepared, however, to provide an opinion under the Bureau's Program of Advisory Opinions. In this regard, he advised the parties on August 15, 1989 that he was of the opinion it was unlikely that this transaction would result in a substantial lessening or prevention of competition if it were to proceed as proposed. In examining this transaction, the Director considered the possible implications for competition resulting from CPDQ representation on the Board of Directors of each of the three major food distributors in the province of Quebec. In response to the Director's concerns, the CDPQ undertook that it would not be represented on these boards by Caisse employees and that no person representing the Caisse will sit on more than one board.

The Director will be monitoring developments in the marketplace over the three year limitation period provided in the Act, to ensure that a material change in circumstances does not alter his conclusion.

PWA Corporation/Wardair Inc.

As reported in the Director's 1989 Report, PWA Corporation, the parent company of Canadian Airlines International Limited, announced its proposed acquisition of Wardair Inc. on January 19, 1989. An examination of the merger was commenced at that time. On March 23, 1989, the Director received an application by six Canadian residents (filed through the Consumers' Association of Canada) pursuant to section 9 of the Competition Act and, accordingly, initiated a formal inquiry under section 10 of the Act.

Analysis of the available evidence in the inquiry concluded that the transaction raised serious concerns for competition in the domestic airline industry for several reasons. The information obtained from a variety of sources established that the merger would result in the elimination of a vigorous and effective competitor, that significant entry barriers to the industry exist, and that there is little potential for foreign competition.

Balanced against these negative factors was the financial situation faced by Wardair. In considering the failing business factor under the Competition Act two issues arise: the extent to which failure is, in fact, likely to occur; and, whether there are likely alternatives to the merger that likely would be less restrictive of competition. Careful analysis of Wardair's financial situation with the assistance of experienced financial consultants indicated that it would likely fail within a matter of months. A number of retrenchment scenarios were reviewed and

found to be either unattainable or unworkable in the circumstances. During the course of the merger examination no possible alternative merger proposal to the acquisition of Wardair by PWA Corporation arose.

Accordingly, any anticompetitive effects arising in the market subsequent to the merger could not be attributed to the merger because there were no alternatives that would likely result in a more competitive environment. In order words, market power did not result from the merger.

Applications to the Competition Tribunal

During the fiscal year two applications for consent 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 Montreal-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 Competition 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 constitutional challenge was heard in October-November, 1989. On April 6, 1990, Mr Justice Philippon declared that:

- the provisions of the Competition Act which authorize the Competition Tribunal to dissolve a merger are inoperative because they interfere with freedom of association as guaranteed by the Canadian Charter of Rights and Freedoms;
- the Competition Tribunal is unconstitutional because the lay members do not have sufficient tenure protection to be regarded as independent and impartial as guaranteed by the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights.

On April 17, 1990, the Attorney General of Canada filed an appeal to the Quebec Court of Appeal.

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 June, 1988, applications to intervene in the matter were made by Wardair Canada Inc., American Airlines and the Consumer's Association of Canada. Subsequent applications to intervene were received from the Attorney-General of Manitoba, the Alliance of Canadian Travel Associations, Bios Computing Corporations and Air Atonabee Limited. Although these applications were not objected to by the Director, the role 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 arguments 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 proceedings 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.

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 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.

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 order provides access to information to competing computer reservation systems and direct access links on a reciprocal basis to commercially significant CRS. The order also contains CRS rules which have general application to all CRS vendors and owning carriers who may be granted a direct access link under the order. The rules incorporate, in part, neutral display, non discriminatory access and fees, and provide a *per se* prohibition on tied selling between carriers and the CRS system which they own.

Asea Brown Boveri Inc./Westinghouse Canada Inc.

As reported in last year's Annual Report, on April 26, 1989, the Director applied to the Competition Tribunal for a Consent Order under section 105 of the Act in relation to the acquisition of the electric power transmission and distribution business of Westinghouse Canada Inc. (Westinghouse) by Asea Brown Boveri Inc. (ABB). 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., were the two largest manufacturers of power transformers in Canada. In addition to concentration levels resulting from the merger, the Director's conclusion that the matter would likely result in a substantial lessening of competition in the market for large power transformers in Canada was also based on other factors, including a lack of foreign competition, high entry barriers, the removal of an effective competitor and the reduced effectiveness of remaining competition.

The Consent Order, which was the first issued by the Tribunal, was granted on June 15, 1989, after a public hearing on that date. The provisions of the order require

that ABB divest certain assets obtained from Westinghouse if it is unable to attain specific tariff relief measures for imports of medium and large power transformers. The tariff measures are a full remission of duties for five years on all imports of auto-transformers rated at greater than 300 MVA, other transformers rated at greater than 275 MVA, or transformers of a kilovolt class of 765 KV or greater. Also included are accelerated tariff reductions on imports from the United States of auto-transformers rated greater than 100 MVA up to 300 MVA and other transformers rated greater than 50 MVA up to 300 MVA. In addition, the order required that the operations of Transelectrix Technology be held separate from those of ABB pending compliance with the other provisions of the Order. ABB also provided an undertaking to the Tribunal that it would not initiate or support any anti-dumping proceedings for medium and large power transformers for a period of five years.

In order to achieve the required tariff measures, ABB made application to the appropriate government authorities for a remission order of five years duration for the large transformer range, and to have the medium range of transformers included in the package of items to be negotiated under the Canada-U.S. Free Trade Agreement to be subject to accelerated reductions of tariffs under the Agreement.

The negotiations between the United States and Canada to arrive at an agreed package of items for accelerated tariff reduction took longer than had been anticipated at the time the Consent Order was issued. The proposed package was not announced until November 30, 1989, by which time it was evident that the required governmental approvals for the package would not be obtained prior to January 1, 1990, as required by the Consent Order.

As a result, on November 9, 1989, ABB made an application to the Tribunal to have the original Consent Order varied so as to allow an extension to June 30, 1990, of the deadline for the attainment of the accelerated tariff reductions on imports of transformers from the United States. ABB also applied to vary the hold separate provisions of the Consent Order so as to allow the day-to-day management of Transelectrix Technology to be assumed by ABB, but provide that Transelectrix Technology be maintained as a separate division with appropriate infrastructure to allow its sale on a free-standing basis. After a careful vetting of the proposal with affected parties, the application of ABB was supported by the Director at a public hearing of the Tribunal on December 18, 1989, and the Tribunal granted the requested order at that time.

On January 1, 1990, a tariff remission order in respect of imports of large transformers came into effect. As of March 31, 1990, the proposals for accelerated tariff reductions under the Canada-U.S. Free Trade Agreement were being considered by the Congress of the United States and were expected to be in place by June 30, 1990.

Imperial Oil Limited/Texaco Canada Inc.

On January 20, 1989, Imperial Oil Limited (Imperial) entered into a controlling shareholder's agreement with Texaco Inc. of the U.S. to acquire 78% of the outstanding shares of Texaco Canada Inc. (Texaco). Imperial and Texaco are two of Canada's largest vertically-integrated petroleum companies and compete at all levels of the petroleum industry.

Also on January 20, 1989, Imperial gave the Director formal undertakings which included an unconditional undertaking to divest any assets necessary to alleviate competition concerns in the downstream sector which includes refining, distribution and marketing.

Pursuant to an offering circular dated January 26, 1989, Imperial acquired the balance of the shares of Texaco. The transaction, valued at approximately \$4.96 billion (U.S.), closed on February 23, 1989.

On February 24, 1989, the Director issued a public statement disclosing the substance of Imperial's undertakings to him. In addition, the Director announced that, based upon his examination to date, divestitures of assets in the downstream sector would likely be required and it was his intention to publicly place any proposed divestiture package before the Competition Tribunal on a Consent Order basis. At this time, the Director also mentioned that serious competition concerns did not appear likely in the upstream sector, which includes the exploration and production of crude oil and natural gas, and pipeline transportation.

In the months that followed, the Director carried out a comprehensive examination of the state of competition in the supply, distribution and marketing of refined petroleum products in Canada making extensive use of economic and industry experts. On June 29, 1989, he applied to the Competition Tribunal for a Consent Order under section 105 of the Competition Act. The proposed Consent Order directed the divestiture of specific assets across Canada and required Imperial to offer gasoline supplies to independent petroleum marketers in Ontario and Quebec.

In his application for the Consent Order, the Director contended that the merger was likely to prevent or lessen competition substantially in the wholesale and retail supply of refined petroleum products. In particular, the merger would:

- eliminate a major refiner-marketer in the Atlantic Canada region;
- eliminate a significant supply alternative for non-integrated gasoline marketers in Quebec and Ontario;

- reduce the availability of terminal facilities for the storage and distribution of refined petroleum products across Canada;
- eliminate an effective competitor from the branded sector of retail gasoline markets across Canada; and
- increase the opportunity for interdependent market behaviour among refiner-marketers.

To remedy the anticompetitive effects of the merger, the Director sought the Tribunal's approval for the divestiture of virtually all of Texaco's petroleum assets in Atlantic Canada. These included: the Eastern Passage refinery and marine terminal in Dartmouth, Nova Scotia; the Ultramar supply agreement at the refinery; four storage and distribution terminals located throughout the Atlantic region; and 197 retail service stations located throughout the region. This divestiture was due to the high level of concentration and entry barriers at the refinery level, provincial regulation of gasoline pricing and entry in Nova Scotia and Prince Edward Island, the importance of heating oil to the region, the barriers to refined product imports by independent marketers, and the likelihood that independents would have to rely on Imperial as their sole source of supply.

Elsewhere in Canada, the Director sought the Tribunal's approval for the divestiture of 346 service stations and 9 storage and distribution terminals in local markets which exhibited relatively high concentration, obstacles to new entry, and duplication of Imperial and Texaco facilities. The proposed consent order further required Imperial to make available a specific quantity of gasoline to independent marketers in Ontario and Quebec from its own Sarnia refinery and Texaco's Nanticoke refinery.

The aforementioned requirement recognized the significance of independent marketers in maintaining competition in retail gasoline markets. At the same time, it would allow Imperial to achieve substantial synergies and efficiencies from combining the refinery operations at Sarnia and Nanticoke.

Quebec independents were included in the order through Texaco's long-term supply exchange agreement with Petro-Canada's refinery in Montreal. The supply obligation in the proposed Consent Order is for a period of seven years with an opportunity for independents to obtain supply for up to 10 years.

On July 4, 1989, the Competition Tribunal issued an Interim Order requiring Imperial to hold separate and apart the assets identified in the proposed consent order to be divested pending a final decision by the Tribunal.

In the summer of 1989, the Tribunal permitted 14 parties to intervene in the matter, many of whom had been consulted and with whom the Bureau had had extensive discussions prior to the filing of the application for a Consent Order. These included the Provinces of Quebec and Newfoundland, the Consumers' Association of Canada, representatives of Texaco's refining and marketing employees, independent petroleum marketers, and Texaco and Imperial dealers.

The Tribunal conducted a pre-hearing conference on August 24, 1989, and public hearings were held before the Tribunal in Ottawa from October 16 to November 8. At these hearings the Tribunal heard evidence from economic and industry experts and witnesses for intervenors.

Prior to the conclusion of the hearings, the Attorney General of Quebec withdrew from the proceedings when Imperial agreed to divest an additional 68 service stations in that province.

On November 10, the Tribunal issued its preliminary decision. It approved the service station divestitures, but expressed concern about the effectiveness of the divestitures in Atlantic Canada and the terms and enforceability of the supply assurance for Ontario/Quebec independents. Specifically, the Tribunal preferred that all of Texaco's petroleum assets in Atlantic Canada be divested to ensure viability of the refinery operations and to ensure that an effective competitor would replace Texaco in the region. In addition, it wanted a condition of supply whereby Imperial would be required to actually sell gasoline to independents rather than simply offer product for sale.

Revisions to the proposed consent order were filed with the Competition Tribunal on November 28, 1989 and the Tribunal rendered its final decision on January 26, 1990. The Director filed an amendment to the proposed order on February 2, 1990 and the Tribunal granted the order on February 6, 1990.

Pursuant to the Consent Order, Imperial must divest all of Texaco's assets in the Atlantic region. These include the Eastern Passage refinery and marine import terminal, 4 storage terminals and 224 service stations. Outside of the Atlantic region, Imperial must divest 9 storage terminals and 411 service stations. Imperial has a duty to supply a specified volume of gasoline to independent petroleum marketers in Ontario and Quebec for a period of up to 10 years. A market growth formula is

included in the supply obligation. Imperial cannot re-acquire any divested service station or supply branded product to any divested station for a period of 5 years. Moreover, for 10 years Imperial cannot acquire any downstream petroleum assets without first notifying the Director of its intention to do so.

Imperial must sell the divested assets within one year, failing which they will be placed in the hands of an independent trustee who will have six months to sell them. The Director has authority to approve the divestiture process and all purchasers of the assets.

On March 6, 1990, Barron Hunter Hargrave Strategic Resources Inc., one of the intervenors, filed a notice of appeal in the Federal Court of Appeal. No grounds were given for this appeal in the notice.

The divestiture process was continuing at the year end as required by the order.

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, when 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 through 90).

Other provisions in Part VIII relate to the implementation of foreign laws or directives (sections 82 and 83) and refusals to supply by foreign suppliers (section 84). Several limitations and exceptions apply to the various reviewable matters provisions. For greater certainty, readers are advised to consult the legislation.

Applications to the Competition Tribunal

Three reviewable practice cases were before the Competition Tribunal this year.

The NutraSweet Company

On June 1, 1989, the Director filed an application with the Competition Tribunal alleging that NutraSweet Company (NutraSweet) has engaged in practices which constitute an abuse of dominant position and tied selling in the sale in Canada of the artificial sweetener aspartame.

The application alleged that NutraSweet controls over 95 percent of the relevant market and has engaged in a practice of anticompetitive acts that have had the effect of precluding the entry or expansion of competitors. The application seeks an order prohibiting NutraSweet from engaging in such practices. This application is the first one

under the non-criminal abuse of dominant position provisions enacted in 1986 to replace the previous criminal prohibition on monopoly.

NutraSweet denied the allegations. Hearings before the Competition Tribunal were held during the period January 9, 1990, to February 23, 1990. The Tribunal will hear arguments in April, 1990.

Chrysler Canada Ltd.

On December 14, 1988, the Director filed an application with the Competition Tribunal in relation to Chrysler Canada Ltd. (Chrysler). The application asked the Tribunal to order Chrysler to supply automotive parts for export purposes to R. Brunet of Montréal. The Tribunal issued an order supporting the Director's application on October 13, 1989.

However, the Director was subsequently apprised that Chrysler was contravening the October, 1989, order. Consequently, a show-cause application for contempt proceedings was brought before the Tribunal on February 19, 1990. The Tribunal ruled on February 20, 1990, that it was within its jurisdiction to hear applications of this nature, and postponed the hearing until February 27, when the Director's application was heard. The Tribunal reserved its decision.

On February 26, Chrysler appealed the Tribunal's decision of February 20 and requested that the Federal Court of Appeal stay the hearings before the Tribunal. Chrysler also appealed the Tribunal jurisdiction to punish contempt committed *ex facie curiae*. On March 1, the Federal Court of Appeal refused the stay and heard the appeal on the attempt issue on March 28. A decision on the appeal is forthcoming.

Xerox Canada Inc.

On November 16, 1989, the Director filed an application with the Competition Tribunal for an order under the refusal to deal provisions of the Competition Act. This application asks the Tribunal to order Xerox Canada Inc. (Xerox) to resume supply of photocopier parts for post-1983 Xerox copiers to Exdos Corporation of North York, Ontario. Xerox is the sole authorized supplier of Xerox brand repair parts in Canada. Hearings before the Competition Tribunal are scheduled for June, 1990.

Activities Relating to Inquiries

During the fiscal year, the Bureau initiated two new 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.

Chapter V

Criminal Offences in Relation to Competition

Part VI of the Competition Act prohibits under criminal sanction 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 section 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 to 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 (section 46), agreements relating to participation in professional sport (section 48) and agreements among banks (section 49). 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, 1990, 27 proceedings were considered by the Courts under the offences against competition provisions. These consisted of 11 proceedings commenced during the year and 16 proceedings before the courts from previous years. Sixteen proceedings were concluded during the year, of which six resulted in conviction, seven resulted in the acquittal of the accused, and three resulted in the issuance of an order of prohibition without conviction. Fines totalling \$915 000 were imposed during the year. In addition, in the 15 proceedings before the courts at the end of the year, \$40 850 in fines were 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: 1989 to 1990

Section	Proceedings Commenced		Completed Proceedings					
			Conviction		Order of prohibition		Non-conviction	
	1988-89	1989-90	1988-89	1989-90	1988-89	1989-90	1988-89	1989-90
45	2	4	2	-	1	-	1	2
47	-	2	3	-	-	1	-	-
50(1)(a)	1	-	1	-	-	1	-	-
50(1)(c)	-	1	-	-	-	-	-	-
51	-	1	1	-	-	1	-	-
61(1)(a)	3	1	6	4	-	-	1	2
61(1)(b)	1	1	2	2	-	-	5	2
61(6)	-	1	-	-	-	-	-	1
Totals	7*	11**	15	6	1	3	7	7

* 7 proceedings arising from 6 court cases to violations of the identified provisions of the Act (one of which combines 9 separate matters)

** 11 proceedings arising from 7 court cases to violations of the identified provisions of the Act

Agreements to Lessen Competition/Bid-rigging

Asphalt Paving

On September 12, 1988, one charge was laid under paragraph 32(1)(c) of the Combines Investigation Act (now paragraph 45(1)(c) of the Competition Act) in Windsor, Ontario, against the following companies and individuals: McIntosh Paving Company Limited; E. Bondy Excavating and Trucking Limited; Earl Jones & Sons Limited; Mr. Charles Burns McIntosh; Mr. Charles Louis Beaudoin; Mr. Ernest Donald Bondy; Mr. Murray Jones; and Mr. Ralph Jones. The charge concerned asphalt paving contracting services between April 1, 1982, and October 12, 1984, in the Windsor area. Searches of the above three named companies were conducted in October 1984. However, due to court challenges, the documents were not released by the Court to the Director until June 14, 1988. On September 6, 1989 the Attorney General of Canada withdrew the charge. (Resources and Manufacturing Branch)

Price Discrimination

Ski Lift Tickets

On April 6, 1989, an order of prohibition was issued by the Federal Court of Canada against Station Mont-Tremblant Lodge Inc. (Lodge). The order was issued under subsection 34(2) after the respondent consented to the terms of the order and the accompanying admissions. The admissions indicate that the Lodge, the sole supplier of ski lift tickets for the Mont-Tremblant ski hills, had adopted a discount lift ticket policy for pricing purposes, under which equally favorable discounts, rebates, allowances, price concessions or other advantages were not made available to a competing lodging operator in respect

of sales of articles of like quality and quantity. Such conduct was alleged to be directed towards the commission of an offence under paragraph 50(1)(a) of the Act.

In particular, the order prohibits the adoption of a discount or program whereby lodging operators are classified on the basis of the type of accommodation provided or the range of peripheral services offered, such as restaurant or bar facilities.

In addition to prohibiting the Lodge from doing any act or thing directed towards the repetition of the conduct in question, the order requires the Lodge to provide the Director with a detailed description of its discount policy or program with respect to sales of lift tickets to hotel operators, and a detailed account of rebates being granted to purchasers. The order will remain in effect for five years. (Services Branch)

Promotional Allowances

Power Tools

On February 13, 1990, an order of prohibition was issued by the Superior Court of Quebec against Makita Power Tools Canada Ltd. The order was issued under subsection 34(2) after the respondent consented to the terms of the order and the accompanying admissions. The admissions indicated that the co-op advertising program which had been initiated by the company had not been offered on proportionate terms to all competing retailers. Such conduct was alleged to be directed towards the commission of an offence under subsection 51(2) of the Act. The order prohibits Makita from doing any act or thing directed towards the repetition of the commission of such an offence. In addition, the order requires Makita to provide the Director with a detailed description of its co-op advertising plan. (Resources and Manufacturing Branch)

Bid-rigging

Architectural Hardware

On September 21, 1989, an order of prohibition was issued against Architectural Hardware Ltd., L. H. Ruprecht Ltd. (trading as Commercial Doors & Hardware), Summerhill Hardware Ltd., and William Aikerhead Door and Hardware Ltd. The order was imposed under subsection 34(2) after the named parties consented to the terms of the order.

The order prohibits the companies from engaging in any activity directed toward the commission or continuation of bid-rigging offences. In addition, the order enjoins each company to provide staff involved in the sale of these products and companies presenting tender calls with a written statement indicating that it is company policy to comply with the provisions of the Act and the terms of the order and that non-compliance may be punishable under subsection 34(6) of the Act. Finally, the order contains certain measures to assist the Director in ensuring compliance with the terms of the order. (Resources and Manufacturing Branch)

Price Maintenance

Gasoline – Winnipeg

On October 15, 1987, two charges were laid against Shell Canada Products Limited (Shell), one under each of paragraphs 61(1)(a) and 61(1)(b) of the Competition Act. On February 27, 1989, the Manitoba Court of Queen's Bench convicted Shell under paragraph 61(1)(a) and fined the company \$100 000 for attempting to influence upward the price of gasoline sold by one of its retail dealers. Shell's appeal of the conviction was dismissed by the Manitoba Court of Appeal on February 8, 1990, and the Court increased the fine to \$200 000. This is the largest fine imposed by a Canadian court for a single count under the price maintenance section and it is the first time a superior court in Canada has ruled on the meaning of the term "threat" in this section of the Competition Act. As well, the court found that although Shell argued it did not have a corporate policy of price maintenance, that was not a mitigating factor in assessing the appropriate fine and that Shell was liable for the actions of its Winnipeg marketing representative even though he was low on the corporate hierarchy. (Resources and Manufacturing Branch)

Wrist Watches

On December 7, 1987, Les Must de Cartier Canada Inc. was ordered to stand trial on two charges, one under each of paragraphs 38(1)(a) and 38(1)(b) (now 61(1)(a) and 61(1)(b)). This inquiry was commenced following receipt of a complaint by a Toronto jeweller alleging that the accused had attempted to influence upward the price at which the retailer sold Cartier wrist watches, and had refused to supply the retailer with wrist watches

because of his low pricing policy. On May 23, 1989, the accused was acquitted of both charges. (Resources and Manufacturing Branch)

Power Tools

On February 17, 1988, two charges were laid, one under each of paragraphs 61(1)(a) and 61(1)(b), against Makita Power Tools Canada Ltd. (Makita) On September 22, 1988, the accused waived its right to a preliminary hearing. On April 13, 1989, the accused pleaded guilty to one charge under paragraph 61(1)(b) and was fined \$15 000. The remaining charge was withdrawn. This inquiry was commenced in September, 1985, following a complaint from a Quebec retailer of automobile parts and accessories alleging that the local Makita sales representative was refusing to take any more orders of Makita power tools because of its low pricing policy. (Resources and Manufacturing Branch)

Vitamins

On April 4, 1989, Hoffmann-La Roche, Limited pleaded guilty to one charge under paragraph 61(1)(a). The company was fined \$50 000 and made subject to an order of prohibition. This inquiry was initiated by a complaint from a wholesaler in Western Canada alleging that Hoffmann-La Roche, Limited had attempted to influence upward the price at which it sold Redoxon, a brand of over-the-counter vitamins produced by Hoffmann-La Roche, Limited. (Services Branch)

Watchbands

On May 15, 1989, Les Industries du Bracelet-Montre Stylecraft Inc. pleaded guilty to one charge under paragraph 61(1)(a) and one charge under paragraph 61(1)(b). The accused was fined \$15 000 in total, \$5 000 for the infraction under paragraph 61(1)(a) and \$10 000 for the infraction under paragraph 61(1)(b). One charge under paragraph 61(1)(b) was withdrawn by the Crown. The inquiry in this matter was commenced following a complaint from a wholesaler of watchbands and repair parts alleging that the accused had attempted to influence upward his prices and had subsequently refused to supply him because of his low pricing policy. (Resources and Manufacturing Branch)

Motorcycles and Consumer Motorcycle Shows

On October 13, 1989, 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 Limited all pleaded guilty to one charge under paragraph 61(1)(a). On November 9, 1989, upon reviewing the joint submission regarding sentence and the statement of facts in this matter, the Ontario Supreme Court sentenced the accused to pay a total fine of \$250 000 and issued an Order of Prohibition. The charge in this matter focussed upon the actions of the five major motorcycle distributors and

their trade association in an effort to restrict discount price advertising at consumer motorcycle shows. (Resources and Manufacturing Branch)

Watches

On February 20, 1990, Wenger's Limited was convicted of one count of refusing supply of Cardinal watches to Bijouterie Marcel Gilbert Importateur of Chicoutimi, Quebec, by the Quebec Provincial Court, Criminal Division. The trial was preceded by a number of motions challenging the proceedings on the basis of unreasonable delay, lack of jurisdiction and illegal seizure of documents, all of which were decided in favour of the Crown on June 15, 1989. Sentencing was scheduled for June 18, 1989. On March 21, 1990, leave to appeal the conviction was granted by the Quebec Court of Appeal. (Services Branch)

Court Proceedings Relating to Ongoing Cases

Association of Ontario Land Surveyors

On February 21, 1990, the Association of Ontario Land Surveyors filed an application in the Supreme Court of Ontario requesting a ruling that the Competition Act did not apply to certain activities of the Association which it maintained were subject to the "regulated conduct" defence. This defence has been applied by the courts to certain activities of the professions where provincial legislation has conferred regulatory authority on a self-governing professional organization. The application was originally scheduled to be heard on April 12, 1990, but was delayed and has not been rescheduled at the time of printing of this report. (Services Branch)

The Nova Scotia Pharmaceutical Society

On March 22, 1990, the Nova Scotia Provincial Court committed the Nova Scotia Pharmaceutical Society, the Pharmacy Association of Nova Scotia, and a number of individual pharmacists and pharmacies in Nova Scotia to stand trial on charges under section 45 of the Act. These parties were charged with conspiracy to lessen competition unduly in the supply of prescription drugs and pharmacist's dispensing services to customers paying cash or covered under a private prescription drug insurance plan in Nova Scotia between 1974 and 1986. The trial is scheduled for October 1, 1990. (Resources and Manufacturing Branch)

Other Matters

The Supreme Court of Canada rendered its decision on the Thomson Newspapers (Thomson) case on March 29, 1990, upholding the constitutionality of section 17 of the Combines Investigation Act which provides for the oral examination of witnesses and the production of documents.

In 1985, *duces tecum* orders under section 17 were sent to officials of Thomson. The company brought a motion to quash the orders on the grounds they violated section 13 of the Charter of Rights and Freedoms by compelling witnesses to incriminate themselves. They also alleged that the requirement to produce documents amounted to an unreasonable search and seizure contrary to section 8 of the Charter.

The Supreme Court's decision allows the Director to obtain orders for oral examinations, the production of documents and written returns of information. These provisions are now contained in section 11 of the Competition Act. (Resources and Manufacturing Branch)

Activities Relating to Inquiries

During the fiscal year, the Director initiated 13 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 five inquiries.

At the close of the last fiscal year, four 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 six cases were referred to the Attorney General during 1989-90.

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 information is not warranted. The Director is required to report to the Minister of the discontinuance of any inquiry. Four inquiries under sections 45 to 51 and section 61 were discontinued during the year. Discontinuances are described briefly in Appendix VI.

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, 1990, 195 misleading advertising and deceptive marketing practices cases were considered by the Courts. These consisted of 84 proceedings commenced during the year and 111 proceedings before the Courts from previous years. This includes 15 cases that were under appeal at the start of the year.

There were 76 cases concluded during the year, 49 of which resulted in convictions, 22 in acquittals, charges withdrawn and other completions of court proceedings¹ and five in the issuance of orders of prohibition without conviction. Fines totalling \$907 850 were imposed during the year. In addition, of the 119 cases before the Courts at the end of the year, \$115 350 in fines were outstanding in 11 cases 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 important court proceedings that took place during the year.

Television Sets ("Made in Canada")²

On September 26, 1989, the Federal Court of Canada issued an order of prohibition under subsection 34(2) involving Sanyo Industries Canada Inc./Les Industries Sanyo Canada Inc. (Sanyo). That company had affixed "Made in Montreal by Sanyo Industries Canada Inc." plaques on the backs of its television sets, giving the general impression that the product was made in Canada. The Director was concerned that the Canadian portion of the production of the sets in terms of cost of direct material and/or labour and related overhead was significantly less than 51%.

The order was granted as a result of discussions between Sanyo and representatives of the Director and the Attorney General. It prohibits Sanyo from repeating the practice for a period of three years.

Advertising Space

Canadian Police Review Publishing Inc. and Keith A. Gardner represented that the Review printed 20 000 copies per issue but were not able to substantiate this figure. They were charged under paragraph 52(1)(b).

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

2 See also the undertaking obtained regarding use of the phrase "Made in Canada", noted in Appendix IX

On August 8, 1989, both accused pleaded guilty. The company was fined \$100 000 and Keith A. Gardner was fined \$3 000. An order of prohibition was also granted.

Fuel Saving Device

Carburation Econex Canada Inc. and Raymond Roy, in promoting the sale of a fuel saving device, represented in magazine advertisements that the device reduced pollution by 90 percent and produced fuel savings of up to 25 percent. Investigation revealed that these representations were false; tests conducted by the National Research Council indicated that there were no such savings.

On August 2, 1989, the company was convicted of 10 charges under each of paragraphs 52(1)(a) and (b) and fined a total of \$200 000. On January 24, 1990, Raymond Roy pleaded guilty to 12 charges under each of the above paragraphs and was sentenced to make a donation of \$4 000 to the Association de protection des automobilistes.

Vacation Packages

The Wholesale Travel Group Inc. and Colin Chedore face five charges under paragraph 52(1)(a). Before any evidence was called at their trial, their motion to have subsections 52(1) and 60(2) declared inconsistent with sections 7 and 11(d) of the Charter of Rights and Freedoms, and therefore of no force or effect, was successful. This decision was reversed on appeal to the High Court. On November 23, 1989, in a majority decision by the Ontario Court of Appeal, it was held that subsection 52(1) was constitutional, but that paragraphs 60(2)(c) and (d) were unconstitutional and of no force or effect. The remainder of paragraphs 60(2)(a) and (b) were held valid after the words "he establishes that" were declared unconstitutional. The matter was then remitted for trial. On February 26, 1990, an application for leave to appeal to the Supreme Court of Canada was granted.

Rugs

The T. Eaton Company Limited, carrying on business as Eaton's, was charged with making false and misleading representations regarding the ordinary selling price of its Chinese rugs. While representing that they could be purchased at a 40 to 50 percent saving off the regular price, this price was highly inflated, did not represent the rugs' true regular price nor the regular price in the relevant market. A survey indicated that the regular market price was substantially lower than Eaton's represented regular price. On January 22, 1990, Eaton's was fined \$65 000 in respect of one charge under paragraph 52(1)(d).

Carpita Corporation, carrying on business as Factory Carpet, was charged under the same provision as

Eaton's. It had represented in catalogues and on the tags of rugs it was selling that they had a "value" of \$199.99. These rugs, however, were ordinarily sold in the relevant market for between \$79 and \$140. Factory Carpet was fined a total of \$65 000 on March 6, 1990, in respect of two charges.

Reform of the Misleading Advertising Provisions

The Parliamentary Standing Committee on Consumer and Corporate Affairs, as it then was, issued a Report on the Subject of Misleading Advertising in June, 1988. That Report contained numerous recommendations in relation to the administration of the current provisions, as well as suggestions for statutory reform.

The Government was unable to respond to the Report before Parliament was dissolved. Nevertheless, the Bureau considered it useful to examine some of the reform issues raised. The Branch undertook several internal studies and, as a result, was encouraged to continue the process of consultation.

During the summer of 1989, a consultation letter was sent out to business associations, consumer interest groups, academics and provincial authorities indicating that the desirability of amendments to the misleading advertising and deceptive marketing practices provisions of the Act was being examined. Recipients were invited to review and critique a "framework for reform", developed in part as a response to the Report. The framework did not propose to widen the scope of the misleading advertising provisions, but rather was "confined to allowing improved and more equitable options for dealing with matters that are currently within the ambit of the Act, but are adjudicated by the criminal courts."

The letter addressed four concerns raised in the Report. It gave some indication of the Bureau's "preliminary positions" regarding a non-criminal case adjudication process, remedial orders, interpretive rule-making and assurances of voluntary compliance. Preliminary positions were set out, intended to "stimulate and focus comment from interested parties."

Responses received were numerous and, in some cases, detailed. As a result of these preliminary consultations, consideration is being given to the formation of a small working group, with representation from business and advertising associations, consumer organizations and government, to further the reform process.

Activities Relating to Inquiries

During the fiscal year, the Director initiated 76 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 five inquiries.

At the close of the 1988-89 fiscal year, 52 cases which had been referred to the Attorney General for consideration as to whether prosecution or other proceedings ought be commenced were still under review. An additional 56 cases were referred to the Attorney General during 1989-90.

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 undertakings are given or for other reasons 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 seven 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 1985-1986.

Operations under the Misleading Advertising and Deceptive Marketing Practices Provisions*

	1985-86	1986-87	1987-88	1988-89	1989-90
Total complaints received	10 668	12 382	13 496	13 237	14 610
Number of files opened	9 809	11 514	12 374	12 043	13 448
Applications for inquiries under section 9	—	—	1	—	2
Completed examinations/inquiries	1 042	882	670	612	493
Information contacts	1 109	1 306	1 517	1 325	1 310
Inquiries formally discontinued:					
Undertakings	—	—	—	—	3
Other reasons	—	—	3	3	4
Matters referred to the Attorney General of Canada	175	151	83	75	56
Matters referred where the Attorney General of Canada decides no further action warranted	19	10	—	5	6
Proceedings commenced during the year	158	149	131	110	84
Prohibition orders without conviction	—	—	2	3	5
Completed cases: non-convictions**	33	41	43	45	22
Completed cases: convictions	109	111	84	77	49
Total fines	***	***	\$661 500	\$812 980	\$907 850
Fines in out-standing matters	***	***	\$172 850	\$208 000	\$115 350

* See also activities noted at the end of chapter VIII related to Information and Compliance Programs.

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

*** Not reported in previous Annual Reports.

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.

During the year, representations were made before regulatory hearings and boards relating to a number of industry sectors. These included transportation, communications, energy and agriculture, among others. 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

National Transportation Agency Inquiry into VIA Rail Canada Inc.'s pricing policy

On March 7, 1989, the Minister of Transport, pursuant to section 31 of the National Transportation Act, 1987, requested the National Transportation Agency (NTA) to conduct an inquiry "into the pricing policy of VIA Rail Canada Inc. (VIA) and its impact on the competition for ridership between modes".

The Director of Investigation and Research's representative appeared before the NTA on May 2, 1989. In his submission, the Deputy Director advocated considering the option of reducing regulatory oversight, or applying regulatory forbearance, to allow greater pricing freedom for VIA. The Director also advocated granting VIA discretion on commercial decisions to shape its service profile across different routes and markets.

On May 3, 1989, counsel for VIA requested and were granted a hearing adjournment by the NTA. Then on May 10, 1989, the Chairman of the NTA advised the Minister of Transport that it would not be possible for the Agency to meet the June 14 deadline for submitting a report of the inquiry. In a reply on June 8, 1989, the Minister of Transport removed the deadline from the Inquiry's terms of reference and stated that he would reconsider at some future date the need to proceed with the Inquiry.

Finally on October 4, 1989 the Minister of Transport formally terminated the inquiry. (Regulatory Affairs Branch)

British Columbia Motor Carrier Commission

The British Columbia Motor Carrier Commission scheduled hearings for November 27, 1989 with regard to an application by Annacis Auto Transport Ltd. (Annacis) for extraprovincial truck operating authority which would permit the transportation of motor vehicles from British Columbia to the Alberta/British Columbia border for furtherance and return. The application was opposed by the only existing carrier with extraprovincial truck operating authority in British Columbia, Auto Haulaway Inc.

In view of the fact that a similar application in 1988 was denied by the same commission, the Director gave notice of his intention to appear at the hearings to cross-examine witnesses and to present final argument. The Director intended to argue in favour of granting Annacis' application in full. This, in the Director's view, would be consistent with the intent of the new Motor Vehicle Transport Act, 1987 under which provisions the application was being reviewed. Upon Auto Haulaway's withdrawal of its objection to the application immediately prior to the November 27, 1989 commencement date, the hearings were cancelled and the application was granted in full. (Regulatory Affairs Branch)

Submission to the Ontario Chicken Producers' Marketing Board

As part of its policy deliberations, the Ontario Chicken Producers' Marketing Board invited the Director to provide comments on both the competitive impact of various new pricing systems, and the potential applicability of the Competition Act to these systems.

The Director's August 1989 submission highlighted the fact that many of the industry's problems arise from inflexibilities in the current operation of the chicken supply management system in Canada. The submission suggested that more market-based pricing, such as an auction system, would provide an efficient and competitive method for allocating live chicken from producers to processors in Ontario. In addition, it was noted in the submission that the current difficulties in the Ontario industry are critically dependent on conditions in the end-use market, and cannot be solved merely through restrictive regulatory efforts at the producing-processing level.

The Board's intention to modify the traditional pricing system was initiated by perceived problems resulting from the sale of supply managed chickens to the increasingly competitive chicken processing sector. These problems include the paying by processors to growers, of prices in excess of the regulated or official price in order to obtain chickens.

In February, 1990, the Board proposed an agreement, to take effect later in the year, which assigns the supply of live chickens to each processor in Ontario. (Regulatory Affairs Branch)

Submission to the Royal Commission on the British Columbia Tree Fruit Industry

As a result of several years of poor financial returns recently in the B.C. tree fruit industry, the Province of British Columbia established a Royal Commission in December, 1989, to examine methods for improving the economic potential of the industry. The Director was invited to comment on several policy options under consideration by the Commission, including the possibility of implementing supply management for apples.

The Director's submission argued that the industry's consistent production and export performance, and its continued success in adopting new technologies, indicate that it is capable of remaining dynamic and competitive.

The submission suggested that improved economic performance is possible in this industry by modifying the present pooling system to allow individual growers to obtain better financial returns for higher quality product. Lacking the means for farmers to recoup return from extra effort or investments, the present system undermines the long run economic health of the industry and the productive activities of all industry participants.

The submission also noted that further regulatory restrictions, particularly supply management for apples, would be economically inefficient solutions to any present difficulties in the industry. Specifically, it was argued that supply management for apples will reduce grower incentives for competitive and innovative decision-making, reduce access to export markets, and inhibit healthy growth and development in this industry.

The Royal Commission is to provide its final report to the provincial government in May, 1990. (Regulatory Affairs Branch)

Alberta Public Utilities Board – Regulation of the Pricing of Milk in Plastic Containers

On February 26, 1990, the Director advised the Board that, subject to the Board's consent, he would make a representation at the Board's hearing of the application dated October 12, 1989, by processors and distributors for an increase in the minimum wholesale and minimum retail price of fluid milk and fluid milk products. The Director

expressed particular interest in the matter of separate pricing of milk in plastic containers, which in his view was integrally connected with competition policy concerns regarding efficiency and market entry and exit effects in the processing and marketing sectors of the milk industry.

Subsequently, the applicants modified their application, effectively removing therefrom the matter of a separate price for milk in plastic containers. Consequently, on March 5, 1990, the Director withdrew his notice of intervention in this hearing. (Regulatory Affairs Branch)

CRTC Telecom Cost Inquiry – Phase III

In Public Notice 1988-89, the Canadian Radio-television and Telecommunication Commission (CRTC) set out to determine what action, if any, was required to modify the Phase III costing reporting methodology.

In his submission to the Commission, the Director argued that category costing results can only provide some useful information for setting policies relating to the general direction of monopoly services and rates. On the other hand, the Director expressed serious reservations regarding the effectiveness of Phase III results on competitive services revenue and cost relationship for preventing undesirable cross-subsidization.

The Director, therefore, recommended that the Phase III methodology be primarily utilized to establish the monopoly rate base and that the Commission rely on a monopoly service specific rate of return in its revenue requirement decisions. It was the Director's view that this approach would create the maximum incentive to ensure that competitive services were not benefiting from unwarranted cross-subsidies from monopoly services.

In Decision 89-12, dated September 15, 1989, the Commission assessed the merits of a number of proposed modifications to its costing methodology. It was, however, the Commission's view that the existing reporting requirements were appropriate and that only minor modifications to the methodology were necessary.

The Commission is continuing to monitor the results and appropriateness of its reporting requirements. (Regulatory Affairs Branch)

CRTC – Resale and Sharing of Private-Line Services

On January 11, 1989, the CRTC initiated a new proceeding to review the regulations governing the resale and sharing of private-line voice services. The CRTC previously had decided to restrict resale and sharing arrangements for voice telecommunications services, given its concern that resale and sharing would erode the telephone companies' revenues and in turn jeopardize the "contribution" directed to subsidize local access for telephone subscribers.

The Director filed a submission to the proceeding on April 10, 1989. The Director advocated removing all restrictions and permitting competitive forces to govern

resale and sharing. Users would then benefit from price competition between resellers and sharing groups as well as from more equitable access to advanced voice telecommunications services. Such competition would also further the trend to efficient utilization of telecommunications facilities. The Director downplayed concerns of "contribution" erosion, emphasizing that resale and sharing service providers would have a limited impact on the incumbent telephone companies' revenues.

In its decision released March 1, 1990, the CRTC stated that it will lift the chief restriction on the resale of voice services. The CRTC indicated that it did not consider possible contribution erosion to be of sufficient magnitude to outweigh the advantages of permitting expanded resale. (Regulatory Affairs Branch)

CRTC - Proposed Changes to the Cable Television Regulations, 1986

On October 16, 1989, the CRTC issued Notice of Public Hearing 1989-14, inviting comments on proposed changes to the regulation of cable subscriber fees. Presently, cable television service in Canada is regulated by the CRTC according to the Cable Television Regulations, 1986.

In a written intervention filed on December 22, 1989, the Director responded to the CRTC's proposed changes with detailed recommendations designed to promote the efficient regulation of subscriber fees. However, the Director emphasized that structural change, namely greater reliance on competition from alternative programming delivery services in cable television markets, may be the most effective regulatory approach in the long run.

This second theme was more forcefully presented by the Director in an oral brief before a CRTC public hearing on February 5, 1990. The Director advocated that competition can achieve greater economic efficiency. Existing regulations and monopoly franchises have conferred significant market power upon the cable industry. Competition, on the other hand, can benefit cable subscribers with superior price and product choice. Given the emergence of new technologies, the potential for competition in the delivery of programming services is all the more likely and, in the Director's view, should be encouraged by the CRTC.

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

- that further liberalization of the CRTC's exemption criteria would play an important role in encoura-

ging "illegal" satellite master antenna operations to conform to government regulations;

- that MATV systems represent an important element of consumer choice for residents of multi-unit dwellings; and
- 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 released its decision in Public Notice 1989-47 on May 18, 1989. To a large degree the CRTC moved to legitimize the operation, if not liberalize the regulation, of MATV systems. Thus, MATV system owners can contract third party services in conjunction with the establishment or operation of their system. A more realistic range of operating costs may be legitimately recovered by MATV system operators. Finally, MATV system operators will be treated the same as cable television licensees with respect to regulated wholesale programming charges. (Regulatory Affairs Branch)

Newfoundland Telephone Company Ltd. - Terminal Attachment

Phase III, the final phase of the proceeding on subscriber-provided terminal equipment within the network of Newfoundland Telephone Company (Newfoundland Telephone), was to address a schedule of rates as well as terms and conditions for the attachment of subscriber-provided multi-line terminal equipment. Hearings were to commence on October 10, 1989, in St. John's. The Director had filed his notice of participation and had submitted interrogatories to Newfoundland Telephone. However, on August 25, 1989, the Board of Commissioners of Public Utilities suspended its proceeding due to the Supreme Court of Canada decision in the AGT/CNCP matter. In essence, the Supreme Court ruled that Alberta Government Telephone is a work or undertaking within federal legislative authority by virtue of section 92(10)(a) of the Constitution Act and would be subject to CRTC jurisdiction except that, as presently drafted, AGT is immune from CRTC jurisdiction exercised under section 320 of the then *Railway Act*.

This decision also applied to all provincially regulated telephone companies, including Newfoundland Telephone. On September 8, 1989, the Board issued a decision adjourning the proceeding given the CRTC's jurisdiction in this matter.

On October 13, 1989, the Association of Competitive Telecommunications Suppliers (ACTS) and the Canadian Business Telecommunications Alliance (CBTA) filed an application for interim and final orders liberalizing the rules applicable to the attachment of subscriber-provided terminal equipment.

In Telecom Public Notice 1990-18 of February 14, 1990, the CRTC determined that the rates as well as terms and conditions for such attachment would be considered in

a proceeding reviewing Newfoundland Telephone's application for a general rate increase for 1990. This hearing is to commence May 15, 1990 in St. John's. (Regulatory Affairs Branch)

CNCP – Application for Regulatory Forbearance

On September 10, 1986, CNCP Telecommunications applied to the CRTC for orders exempting it from the requirement to file tariffs for their offerings and 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.

On December 9, 1988, CNCP applied to the Supreme Court of Canada for leave to appeal the decision of the Federal Court of Appeal. The application was denied on June 1, 1989. (Regulatory Affairs Branch)

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

As reported on page 34 of the 1989 Annual Report, Northridge Petroleum Marketing Inc., a natural gas marketer, applied to the National Energy Board (NEB) for transportation from the Alberta border to Emerson, Manitoba by TransCanada Pipelines Limited (TCPL). Thereafter, the gas would move through a series of pipelines through the United States to its ultimate destination in Ontario, a route that competed with the TCPL system. TCPL argued such competition would undermine the integrity of its system.

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.

In its decision, the NEB approved the application by Northridge. It stated that the arrangement was innovative and consistent with the deregulation of gas markets in providing an alternative to TransCanada as a transporter of eastbound gas. (Regulatory Affairs Branch)

National Energy Board – Gas Supply Information Required for Facilities Expansion Application

In August, 1989, the Director intervened in a write-in hearing dealing with the type of gas supply information a prospective shipper on TransCanada's pipeline is required to submit to TransCanada in order to have his request for new capacity included in an application by TransCanada to the NEB for expanded facilities.

The Director argued that the NEB should ease its requirements for project specific gas supply information, and instead allow supply and demand to respond to the communication of price signals in an unencumbered competitive market. The tying of market participants to long-term contracts at the time the application is made could only impede the functioning of such a market.

In its Reasons for Decision, the NEB stated that requiring detailed gas supply information for supplies that would serve normal growth in established markets would constitute an undue regulatory burden for shippers. It consequently eased the requirements for gas supply information for established markets, but continued to require detailed gas supply information in other newer and less predictable markets.

The NEB declined to set a minimum term for a gas supply contract and stated that the onus was on TransCanada to determine whether the contract term for a specific shipper is sufficient to warrant inclusion of the project in the application. (Regulatory Affairs Branch)

National Energy Board – Rules for Queuing for Prospective Shippers on TransCanada's pipeline

In January, 1990, the Director filed comments with the National Energy Board concerning the rules for queuing for prospective shippers wishing to have natural gas transported on TransCanada's pipeline. Such rules have become necessary because the pipeline is operating at full capacity.

In his submission, the Director stated that TransCanada should build capacity to meet projected demand so that queuing would be minimized or eliminated. Queuing should not be required when TransCanada is building new facilities, and prospective shippers wishing new capacity should not be restricted in accessing the transportation system because of restrictive queuing rules governing gas supply contracts.

In March, the Board denied a section in the proposed queuing rules that would have placed shippers who

entered into backstopping financial agreements with TransCanada at the head of the queue for newly constructed capacity. The Director had commented that these financial considerations were beyond the existing requirements in the toll schedule and should be considered explicitly by the Board. The NEB's decision on the remaining rules for queuing is pending. (Regulatory Affairs Branch)

National Energy Board – Study on Inter-Utility Trade in Electricity

The Board was asked by the Minister of Energy, Mines and Resources to review and report on measures that could be taken to encourage greater interprovincial co-operation between Canada's electrical utilities, and to enable buyers and sellers of electricity to obtain commercial access to available transmission capacity through intervening provinces for wheeling purposes.

The Board initiated phase one of the review as an interutility (i.e. interprovincial) study on co-operative trade in electricity in March, 1990, and invited comments from interested parties. On March 26, 1990, the Director responded to the Board's invitation indicating a submission would be filed by the Board's deadline of May 12, 1990. (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 videotext 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 30 other parties intervened in the proceeding. Final arguments were submitted in the autumn of 1989. As of March 31, 1990, the CRTC had not yet handed down its decision in this matter. (Services Branch)

Nova Scotia Board of Public Utilities – Wilson Fuel Oil Application

On December 7, 1989, the Director intervened before the Nova Scotia Board of Public Utilities with respect to an application for a retail gasoline licence by an independent petroleum wholesaler and retailer in Truro, Nova Scotia. The Director filed with the Board the written

submission of his expert witness, who also gave extensive testimony during the course of the hearings. The Director's intervention concentrated on the benefits of competition for developing a stronger, independent retail gasoline sector in Nova Scotia. Nova Scotia is one of only two provinces in Canada where entry regulation in retail gasoline still exists. As of March 31, 1990, the Board had not released its decision in this matter. (Resources and Manufacturing Branch)

Other Representations

Ontario Environmental Assessment Board Hearing to Review Ontario Hydro's 25-Year Demand/Supply Plan

The Ontario Government referred the review of Ontario Hydro's Plan to the Ontario Environmental Assessment Board (OEAB). Pending the Board's final identification of issues, the Director advised the Board on March 15, 1990, of his interest in making representations before the Board at its main hearing in the fall of 1990, with respect to competition policy concerns pertaining to the role of independent and cogenerators in Ontario Hydro's Supply Plan. (Regulatory Affairs Branch)

Ontario Para-legals – Submission to Ontario Task Force

As reported on page 34 of the 1989 Annual Report, the Deputy Director of Investigation and Research (Services Branch) sat as a member of the Advisory Committee to Dr. Ron Ianni, the one person Task Force conducting a study into the role and regulation of independent para-legals in Ontario. The Deputy Director's position continued to be that there exists a need for independent para-legal services in Ontario and, in this regard, market forces should be allowed to govern provision of these services to the fullest extent possible consistent with the requirements of competency and integrity. The Task Force is to report by August 31, 1990, with its final recommendations. (Services Branch)

B.C. Engineers – Submission to Task Force Studying the Burnaby Roof Collapse

In May, 1988, D.S. Closkey was appointed by the Lieutenant-Governor in Council of British Columbia to inquire into the 1988 roof collapse at the Station Square Development in Burnaby, B.C. The Closkey Report, which was completed on August 26, 1988, included a recommendation that the Association of Professional Engineers of B.C. be authorized to establish and enforce a schedule of minimum fees, to be approved by the Lieutenant-Governor in Council. Subsequently, a task force was established to receive submissions relating to the Closkey Report recommendations. In response to an invitation to submit the Bureau's views on the fee schedule issue, the Deputy Director of Investigation and Research (Services) made a

written submission dated January 18, 1989, which outlined competition policy concerns in respect of allowing mandatory fees. (Services Branch)

**Saskatchewan Land Surveyors -
Submission to the Saskatchewan
Special Committee on Regulations**

A complaint was received in October, 1988, from an Alberta land surveyor that the Saskatchewan Land Surveyors' Association (SLSA) had passed a by-law amendment requiring out-of-province surveyors to set-up a consultation office in Saskatchewan in order to continue providing surveying services in the province. Following a preliminary examination of the matter, written submissions dated February 3, 1989, and June 21, 1989, were made by the Deputy Director of Investigation and Research (Services) to the Special Committee on Regulations of the Government of Saskatchewan dealing with the Bureau's competition concerns with this by-law and a SLSA by-law regarding mandatory fee schedules. (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 information and compliance program.

The Speech Program

The Director and senior staff members of the Bureau undertook a number of speaking engagements throughout the year before trade associations and other business or professional groups with an interest in competition policy. Central themes in these addresses included: the recent experience with merger review; the controls of mergers and joint ventures; the impact of the Competition Act on the professions; etc.

On October 30, 1989, with the appointment of a new Director, Howard I. Wetston, who replaced Calvin S. Goldman, the themes of the addresses changed somewhat. The compliance-oriented approach remained a principal focus for enforcement of the Competition Act. However, the new Director also outlined a number of priorities, which included ensuring that the objectives of the Competition Act are reflected in the formation of government economic policy and are also taken into consideration during the regulatory process. In addition, the Director indicated that he will be issuing clearer statements of enforcement policy through bulletins and guidelines. Information on speeches which are publicly available is provided in Appendix X.

The Director's Consultative Forum

The Director's Consultative Forum is 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.

The Director participated in a number of smaller scale consultation meetings 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, 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. The Director has no authority to regulate business conduct or to determine its legality. Therefore, 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

A high priority has been placed on expanding the information provided to the public about the Act and how it is administered. Publication of a series of information bulletins is continuing. The first bulletin, released in June, 1988, addressed the merger provisions and in December, 1988, the second discussed Advance Ruling Certificates. The third bulletin, released in June, 1989, addressed the Director's Program of Compliance.

Preparatory work for bulletins on predatory pricing, price discrimination and the merger provisions was undertaken. A draft bulletin dealing with predatory pricing was circulated for discussion in April, 1990. A second, dealing with the price discrimination provisions of the Act, will be released, also in a draft form, in July, 1990. A third bulletin, addressing the merger guidelines, should be circulated for comment in October, 1990.

Media Contacts

Throughout the year, Bureau officials continued their efforts to inform the public by maintaining a professional working relationship with the media. The Bureau of Competition Policy recognizes the important role played by

frequent and effective media contacts in its program of public information and education. The need for timely, concise and accurate information on Bureau policies and programs has never been greater. During the so-called merger wave, the Bureau issued several news releases and backgrounders that detailed the transactions involved and explained the rationale for the Bureau's position. News conferences were also held to assist the media in understanding the resolutions and the application of various sections of the Competition Act.

News releases are routinely issued following case decisions and resolutions. In particularly significant or complex cases, detailed backgrounders accompany these releases. Bureau officials also participate in numerous media interviews, briefing sessions and editorial boards.

Information and Compliance

	Misleading Advertising Provisions		Remaining Sections of the Act		Total	
	1988-89	1989-90	1988-89	1989-90	1988-89	1989-90
Requests for Information	24 983	27 192	1 241	1 595	26 224	28 787
Oral Advisory Opinions	1 007	1 124	114	139	1 121	1 263
Written Advisory Opinions	377	323	42	31	419	354
Media Contacts	235	274	280	111	515	385
Speeches/Educational Seminars/ Consultative Meetings	184	121	40	60	224	181

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 in which the Director's staff was engaged during the reporting period.

Framework Paper on Competition Policy and Other Economic and Social Policies

Competition policy is increasingly recognized as a key aspect of the legislative and policy framework for the national economy. During the review period, staff members of the Bureau completed a comprehensive overview of the inter-relationships between competition policy and other economic and social policies. This document was released to the public at the *National Conference on the Centenary of Competition Policy in Canada* in Toronto in October, 1989. Some of the areas of focus in the document are the relationships between competition policy and trade policy, industrial policy, interprovincial trade, intellectual property, privatization, science and technology policy, transportation, professional licensing, and environmental policy. The general conclusion of the paper is that competition policy can help to support market-oriented initiatives in these diverse fields of economic and social policy. The document also comments on the changing environment of business and government in Canada and the future evolution of Canadian competition policy in light of developments such as the globalization of markets. (Economics and International Affairs Branch)

Multilateral Trade Negotiations

Staff members of the Bureau of Competition Policy provided support for the Canadian negotiator in the ongoing multilateral negotiations on Trade Related Intellectual Property Rights (TRIPS). The negotiations are an important aspect of the Uruguay Round of Multilateral Trade Negotiations under the *General Agreement on Tariffs and Trade* (GATT). As part of this work, staff members completed an extensive study of the use of intellectual property rights to segment international markets, and the possible application of the principle of exhaustion of intellectual property rights in international trade.

In general terms, implementation of the exhaustion principle would involve curtailment of existing rights to control importation of materials protected under intellectual property legislation. The study indicates that the effects of this policy would depend heavily on underlying institutional factors, such as the treatment of vertical market restraints under Canadian and foreign competition legislation. In general, however, the study finds that wide adoption of this principle would not be in Canada's best interests. In particular, while exhaustion could reduce the ability of multinational enterprises to segment international markets, this could adversely affect the transfer of technology into Canada.

Staff members of the Bureau also provided input to other aspects of the TRIPS negotiations relating to competition policy. In particular, they helped to assess the treatment of intellectual property licensing practices in various participating countries and to respond to suggestions put forward by the developing countries concerning these matters.

Finally, Bureau staff contributed to the development of the Canadian negotiating positions on the topics of Trade-Related Investment Measures and Services (TRIMS). These are also areas of considerable importance in the Uruguay Round of the GATT. (Economics and International Affairs Branch)

Implementation of the Canada-U.S. Free Trade Agreement

Bureau staff participated in various activities related to the implementation of the Canada-U.S. Free Trade Agreement. Most notably, officials of the Bureau contributed to interdepartmental work aimed at developing the Canadian position in the negotiations which began pursuant to Article 1907 of the Agreement. These negotiations have the goal of bringing about the establishment of a

new regime to address problems of dumping and subsidization. The Bureau's efforts focussed mainly on the area of dumping, where the possibility exists of relying on competition law as a substitute for the current anti-dumping system. An in-depth study on the Canadian experience respecting the relationship between competition policy and anti-dumping law was prepared with the sponsorship of the Bureau and served as a contribution to the interdepartmental work in this area. (Economics and International Affairs Branch)

Competition Policy Aspects of the *Integrated Circuit Protection Act*

Staff members of the Bureau participated in the development of portions of Bill C-57, the *Integrated Circuit Topography Act*, that relate to competition policy. This legislation, which was introduced in the House of Commons on December 18, 1989, is intended to establish a new regime of intellectual property protection for semiconductor chip designs. The nature of protection afforded by existing intellectual property statutes is not suitable to the unique characteristics of chips.

To clarify the relationship between the two statutes, Bill C-57 contains a number of consequential amendments to the Competition Act. These amendments parallel references in the Act to other types of intellectual property rights. In particular, the consequential amendments to the Competition Act will expand section 32 of the Act to provide remedies to deal with anticompetitive abuse of registered integrated circuit topographies. Presently this section provides remedies only for the abuse of patents, trademarks, copyrights and registered industrial designs.

In addition, the consequential amendments clarify that owners of registered industrial topographies (like other intellectual property holders) remain subject to the price maintenance provision of the Competition Act. They stipulate that registered topographies are covered by the limited exception for intellectual property rights in the abuse of dominance provision of the Act. Finally, the consequential amendments to the Competition Act provide that the wider licensing of integrated circuit designs, as well as patents, may be required by the Competition Tribunal as a condition for the registration of specialization agreements under the Act.

In addition to providing input to the development of Bill C-57, staff members of the Bureau provided support for officials who represented Canada in the development of a multilateral treaty on semiconductor chip protection. The treaty, which was negotiated in Washington, D.C., in the spring of 1989, covers various aspects of semiconductor chip protection. It permits signatories to apply appropriate remedies to deal with anticompetitive abuse involving semiconductor chip designs. (Economics and International Affairs Branch)

The Plant Breeder's Rights Act

The Bureau provided input to the Department of Agriculture in the development of Bill C-15, the *Plant Breeder's Rights Act*. This Bill, which was introduced in the House of Commons on May 8, 1989, will establish a new regime of intellectual property protection to promote the development and commercial exploitation of new plant varieties. The Bureau's input concerned the possible abuse of exclusive rights and privileges arising under the legislation and the need for appropriate legislative safeguards. In this regard, the Act provided for the grant of compulsory licences and the annulment of plant breeder's rights under circumstances set out in the legislation. (Economics and International Affairs Branch)

Collective Bargaining Rights for Artists

During the reporting period, the Department of Communications put forward a proposal to establish collective bargaining rights for artists. This proposal originated as part of a general package of measures to raise the status of the artist in Canada. Staff members of the Bureau met several times with officials of the Department of Communications to discuss their proposal and potential concerns arising *vis-a-vis* the Competition Act. In particular, the proposal required consideration of the scope of the present exemption in the Act for collective bargaining activities of workmen and employees. (Economics and International Affairs and Services Branches)

The Shipping Conferences Exemption Act, 1987

Staff members of the Bureau of Competition Policy continued to assist with the implementation of the *Shipping Conferences Exemption Act, 1987* (SCEA). This legislation provides a limited exemption from the Competition Act for the operation of international shipping cartels in Canada. Members of the Bureau met several times with officials of the National Transportation Agency and Transport Canada to respond to concerns arising from the exemption and to clarify the interface between the Competition Act and the SCEA.

In addition, Bureau staff commenced preparations for the 1992 review of the SCEA legislation pursuant to the terms of the *National Transportation Act, 1987*. This work included monitoring the review of corresponding legislation in the U.S., the Shipping Act of 1984, which is already under way. Previous experience suggests that the outcome of the U.S. policy deliberations will be an important consideration in the Canadian SCEA review process. (Economics and International Affairs and Services Branches)

Interprovincial Barriers to Trade in Beer

The Bureau of Competition Policy is involved in discussions with External Affairs, Industry, Science and Technology Canada, provincial trade officials and representatives of the beer industry in an attempt to reduce or eliminate interprovincial barriers to trade in the sale of beer in Canada. These talks, spurred in part by a GATT panel ruling that Canadian policies and practices in the beer, wine and spirits industries discriminate against imports, are also intended to lead to the elimination of barriers to trade in imported beer as well. (Resources and Manufacturing Branch)

Canadian Council of Motor Transport Administrators

During the year, the deliberations of the Standing Committee on Motor Carriers (CMC) of the Canadian Council of Motor Transport Administrators (CCMTA) have been carried on under the organizational umbrella of the Standing Committee on Compliance and Regulatory Affairs (CCRA). The main thrust of the CMC members' effort has been focussed on ways to develop a uniform approach to the interpretation of the new *Motor Vehicle Transport Act*, 1987 (MVTA).

To this end a task force, composed of three senior provincial regulators and a member of the Director's staff, was established to examine and report on relevant issues accompanying the interpretation of the "public interest" provisions of the licensing sections of the MVTA. A paper addressing this matter was tabled in the fall of 1989.

In the context of regulatory reform analyses in the area of truck transport, a group composed of representatives from Transport Canada and the National Transportation Agency and the Director of Investigation and Research is examining the decisions rendered by provincial transport boards under the new provisions relating the entry criteria, from the public interest to reverse burden of proof, contained in the MVTA. The group produces an annual report aimed at identifying the major elements taken into consideration by these boards. The first edition of this report was presented to the CCMTA in May 1989. On March 31, 1990, the group was on the point of finalizing the second edition covering the decisions rendered in 1989. (Regulatory Affairs Branch)

Agri-food Trade Policy Activities

The Director's staff participated in interdepartmental consultations on agri-food related to the implementation of the Canada-U.S. Trade Agreement (e.g. accelerated tariff removal), administration of imports of supply-managed commodities (e.g. poultry), assessment of retaliatory trade actions, and the development of the Canadian position on agriculture in the Uruguay Round of the Multilateral Trade Negotiations. (Regulatory Affairs Branch)

National Telecommunications

During the past twelve months, the Director's staff continued to actively participate in the development of a national telecommunications policy, embracing a wide range of regulatory, legislative and policy issues. (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 1986 OECD Council Recommendation 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 interest of another.

The bulk of Canada's bilateral competition policy work involves co-operation 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 11 notifications to, and received 15 notifications from, the U.S. authorities. No notifications were sent to or received from other countries. The most common reason for contact with the U.S. was to request third party information. Most of the notifications related to the review of mergers.

Officials of the Bureau held meetings with competition officials from the United States, the European Economic Community and Sweden. In each case, meetings took place both in Canada and abroad. The visit to Canada by U.S. officials took place in January, 1990, and marked the first in a series of regular semi-annual meetings to be held involving senior competition policy officials of the two countries. Bureau officials also attended bilateral meetings in Japan and Australia. (Economics and International Affairs Branch)

Multilateral Relations

The Bureau is an active participant in the work of the OECD Committee on Competition Law and Policy. The Committee provides a forum for the exchange of information on topics of mutual concern and, where appropriate, helps to ensure greater uniformity of international antitrust policy among participant countries.

During the year, a major report by the Committee on the subject of Competition Policy and Intellectual Property Rights was published by the OECD. The report discussed the role of intellectual property rights in the competitive market system and the competition policy treatment of licensing practices in member countries. In October, 1989, the Committee held a Symposium on Competition and Economic Development at which the Director gave a speech on mergers and joint ventures. Subsequent to this Symposium, in January, 1990, a training workshop was organized by the OECD Secretariat for the staff of the newly-formed competition authority of Kenya. A senior Bureau official participated along with five other OECD member country experts. Over the course of the year, the Committee finalized a report on deregulation in road transport to which Bureau staff had contributed. As well, the Bureau submitted a response to a questionnaire on trade policy and provided input on the topic of franchising to assist in the Committee's work.

In addition to OECD activities, the Bureau participates in the UNCTAD Intergovernmental Group of Experts on Restrictive Business Practices. This forum is designed to serve as a vehicle for promoting greater consistency in the international competition law environment. The eighth session of the Group of Experts was held in October, 1989. Canada's contribution to a handbook on restrictive business practices legislation was highlighted.

The Bureau was also active in the field of multi-lateral relations through less direct means. Most notably, a Bureau official continued to chair an interdepartmental working group which was created to study questions related to competition policy and company law. As of the end of the fiscal year, the working group's report was being finalized for interdepartmental consideration and eventual publication. (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 Consumer and Corporate Affairs Canada. The Bureau provides the administrative and enforcement support for the Director's statutory responsibilities.

The organizational structure which was developed and implemented following the 1986 amendments is shown in the chart at the end of this chapter. Current senior management assignments are also identified. Howard I. Wetston was appointed Director of Investigation and Research effective October 30, 1989, following the departure of Calvin S. Goldman. Mr. Wetston was previously the Senior Deputy Director. Other senior management assignments have also changed during the fiscal year and two senior positions were vacant at year end.

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 the Services Branch comprise the Restraints to Competition function. These Branches 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 within 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 through the publication of information bulletins, statutory reports and judgments, as well as the Bureau's speech program. The Branch also drafts policy documents and coordinates in-house training programs for investigators.

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

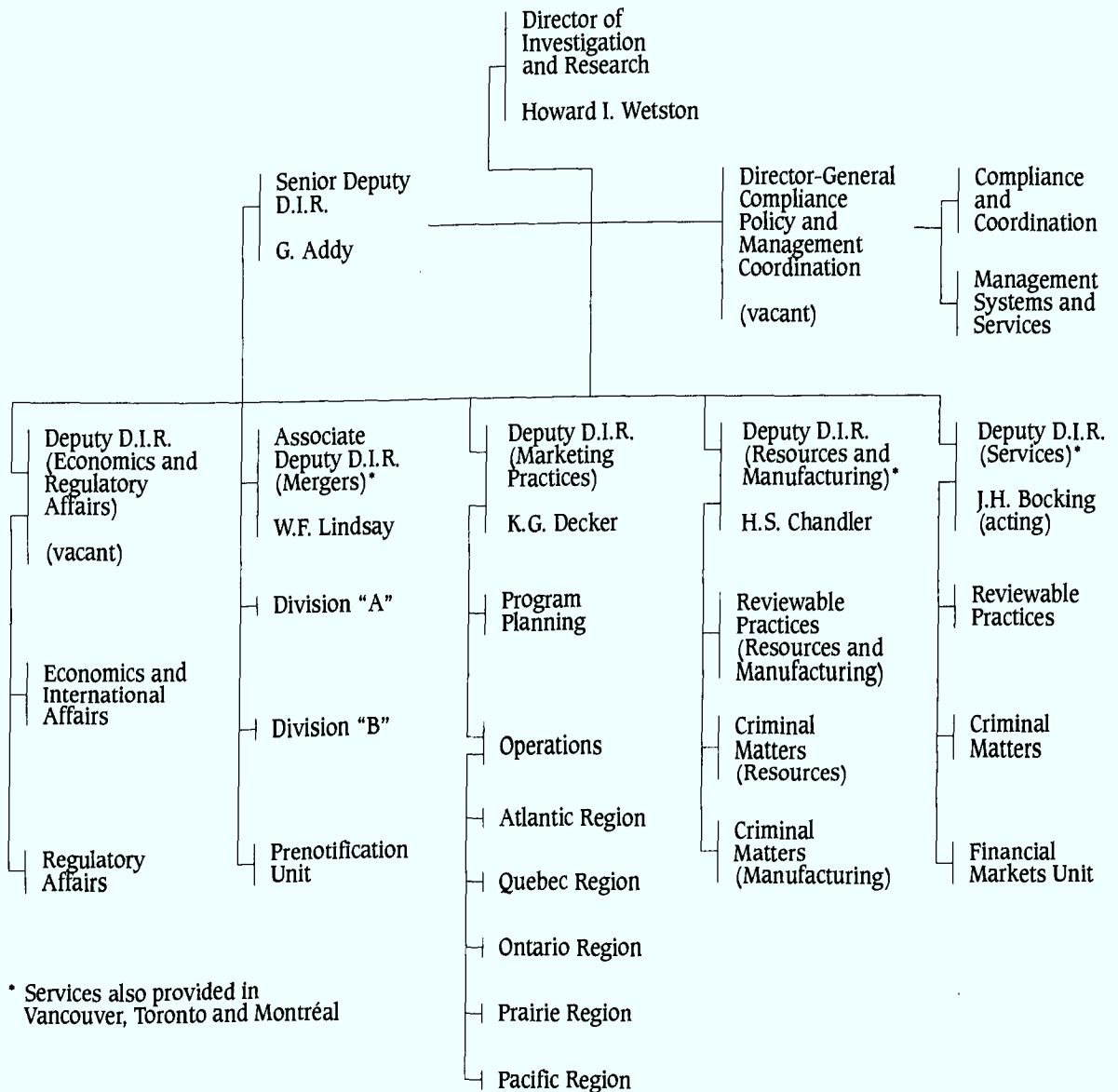
The Bureau of Competition Policy had an authorized strength for 1989-90 of 261 person years. Of these, 203 are located in headquarters, 53 are located in field offices of the Marketing Practices Branch in Vancouver, Edmonton, Calgary, Winnipeg, London, Toronto, Hamilton, Montréal, Québec, Dartmouth and St. John's, and 5 are located in the Montréal, Toronto and Vancouver offices of Restraints to Competition, which covers those sections of the Act other than marketing practices.

In 1989-90 the total budget of the Bureau was \$19 512 860. The major expenditures during the year were \$13 244 724 for staff salaries and benefits and \$6 249 300 for administration. The Bureau incurred \$2 624 284 in legal and expert fees and disbursements in relation to its activities under the Act.

The total budget included \$1 475 000 in supplementary funding provided to meet the extraordinary needs of the Bureau for legal counsel and industry experts and to complete the construction of additional secure office premises.

The Bureau collects fines imposed by the courts following successful prosecutions under the Act. During 1989-90, the total collected was \$1 148 027, which was credited to the government's Consolidated Revenue Fund.

Bureau of Competition Policy



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 mergers that appear in the financial and daily press and industry and trade publications. The register records, by calendar year, reported mergers in industries subject to the Competition Act. Accordingly, until 1976 mergers in most service sectors of the economy were 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 Mergers*	Domestic Mergers**	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
1989	691	400	1 091

* Mergers 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).

** Mergers 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

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 1989-1990. 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
166748 Canada Inc.	Commonwealth Hospitality Ltd.	Hotel accommodation	FC	
166815 Canada Limited	Ridout Wines Limited	Wineries and other beverages	FC	
170112 Canada Inc.	Crown Flexpak Limited	Packaging materials	FC	
2734-8400 Quebec Inc.	Discus Music World Ltd.	Pre-recorded music	FC	ARC
2741-3087 Quebec Inc.	Groupe Cantrex Inc. (certain assets)	Franchising services	FC	
375901 B.C. Ltd.	Harbour Castle - Westin Hotel & Convention Centre	Hotel accommodation	FC	ARC
402749 Alberta Ltd.	Canadian Fracmaster Limited	Oil field services	FC	ARC
808006 Ontario Inc.	Speedy Muffler King Division of Texaco Canada Inc.	Automotive parts retailing	FC	ARC
844826 Ontario Ltd.	Falconbridge Limited	Mining and mineral processing	FC	AO
851119 Ontario Inc.	Falconbridge Limited	Mining and mineral processing	FC	ARC
855715 Ontario Limited	Domtar Inc. (certain assets)	Salt mining and refining	FC	
879327 Ontario Inc.	Consumers Distributing Company Limited	Retail catalogue merchandizing	FC	ARC
Acrofax Inc.	Toronto Credits Limited	Credit reporting services	FC	
Air Canada (Reservec)	Canadian Airlines International (Pegasus)	Computer reservation systems	CT	

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 to be restructured before closing.
CT	Application to the Competition Tribunal (consent order issued)

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Alcan Aluminium Limited	Hunter Douglas Canada Limited (certain assets)	Building products	FC	
Alcan Aluminium Limited	Moli Energy Limited	Rechargeable lithium batteries	FC	
Algoma Central Railway	Upper Lakes Group Inc.	Marine transportation	FC	
Allied Van Lines Ltd.	Aero Mayflower Transit Company Ltd.	Moving and storage services	FC	
American Eagle Petroleums Ltd.	Oracle Resources Ltd.	Oil and gas	FC	ARC
Amoco Canada Resources Ltd.	Oracle Resources Ltd. (certain assets)	Oil and gas	FC	ARC
Anamdar Limited	Coronet Trust Company	Financial services	FC	
Ansell Inc.	Becton, Dickenson & Co. Ltd. (certain assets)	Industrial gloves	FC	
Asea-Brown Boveri Inc.	Combustion Engineering Canada Inc.	Engineering management	FC	
Asea-Brown Boveri Inc.	Westinghouse Canada Inc.	Electrical equipment and power generation	CT	
Atcor Ltd. & Numac Oil & Gas Ltd.	394248 Alberta Ltd. & 394249 Alberta Ltd.	Oil and gas	FC	
Atlantic Trust Company of Canada	Canwest Trustco Limited	Financial services	FC	
AT Plastics Inc.	C.I.L Inc. (certain assets)	Plastics manufacturing	FC	ARC
Baxter Foods Limited	McKay's Dairy Limited	Dairy products	FC	
B.C. Sugar Limited	Lantic Sugar Inc.	Sugar refining	FC	
Beaver Lumber Company Limited	Lockhart Limited	Building materials	FC	
Bolands Limited	Lewisporte Wholesalers Ltd.	Wholesale food and building supplies	FC	
Boliden Canada Limited	844826 Ontario Ltd.	Mining and mineral processing	FC	ARC
Bristol-Myers Canada Inc.	Squibb Canada Inc.	Pharmaceuticals	FC	
C.S. Brooks Corporation	Dominion Textile Inc. (certain assets)	Textiles	FC	ARC
Cadbury Beverages Canada Inc.	E.D. Smith & Sons, Limited (certain assets)	Vegetable juice beverages	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Cambridge Leaseholds Limited	Woodward's Limited	Retail merchandizing	FC	ARC
Campbell Soup Company Ltd. & Borden Company, Limited	Catelli Inc.	Food manufacturing	FC	
Canada Pipe Company Ltd.	Canron Canada Inc.	Iron pipe manufacturing (certain assets)	FC	
Canfor Corporation	Balfour Forest Products Inc.	Wood products	FC	ARC
Canon Canada Inc.	OE Inc.	Office equipment	FC	ARC
CBR Cement Company Ltd.	Stel-Marr Concrete Co. Ltd.	Concrete and cement products	FC	
Central Capital Corporation	Scottish & York Insurance Co. Limited et al.	Financial services	FC	
Central Capital Corporation	USF & G Canada Corporation	Financial services	FC	
Central Soya of Canada Inc.	Canada Packers Inc. (certain assets)	Soyabean crushing	MO	AO
Chauvco Resources Ltd.	Ultramar Oil & Gas Canada Ltd.	Oil and gas	FC	
Chevron Canada Resources Ltd.	166738 Canada Inc.	Oil and gas	FC	ARC
CKR Inc.	Javex Canada Inc.	Bleach and fabric softeners manufacturing	FC	
Cogeco Inc.	Cybermedix Inc.	Cable television	FC	ARC
Compagnie des Machines Bull	Zenith Data Systems Limited	Computers	FC	
Composers, Authors & Publishers Association of Canada Ltd.	Performing Rights Organization of Canada Ltd.	Performing rights collectives	RE-A	AO
Conoco Canada Limited & Ranger Oil Limited	Consolidated Bathurst Inc. (certain assets)	Oil and gas	FC	ARC
Constar International Inc.	Twinpak Inc.	Packaging materials	FC	
Consumers Packaging Inc.	Domglas Inc.	Glass containers	MO	AO
Corona Corporation	Prime Resources Corp.	Mineral and mining processing	FC	ARC
Corona Corporation	Avalon Corporation (certain assets)	Oil and gas	FC	ARC
Corporation d'acquisition Socanav-Caisse Inc.	Steinberg Inc.	Real estate and food retailing	MO	AO

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Covia Partnership	Gemini Group Ltd. Partnership	Computer reservation systems	FC	
Crown Cork & Seal Canada, Inc.	Continental Can Canada, Inc.	Steel and aluminium can manufacturing	MO	AO
Dean Witter Financial Services Inc.	Dean Witter Reynolds (Canada) Inc.	Financial services	FC	
Deloitte Haskins & Sells	Touche Ross & Co.	Accounting and consulting services	FC	
Dobney Foundry Limited	Mainland Manufacturing Ltd.	Castings	FC	
Dofasco Inc.	Quebec Cartier Mining Co.	Iron ore mining	FC	ARC
Doman Forest Products Ltd.	Western Forest Products Ltd.	Wood, pulp and paper	FC	
Dominion Textile Inc.	Textiles Dionne Inc.	Textiles	FC	ARC
Domtar Inc.	Forex Inc. & Scierie St-Michel Inc.	Lumber and wood chips	FC	
Dow Chemical Canada Inc.	Eli Lilly & Co.	Agricultural chemicals	FC	
École de Conduite Tecnic Inc.	École de Conduite Lauzon Inc.	Driving schools	FC	
Ericsson Commun- ications Inc.	General Electric Canada Inc.	Mobile communications	FC	
Federal Industries Consumer Group Inc.	W.H. Smith Canada Ltd.	Book retailing	FC	ARC
Federal Industries Group Inc.	Carte International Ltd.	Power transformers	FC	ARC
Federal Industries Transport Group Inc.	Tri-Line Expressways Ltd.	Truck transportation	FC	ARC
Ferrum Inc.	Hallmark Alloys Limited	Steel tubing	FC	
Ferrum Inc.	Standard Tube Canada	Steel tubing	FC	
Finning Ltd.	R. Angus Alberta Limited	Heavy construction equipment distribution	MO	AO
First City Capital Market	Westar Group Ltd.	Oil and gas	FC	ARC
Fisheries Products International	Clouston Foods Canada Inc.	Fish products	FC	
Focus Capital Management Limited & 167947 Canada Inc.	Morgan Trust Co. of Canada	Financial services	FC	ARC
Ford Electronics Manufacturing Corporation	Associates Capital Corporation of Canada	Financial services	FC	ARC
Ford Motor Co.	Jaguar PLC	Automobile manufacturing	FC	ARC

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
General Electric Capital Canada Inc.	TCF Commercial Leasing Corporation, Canada	Commercial leasing	FC	
General Electric Capital Canada Inc.	McCullagh Leasing Ltd.	Commercial leasing	FC	
General Electric Co. & Siemens Electric	Plessy Inc.	Electrical equipment	FC	
Groupe Coopérants Inc.	Financière Entraide-Coopérants Inc.	Financial services	FC	
GWU Holdings Ltd.	GW Utilities Ltd.	Oil and gas	FC	ARC
Hawker Siddeley Group PLC	Standard Aero Limited	Repair and remanufacture of turbine engines	FC	
Hitachi Ltd.	NAS Canada Inc.	Data processing products	FC	
Holman Enterprises	Lend Lease Cars Inc.	Commercial leasing	FC	ARC
Hoylake Investments Limited	Imasco Limited, Appleton Papers Canada, VG Investments (certain assets)	Tobacco, paper and financial services	FC	
Hudon et Deaudelin Ltée.	Novagro Inc.	Food wholesaling	FC	
Hunting Gibson PLC	Hunting Associated Industries & Hunting Petroleum Services	Oil and gas	FC	
Imperial Oil Limited	Texaco Canada Inc.	Petroleum refining & distribution	CT	
Indal Technologies Inc.	Fathom Oceanology Limited	Aerospace equipment	FC	
Institut Mérieux International S.A.	Connaught Bio Sciences Inc.	Pharmaceuticals	FC	AO
International Paper Canada Inc.	Paperboard Industries Corporation (certain assets)	Packaging materials	FC	
J.V. Vax, Inc.	Connaught Bio sciences Inc.	Pharmaceuticals	FC	
Jannock Limited	169140 Canada Inc.	Building products	FC	
Jannock Limited	Lantic Sugar Ltd.	Sugar refining	FC	ARC
John Brown PLC	Chemetics International Company Inc.	Chemical process equipment	FC	
Johnson Controls Ltd.	Varta Batteries Limited	Automotive and industrial batteries	FC	
Johnson, C., Johnson, T., Evans, J., Wilson, G.	Dominion Textiles Inc. (certain assets)	Beddings and related products	FC	ARC
Kraft General Foods Corporation	Unigesco (certain assets)	Food services	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Lac Minerals Ltd.	Bond International	Gold refining	FC	ARC
Lafarge Corporation	Lehigh Portland Cement Co. (certain assets)	Cement	MO	AO
Lake Ontario Cement Limited	Gormley Aggregates Limited	Aggregates, sand and gravel	MO	AO
Lake Ontario Cement Limited	Miron Inc.	Cement	MO	AO
Lakeside Feeders Ltd.	Centennial Foodcorp Ltd.	Beef processing	FC	
Laurier Life Holdings Limited	Annuity Life Insurance Company	Financial services	FC	
Les Aliments Ault Limitée	Guaranteed Pure Milk Company Limited	Dairy products	FC	
L'Industrielle-Alliance Compagnie d'Assurance	Les Mutuelles du Mans	Financial services	FC	ARC
Luscar Ltd.	OBED Mountain Coal Company	Coal mining Limited (certain assets)	FC	
Maple Leaf Mills Limited	Seafood Products Company Ltd.	Fish products	FC	ARC
McKesson Corporation	Medis Health & Pharmaceuticals Services Inc.	Pharmaceutical wholesaling	FC	ARC
Messageries Dynamiques, division of Group Quebecor Inc.	Benjamin News Inc.	Magazine and periodical distribution	FC	
M.I.M. (Canada) Inc.	Granges Inc.	Gold mining	FC	ARC
Mining & Allied Supplies (Overseas) Limited	Bearing Supply (Canada) Ltd.	Power transmission equipment	FC	
The Mitsui Bank of Canada	The Taiyo Kobe Bank (Canada)	Financial services	FC	ARC
Molson Companies Limited	Elders IXL Limited (Carling)	Brewing	MO	AO
Montenay Power Corporation	Delta Catalytic Corporation	Equipment maintenance	FC	
New-Kirk Corporation	Thomson Vacations Canada Limited	Travel services	FC	
Newfoundland Capital Corporation	Q-Radio Stations	Radio broadcasting	FC	
Nippon Sanso K.K.	Canadian Thermos Products Inc.	Outdoor leisure products	FC	
Noranda Forest Inc.	Normick Perron Inc.	Wood products	FC	ARC
Noranda Inc.	Brenda Mines Limited	Mining and mineral processing	FC	
North Canadian Oil Ltd.	Coseka Resources Ltd.	Oil and gas	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Northern Stores	Chilly Willy	Food retailing	FC	
Northern Telecom Canada Ltd.	Microtel Telecommunications (certain assets)	Telecommunications equipment	MO	AO
Northwest Oil & Gas Corp.	Westmin Resources Limited	Oil and gas	FC	
Olympia & York Developments Limited	BCE Development Corporation	Real estate	FC	ARC
Olympia & York Developments Limited	Windsor Ceramic Tile (1987)	Building products	FC	
OMV (Canada) Ltd.	Imperial Oil Limited (certain assets)	Oil and gas	FC	ARC
Opinac Exploration Limited	Tintagel Energy Corporation Inc. (certain assets)	Oil and gas	FC	ARC
Oracle Resources Ltd.	Placer Dome Inc./Sigma Mines (Que) Ltd./2619-8689 Quebec	Oil and gas	FC	ARC
Overwaitea (405711 Alberta Ltd.)	Associated Grocers Ltd.	Food wholesaling	FC	
Owens Corning Fiberglass Corporation	Fiberglass Canada Inc.	Building products	FC	ARC
Oxdon Investments Inc.	Steinberg Inc.	Real estate and food retailing	FC	ARC
Pacific Gas Marketing	British Columbia Petroleum Corporation	Natural gas	FC	
Pall Mall Properties PLC	Lain Properties PLC	Real estate	FC	ARC
Pan Canadian Petroleum Limited	Husky Oil Limited (certain assets)	Oil and gas	FC	ARC
Paramount Communications Inc.	Time Inc.	Entertainment and publishing	FC	
Perfection Dairy Ltd.	McKay's Dairy Ltd.	Dairy products	FC	ARC
Premdor Inc.	Century Wood Door Ltd.	Door manufacturing	FC	
Proctor & Gamble Company, The	Noxell Corporation	Cosmetics and household products	FC	
Proctor & Gamble Inc.	Grande Cache Forest Products Ltd.	Wood products	FC	
PWA Corporation	Wardair Inc.	Air transportation	MO	AO
Quebecor Inc.	BCE Publitech Inc.	Printing	FC	
Quebecor Inc.	Messageries de Presse Benjamin	Magazine distribution	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
RBC Dominion Securities Ltd.	Pemberton Houston Willoughby Investment Corporation	Financial services	FC	
Repap Pulp & Paper Inc.	Manfor Ltd.	Wood, pulp and paper	FC	ARC
RH Acquisition Corporation	Marion Laboratories Inc.	Pharmaceuticals	FC	
Rhone-Poulenc Inc.	Alkaril Chemicals Ltd.	Chemicals	FC	
Robin Hood Multifoods Inc.	Masterfeeds Limited	Animal and poultry feeds	MO	AO
Rogers Cable T.V. Limited	Western Cablevision Limited	Cablevision	FC	ARC
Rogers Communications Inc.	CNCP Telecommunications Ltd.	Telecommunications	FC	ARC
RTZ Corporation PLC	British Petroleum Company PLC - QIT FER & Titane Inc.	Mining and mineral processing	FC	
Sammi Steel Co., Ltd.	Rio Algom	Stainless steel products	FC	ARC
Saskatchewan Oil and Gas Corporation	ICG Resources Ltd.	Oil and gas	FC	
Saskatchewan Oil and Gas Corporation	Mobil Oil Canada, Ltd. Sask., Chevron Ltd. (certain assets)	Oil and gas	FC	
Security Pacific Corporation	Burns Fry Holdings Corporation	Financial services	FC	ARC
Shell Canada Limited	Amoco Canada Petroleum Oil and Gas Company Limited (certain assets)	Oil and gas	FC	ARC
Southam Inc.	Jemcom Inc.	Printing and publishing	FC	
Steelewood Investments Limited	Plastibec Ltée.	Plastic products	FC	
Sweetheart Holdings Inc.	Lily Cups Inc. & Fort Howard Corporation	Paper cup manufacturing	FC	ARC
T.C.C. Beverages Ltd.	Beverage Holdings Ltd., Beverages Services Ltd.	Soft drink beverages	FC	
Tembec Inc.	Normick Perron Inc.	Wood products	FC	
Thorne Ernst & Whinney Inc.	Peat, Marwick Mitchell & Co.	Accounting and consulting services	FC	
Tintagel Energy Corporation Inc.	Poco Petroleums Inc.	Oil and gas	FC	
Transcontinental Printing Inc.	Canadian Publishers Co. Ltd.	Printing and publishing	MO	AO
Trical Resources Inc.	Voyager Energy Inc.	Oil and gas	FC	

Name of Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Tilon Financial Corporation	GL Securities Inc.	Financial services	FC	
Uarco Incorporated (169065 Canada Ltd.)	R.L. Crain Inc.	Business forms and printing	FC	
Uni-Select Inc.	Acklands Limited	Automotive parts wholesaling	FC	
Unigesco Inc.	Sodisco Inc.	Building products wholesaling	FC	
United Westburne Inc.	Forsco Inc.	Electrical and plumbing product wholesaling	MO	AO
Uranerz Exploration & Mining Ltd.	Cameco Canadian Mining & Energy Corporation	Uranium mining	FC	
VS Services Ltd.	Modern Building Cleaning Inc.	Building cleaning	FC	
Waxman Industries, Inc.	Ideal Group of Companies Inc.	Plumbing and heating product wholesaling	FC	ARC
WCI Canada Inc.	General Freezer Division of CMIL Industries Inc.	Freezer manufacturing	FC	
Westbridge Systems Corporation	Superior Business Machines Ltd.	Office equipment	FC	ARC
Westburne Québec Inc.	Turgeon et Jobin Limitée	Electrical product wholesaling	FC	
Westcoast Energy Inc. and Petro Canada Inc.	Inter-City Gas Corporation (certain assets)	Oil and gas	FC	
Western International Communications Limited	MH Acquisition Inc.	Television broadcasting	FC	
Westinghouse Canada Inc.	Reff Incorporated & Reff Installation Inc.	Office equipment	FC	ARC
Whitman (Canada) Inc.	Coorsh Inc.	Food products	FC	
Wood Gundy Inc.	Merrill Lynch Canada Inc.	Financial services	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	
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 charge was withdrawn by the Attorney General on September 6, 1989.
Section 61: Price Maintenance	
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(1)(b). On May 23, 1989, the accused was acquitted of both charges.
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, the accused was fined \$100 000. Shells' appeal of the conviction was dismissed by the Manitoba Court of Appeal on February 8, 1990, and the Court increased the fine to \$200 000.
Power tools – Makita Power Tools Canada Ltd. (Whitby, Ontario)	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. On April 13, 1989, Makita Power Tools Canada Ltd. pleaded guilty to one charge under paragraph 61(1)(b) and was fined \$15 000. The remaining charge was withdrawn.
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). On May 15, 1989, the company pleaded guilty to two of the three charges, the Crown withdrawing one charge under paragraph 61(1)(a). The company was fined \$15 000 in total, \$5 000 for the infraction under paragraph 61(1)(a) and \$10 000 for the infraction under paragraph 61(1)(b).
Motorcycles and consumer motorcycle 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 Limited (Toronto, Ontario)	On March 31, 1989, seventeen charges were laid in this matter: three under paragraph 45(1)(c), ten under paragraph 61(1)(a) and three under paragraph 61(6). The accused waived their right to a preliminary hearing and proceeded directly to trial. On November 9, 1989, the matter was resolved when the accused pleaded guilty to one count under paragraph 61(1)(a) and were fined a total of \$250 000. A prohibition order was imposed under subsection 34(1).

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

Vitamins –
Hoffman-LaRoche Limited (Etobicoke, Ontario)

On March 23, 1989, one charge was laid under paragraph 61(1)(a). On April 4, 1989, the accused pleaded guilty to the charge under paragraph 61(1)(a) and was fined \$50 000. A prohibition order was imposed.

Prohibition Orders Without Convictions

Section 47: Bid-rigging

Architectural Hardware Limited, L.H. Ruprecht Limited trading as Commercial Doors & Hardware, Summerhill Hardware Limited and William Aikenhead Door and Hardware Limited (Metropolitan Toronto, Ontario).

On September 21, 1989, a prohibition order was issued under subsection 34(2) by the Supreme Court of Ontario.

Paragraph 50(1)(a): Price Discrimination

Ski-lift services –
Station Mont-Tremblant (St-Jovite, Quebec)

Proceedings for a prohibition order were commenced on March 30, 1989. On April 6, 1989, a prohibition order under subsection 34(2) was issued by the Federal Court of Canada.

Section 51: Promotional Allowances

Power tools –
Makita Power Tools Canada Ltd. (Whitby, Ontario)

On February 13, 1990, a prohibition order was issued by the Superior Court of Quebec under subsection 34(2).

Appendix V

Criminal Offences in Relation to Competition: Proceedings Pending

Product, Names of Accused and Location of Offence

Action Taken and Results

Section 33: Monopoly

Municipal Castings –
(Surrey, British Columbia)

In March, 1984, representatives of the Director searched the premises of a Surrey, B.C., municipal castings supplier and its affiliates pursuant to section 33 of the former Combines Investigation Act. Due to protracted legal challenges by the parties, documents from the searches were not obtained until October, 1989. The case was referred to the Attorney General, and in March, 1989, it was decided to seek a prohibition order under section 34(2) of the Competition Act. As of March 31, 1990, negotiations were ongoing.

Subsection 34(6): Failure to Comply with a Prohibition Order

Driving Schools –
École de conduite Tecnic Aubé Inc., École de conduite Lauzon (Sherbrooke) Ltée, 2172-3572 Québec Inc., École de conduite Tecnic Estrie Inc., École de conduite de l'Estrie Inc., École de conduite Vel Inc., André Houle, Michel Faucher, Yves Aubé and Michel Labbé
(Sherbrooke, Quebec)

On December 21, 1989, one charge was laid under subsection 127(1) of the Criminal Code as a result of a failure to comply with a prohibition order further to subsections 34(1) and 34(6) of the Competition Act. The preliminary inquiry is scheduled to commence October 30, 1990.

Section 45: Conspiracy

Prescription Drugs and Pharmacists
Dispensing Services –
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 (Nova Scotia)

On February 24, 1987, two charges were laid under paragraph 45(1)(c). A two week preliminary inquiry before the Nova Scotia Provincial Court commenced on January 23, 1989 with final argument on September 7, 1989. The decision committing all of the accused to trial on both charges was handed down on March 22, 1990. The trial is scheduled for October 1, 1990.

Funeral Services –
Nova Scotia Licensed Embalmers and
Funeral Director's Association
(Halifax, Nova Scotia)

On March 22, 1988, a charge was laid under paragraph 45(1)(c). The alleged conspiracy involves fees to be paid for burials of indigents. First appearance in this matter is scheduled for April 4, 1990, before the Supreme Court of Nova Scotia.

* Refers to section 33 of the Combines Investigation Act.

Product, Names of Accused and Location of Offence	Action Taken and Results
Driving Schools – École de conduite Tecnic Aubé Inc., École de conduite Lauzon (Sherbrooke) Ltée, Le Groupe Lauzon Inc., 2172-3572 Québec Inc., École de conduite Tecnic Estrie Inc., École de conduite Asbestrie Inc., École de conduite de l'Estrie Inc., École de conduite Vel Inc., André Houle, André Comeau, Michel Faucher, Yves Aubé, Jacques Perreault and Michel Labbé (Sherbrooke, Quebec)	On December 21, 1989, one charge was laid under paragraph 45(1)(c). The preliminary inquiry is scheduled to commence October 30, 1990.
Ready Mix Concrete – Kenny Ready Mix Ltd., Blanchard Ready Mix Ltée (Bathurst, New Brunswick)	On January 5, 1990, two charges were laid in Bathurst in the New Brunswick Provincial Court. The firms are alleged to have conspired with one another to limit unduly the facilities for the production of ready-mix concrete in the area of Bathurst and to have conspired to lessen unduly competition in the sale of ready-mix concrete by raising the price thereof. The trial is set to commence on June 4, 1990./

Flour –
Maple Leaf Mills Limited, Ogilvie Mills Ltd., Robin Hood Multifoods Inc., Parrish & Heimbecker Limited, B.P. Kent Flour Mills Limited, Dover Mills Limited, Rogers Foods Limited and Soo Line Mills Limited
(Nation-wide)

On March 1, 1990, one charge was laid under paragraph 45(1)(c).

Section 47: Bid-Rigging

Flour –
Maple Leaf Mills Limited, Ogilvie Mills Ltd., Robin Hood Multifoods Inc., Parrish & Heimbecker Limited, B.P. Kent Flour Mills Limited, Dover Mills Limited, Roger's Foods Limited and Soo Line Mills Limited
(Nation-wide)

On March 1, 1990, one charge was laid under section 47.

Section 50: Price Discrimination

Reinforced Steel –
(Montréal, Quebec)

On November 8, 1985, an application for oral examinations under section 17 of the Combines Investigation Act was approved by the Restrictive Trade Practices Commission. However, on December 16, 1985, a statement of claim was brought before the Federal Court of Canada by the company whose conduct was being inquired into, challenging the right to conduct hearings under the Act. The decision of the Supreme Court of Canada on the Thomson Newspapers case on March 29, 1990, upholding the constitutionality of section 17 of the Combines Investigation Act, allows the Director to pursue this matter using the provisions of section 11 of the Competition Act, which replaces section 17 of the Combines Investigation Act.

Paragraph 50(1)(c): Predatory Pricing

Driving Schools –
École de conduite Tecnic Aubé Inc., École de conduite
Lauzon (Sherbrooke) Ltée, 2172-3572 Québec Inc., École
de conduite Tecnic Estrie Inc., École de conduite Asbestrie
Inc., École de conduite de l'Estrie Inc., Yves Aubé and
Jacques Perreault (Sherbrooke, Quebec)

On December 21, 1989, one charge was laid under paragraph 50(1)(c). The preliminary inquiry is scheduled to commence October 30, 1990.

Section 61: Price Maintenance

Watches –
Wenger Ltd.
(Chicoutimi, Quebec)

On February 27, 1985, one charge was laid under paragraph 61(1)(b). The accused was convicted on February 20, 1990. On March 21, 1990, the accused filed an appeal against the conviction. Sentencing was scheduled for June 18, 1990.

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). Barcana filed a motion of non-suit which was dismissed by the Superior Court of the province of Quebec on July 3, 1989. Barcana appealed the decision on July 26, 1989.

Women's Wear –
E.E. Lemieux Inc., Simon Carmichael
(Québec, Quebec)

On August 25, 1989, fourteen charges under subsection 61(6) were laid against E.E. Lemieux Inc. and Simon Carmichael, General Manager. On January 15, 1990, the preliminary trial was held and the accused were sent to trial on the fourteen charges. On January 25, 1990, counsel for Simon Carmichael filed a motion *in certiorare* to quash this decision which was subsequently dismissed by the Superior Court on February 13, 1990. The trial is scheduled for October 1990.

Blue Jeans –
Louis Levine Agencies Inc.
(Toronto, Ontario)

On March 2, 1990, two charges under paragraph 61(1)(a) and two charges under paragraph 61(1)(b) were laid.

Appendix VI

Criminal Offences in Relation to Competition: Discontinued Inquiries

Industry	Section of the Act	Nature of Inquiry and Conclusion Reached
Geraldton Hairdressers –	45	A complaint was received from a resident of Geraldton, Ontario, regarding an advertisement that was placed in a local newspaper by all hairdressers in Geraldton which contained uniform prices for various hairdressing services. Although a formal inquiry was commenced, the matter was resolved by a compliance initiative in which all of the implicated hairdressers placed a retraction of their earlier advertisement which noted the involvement of the Director in the matter and provided an indication of their desire to comply with the provisions of the Competition Act.
Canadian Football League –	48	This inquiry was commenced following press reports of a successful Court challenge of a Canadian Football League (CFL) by-law by a player who contended that, among other things, the by-law contravened section 48 of the Competition Act (i.e. conspiracy relating to professional sport) in attempting to discourage player mobility with other leagues. A compliance initiative was taken by the Director which led to the CFL rescinding the by-law in question.
Women's Sweat Shirts –	61(1)(b)	A complaint was received from a Toronto clothing retailer alleging that a manufacturer of women's clothing, also located in Toronto, had refused to supply it a certain brand of women's sweat shirts because of the retailer's low pricing policy. The evidence did not establish that the complainant had been cut off and it appears that there may have been other reasons for the delay in shipments.
Building Materials –	61(1)(b)	A six resident application was received alleging that certain building material suppliers had refused to supply a lumber and drywall company with fiberglass insulation, gypsum board and related building supplies. The information obtained during the inquiry established that the refusals to supply were the actions of lower level sales persons at the respective suppliers. The company did not act upon Bureau suggestions that it request supplies from responsible officials at the suppliers in question. The company was closed as a business operation in August, 1989.

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	
Fabrics – Fabricland Distributors Inc. and Warren Kimel (Toronto, Ontario)	Seven charges were laid on October 14, 1988. On April 7, 1989, the company pleaded guilty to one charge and was convicted and fined \$17 000. The remaining charges were withdrawn.
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. On April 14, 1989, the accused were acquitted.
Stainless Steel Flatware – William Ashley Ltd. and Alan J. Stark (Toronto, Ontario)	Two charges were laid on October 14, 1988. On May 11, 1989, the company pleaded guilty to one charge and was convicted and fined \$22 500. The remaining charge was withdrawn.
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. The accused pleaded not guilty but, on May 19, 1989, Hallmark Ford was convicted on three charges and was fined \$1 000 on each charge for a total fine of \$3 000. The remaining charges were dismissed.
Televisions and Appliances – Roy's Television & Radio Company Limited (Sudbury, Ontario)	Two charges were laid on September 2, 1987. On May 30, 1989, the accused pleaded guilty to one charge and was convicted and fined \$5 000. The remaining charge was withdrawn.
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. On June 7, 1989, the accused was acquitted.
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. On June 22, 1989, a stay of proceedings was entered on three charges and the accused were acquitted on the remaining charge.
Automobiles – Craig Stewart Esplen, Charles Elliott and Humberview Mo- tors Inc. (Toronto, Ontario)	Two charges were laid on December 16, 1988. On July 13, 1989, the company pleaded guilty to one charge and was convicted and fined \$10 000. The remaining charges were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Meat – C & D Beef Enterprises Inc., c.o.b. as Alberta Beef Centre, Douglas Wright and Steven Duane Willmarth (Edmonton, Alberta)	Five charges were laid on February 15, 1989. The company and Douglas Wright were charged jointly in respect of four charges. The company and Steven Duane Willmarth were charged jointly in respect of one charge. The accused pleaded not guilty but on July 13, 1989, the company was convicted of one charge and fined \$2 500. The accused were acquitted of all remaining charges. On March 29, 1990, an order of prohibition was issued.
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. On July 18, 1989, the company pleaded guilty and was convicted and fined \$5 000. The charge against the individual was withdrawn.
Advertising Space – John Sidney Murphy and Robyn Yorke, c.o.b. as Canadian Police Review, Canadian Policy 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. On August 8, 1989, the charges against all the accused were stayed.
Various Products – Jay Norris Canada Inc. and Jean-Claude Héroux (Montréal, Quebec)	Thirteen charges were laid on September 21, 1988. The accused pleaded not guilty but, on March 31, 1989, the company was convicted of seven charges and fined \$25 000 on the first charge and \$3 000 on each of the remaining charges for a total fine of \$43 000. The remaining charges were withdrawn. On August 28, 1989, the individual accused was acquitted.
Gas-Saving Device – Sprinter Energie Inc. (Longueuil, Quebec)	Three charges were laid on April 20, 1989. On August 31, 1989, the charges were withdrawn.
Tires – Custom Muffler Service Ltd. (Ottawa, Ontario)	Four charges were laid on February 23, 1989. On September 6, 1989, the accused pleaded guilty and was convicted and fined \$500 on each charge for a total fine of \$2 000.
Houses – Donald Manson, c.o.b. as Caledon Heights Estates Ltd. (Toronto, Ontario)	Three charges were laid on February 9, 1988. On June 1, 1988, the accused pleaded guilty and was convicted and fined \$6 000 on the first count, \$4 000 on the second count and \$2 500 on the third count for a total fine of \$12 500. On September 25, 1989, an appeal by the accused against sentence was dismissed.
Products – Zellers Inc., c.o.b. as Zellers (Halifax, Nova Scotia)	Two charges were laid on May 25, 1988. On October 18, 1989, the charges were withdrawn.
Blinds – Dominion Textile Inc., c.o.b. as Magasin d'usine and Pierre Caron (Drummondville and Montréal, Quebec)	Two charges were laid on May 31, 1989. The accused pleaded not guilty but, on October 30, 1989, both were convicted. The company was fined \$2 000 on each charge and the individual was fined \$1 000 on each charge for a total fine of \$6 000.
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. An appeal was filed by the accused on April 12, 1989. On November 2, 1989, the appeal was dismissed.

Product, Names of Accused and Location of Offence	Action Taken and Results
Time-Shared Accommodation – Club Mont Ste-Anne Inc. (Beaupré, Quebec)	Three charges were laid on May 16, 1985. On November 14, 1989, the accused pleaded guilty to two charges and was convicted and fined \$7 500 on each charge for a total fine of \$15 000. The remaining charge was withdrawn.
Fur Coats – Wendelyn Textiles & Properties Limited, c.o.b. as Alan Cherry, Alan Cherry Enterprises Limited, 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 Enterprises Limited pleaded guilty to one charge and was convicted and fined \$50 000.
Household Furnishing – National Clearance Warehouse Ltd., National Furniture Distributors Ltd. and Oscar Pilpel (Toronto, Ontario)	Eight charges were laid on October 19, 1988. On November 15, 1989, National Furniture Distributors Ltd. pleaded guilty to two charges and was convicted and fined \$20 000 on each charge for a total of \$40 000. On February 16, 1990, the remaining charges were withdrawn.
Window Coverings and Accessories – Skyline Interiors Inc., Lyle Libenstein and Kim Libenstein (Toronto, Ontario)	One charge was laid on April 5, 1989. On November 20, 1989, the company pleaded guilty and was convicted and fined \$2 500. On January 11, 1990, the charge in respect of both individuals was withdrawn.
Blinds – Recouvrement de Fenêtres Despins Inc. and Verti Store Inc., c.o.b. as Verti Store (Dorval, Quebec)	Six charges were laid on August 17, 1988. On November 8, 1989, Recouvrement de Fenêtres Despins Inc. was convicted and fined \$2 000 on each charge for a total fine of \$12 000. An order of prohibition was granted. The charges against Verti Store Inc. were dismissed.
Various Products – 146935 Canada Inc., c.o.b. as Excel-Tech Advertising Specialties Reg — Les promotions Excel-Tech Enrg., and Maria Majella Castellano (Montréal, Quebec)	Three charges were laid on May 23, 1989. On December 5, 1989, the company pleaded guilty and was convicted and fined \$2 000 on each charge for a total fine of \$6 000. The charges against the individual were withdrawn.
Business Award – Amiram Peleg and Peleg Consumer Polls Incorporated (Winnipeg, Manitoba)	Eight charges were laid on December 22, 1988. On January 4, 1990, the charges were withdrawn and a new charge laid against the company only. On January 8, 1990, the company pleaded guilty to the charge and was convicted and fined \$5 000.
Blinds – Décoration Mont-Bruno Inc. and Michel Hébert (St-Bruno, Quebec)	Four charges were laid on February 6, 1989. On January 11, 1990, the company pleaded guilty to four charges and was convicted and fined \$300 on each charge for a total fine of \$1 200. An order of prohibition was granted against the company.
Cellular Telephone Rental – Cellular Canada Corporation (T.S.N.) Ltd. (Montréal, Quebec)	Six charges were laid on May 23, 1989. On January 15, 1990, the accused pleaded guilty to four charges and was convicted and fined \$2 000 on each charge for a total fine of \$8 000. The remaining charges were withdrawn.
Blinds – Camille Lévesque, c.o.b. as Camille Lévesque Meubles (Rivière du Loup and elsewhere in Quebec)	Seven charges were laid on July 12, 1989. On January 17, 1990, the accused pleaded guilty to six charges and was convicted and fined \$150 on each charge for a total fine of \$900. The remaining charge was withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Blinds - Despin Holdings Inc. and Verti Store Inc. (Québec City, Quebec)	Six charges were laid on December 1, 1988. On January 19, 1990, Despin Holdings Inc. pleaded guilty and was convicted and fined \$2 000 on each charge for a total fine of \$12 000.
Chinese Carpets - T. Eaton Holdings Limited, c.o.b. as Eaton's (Toronto, Ontario)	One charge was laid on February 21, 1989. On January 22, 1990, the charge was withdrawn.
Sewing Machines - Jean Ricard, c.o.b. as J.R. Ricard Machine à coudre (Grand-Mère, Quebec)	Two charges were laid on December 1, 1989. On January 22, 1990, the charges were withdrawn.
Crop Fertilizer - Edward McLachlan and International Gypsum Inc. (London, Ontario)	Seven charges were laid on April 13, 1989. On January 26, 1990, the individual pleaded guilty to two charges and was convicted and fined \$10 000 on each charge for a total fine of \$20 000. The remaining charges were withdrawn. An order of prohibition was granted against the individual.
Carburators - Jacques Pelletier, c.o.b. as Articles Publicitaires M.T.L. Enr., Raymond Roy and Carburaton Econex Canada Inc. (Montréal, Quebec)	Eleven charges were laid on August 25, 1988, against Jacques Pelletier and Carburaton Econex Canada Inc. On June 14, 1989, the charges against Jacques Pelletier were withdrawn and 12 charges were laid against Raymond Roy. On August 2, 1989, the company was convicted of 10 charges and fined \$10 000 on each charge for a total fine of \$100 000. On January 24, 1990, Raymond Roy pleaded guilty and was convicted on all charges and sentenced to probation, a term of which was to make a donation of \$4 000 to the Association de Protection des Automobilistes.
Distributorships of Lotto Machines - Supreme Marketing Ltd., Brian George Reaveley, Edward Thompson and Steven John Duff (Winnipeg, Manitoba; Edmonton and Calgary, Alberta; and Vancouver, British Columbia)	Nine charges were laid on June 15, 1989. The company, Brian Reaveley and Edward Thompson were charged jointly in respect of three charges. The company, Brian Reaveley and Steven Duff were charged jointly in respect of two charges. The company and Brian Reaveley were charged jointly in respect of one charge. On December 19, 1989, the company pleaded guilty to six charges and was convicted and fined \$2 500 on each charge for a total fine of \$15 000; the remaining charges against the company were stayed. On February 2, 1990, all charges against the individuals were stayed.
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. On January 15, 1990, the charges against the individuals were withdrawn. On February 15, 1990, the company pleaded guilty and was convicted and fined \$2 000 on each charge for a total fine of \$8 000.
Christmas Ornaments and Mallard Decoys - Shears Direct Marketing Inc., Faye Labuick and Labuick Media Ltd. (Markham, Brantford, Hamilton and elsewhere in Ontario; Burnaby, British Columbia; and elsewhere in Canada)	Three charges were laid on July 4, 1989. The accused were charged jointly in respect of one charge and Shears Direct Marketing Inc. was charged in respect of two charges. On February 20, 1990, Shears Direct Marketing Inc. pleaded guilty to one charge and was convicted and fined \$5 000. All remaining charges were withdrawn.

Product, Names of Accused and Location of Offence	Action Taken and Results
Carpets – Carpita Corporation, c.o.b. as Factory Carpet (Ottawa, Toronto and elsewhere in Ontario)	Five charges were laid on January 11, 1989. On March 6, 1990, all charges were 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 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. An appeal by the accused was dismissed on March 23, 1990.
Window Blinds – David W. Klimitz and 573748 Ontario Corporation (Brampton, Ontario)	Two charges were laid on August 26, 1987. On April 5, 1988, the accused were acquitted. On March 26, 1990, an appeal by the Crown was dismissed.
Furniture – Barney's Antiques Limited, c.o.b. as World-Wide Antiques, and Arthur Aello (Toronto and elsewhere in Ontario)	Fifteen charges were laid on December 23, 1988. On March 28, 1990, the accused pleaded guilty to two charges and were convicted. The company was fined \$13 750 on each charge for a total fine of \$27 500 and the individual was fined \$3 750 on each charge for a total fine of \$7 500. The remaining charges were withdrawn.

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

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. On April 14, 1989, the accused was acquitted.
Anti-Rust Compound – Waxoyl Canada Ltd. (Halifax, Nova Scotia)	One charge was laid on September 19, 1988. On June 12, 1989, the accused pleaded guilty and was convicted and fined \$3 000.
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. On August 8, 1989, Canadian Police Review Publishing Inc. pleaded guilty and was convicted and fined \$100 000. Keith A. Gardner pleaded guilty and was convicted and fined \$3 000. A stay of proceedings was entered against all remaining accused. An order of prohibition was also granted.
Gas-Saving Devices – Sprinter Energie Inc. (Longueuil, Quebec)	Two charges were laid on April 20, 1989. On August 31, 1989, the charges were withdrawn.
Hair Growth Products – Michael J. Chater and M.C. Beautician Limited, c.o.b. as Michael Chater's School of Cosmetology (Dartmouth, Nova Scotia)	Two charges were laid on November 9, 1988. On November 29, 1989, the accused pleaded guilty to one charge and were convicted. The company was fined \$2 500 and the individual was sentenced to one year's probation and community service.
Crop Fertilizer – Edward McLachlan and International Gypsum Inc. (London, Ontario)	Five charges were laid on April 13, 1989. On January 26, 1990, the charges were withdrawn.

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

Carburators -

Jacques Pelletier, c.o.b. as Articles Publicitaires M.T.L. Enr.,
Raymond Roy and Carburation Econex Canada Inc.
(Montréal, Quebec)

Eleven charges were laid on August 25, 1988 against Jacques Pelletier and Carburation Econex Canada Inc. On June 14, 1989, the charges against Jacques Pelletier were withdrawn and eight charges were laid against Raymond Roy. On August 2, 1989, the company was convicted of 10 charges and fined \$10 000 on each charge for a total fine of \$100 000. On January 24, 1990, Raymond Roy pleaded guilty and was convicted on all charges and sentenced to probation, a term of which was to make a donation of \$4 000 to the Association de Protection des Automobilistes. The remaining charge was withdrawn.

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. On January 15, 1990, the charges against the individuals were withdrawn. On February 15, 1990, the remaining charges were withdrawn.

Blinds -

Décor Pour Vous Inc. (Verdun, Quebec)

Two charges were laid on February 21, 1990. On March 22, 1990, the accused pleaded guilty and was convicted and fined \$500 on each charge for a total fine of \$1 000.

Miscellaneous Items -

Gilro Distributors Ltd., c.o.b. as Checkmate Sport
(Montréal, Quebec)

Five charges were laid on May 29, 1989. On January 17, 1990, the accused pleaded guilty and was convicted and, on March 30, 1990, fined \$1 000 on each charge for a total fine of \$5 000.

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

Televisions -

Roy's Television & Radio Company Limited
(Sudbury, Ontario)

One charge was laid on September 2, 1987. On May 30, 1989, the charge was withdrawn.

Automobiles -

Craig Stewart Esplen, Charles Elliott and Humberview Motors Inc. (Toronto, Ontario)

Two charges were laid on December 16, 1988. On July 13, 1989, the company pleaded guilty to one charge and was convicted and fined \$5 000. The remaining charges were withdrawn.

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 28, 1988. On July 18, 1989, the company pleaded guilty and was convicted and fined \$5 000. The remaining charge was withdrawn.

Tires -

Custom Muffler Service Ltd. (Ottawa, Ontario)

Four charges were laid on February 23, 1989. On September 6, 1989, the charges were withdrawn.

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. On March 13, 1989, the charge against Steven LeVine was withdrawn. The remaining charges were withdrawn.

Window Coverings and Accessories -

Skyline Interiors Inc., Lyle Libenstein and Kim Libenstein
(Toronto, Ontario)

One charge was laid on April 5, 1989. On January 11, 1990, the charge was withdrawn.

Watches -

Superpharm (Montréal) Ltée (Montréal, Quebec)

Two charges were laid on September 7, 1989. On November 27, 1989, the accused pleaded guilty and was convicted and fined \$3 750 on each charge for a total fine of \$7 500.

Product, Names of Accused and Location of Offence	Action Taken and Results
Blinds – Décoration Mont-Bruno Inc. and Michel Hébert (St-Bruno, Quebec)	Four charges were laid on February 6, 1989. On January 11, 1990, the charges were withdrawn.
Blinds – Camille Lévesque, c.o.b. as Camille Lévesque Meubles (Sainte-Hélène, Quebec)	Seven charges were laid on July 12, 1989. On January 17, 1990, the accused pleaded guilty to one charge and was convicted and fined \$150. The remaining charges were withdrawn.
Blinds – Despin Holdings Inc. and Verti Store Inc. (Québec City, Quebec)	Six charges were laid on December 1, 1988. On January 19, 1990, Despin Holdings Inc. was convicted and fined \$2 000 on each charge for a total fine of \$12 000. The remaining charges were withdrawn.
Chinese Carpets – T. Eaton Holdings Limited, c.o.b. as Eaton (Toronto, Ontario)	One charge was laid on February 21, 1989. On January 22, 1990, the accused pleaded guilty and was convicted and fined \$65 000.
Sewing Machines – Jean Ricard, c.o.b. as J.R. Ricard Machine à coudre (Grand-Mère, Quebec)	Two charges were laid on December 1, 1989. On January 22, 1990, the accused pleaded guilty and was convicted and fined \$300 on each charge for a total fine of \$600.
Christmas Ornaments and Mallard Decoys – Shears Direct Marketing Inc. (Markham, Brantford, Hamilton and elsewhere in Ontario; Burnaby, British Columbia; and elsewhere in Canada)	Three charges were laid on July 4, 1989. On February 20, 1990, the charges were withdrawn.
Carpets – Carpita Corporation, c.o.b. as Factory Carpet (Ottawa, Toronto and elsewhere in Ontario)	Eight charges were laid on January 11, 1989. On March 6, 1990, the accused pleaded guilty to two charges and was convicted and fined \$50 000 in respect of one charge and \$15 000 in respect of the other for a total fine of \$65 000. The remaining charges were withdrawn.

Section 56: Referral Selling

Meat – C & D Beef Enterprises Inc., c.o.b. as Alberta Beef Centre, and Steven Duane Willmarth (Edmonton, Alberta)	Two charges were laid on February 15, 1989. On July 13, 1989, the accused were acquitted.
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Section 58: Sale Above Advertised Price

Miscellaneous Items – Zellers Inc., c.o.b. as Zellers (Halifax, Nova Scotia)	Twenty-nine charges were laid on May 25, 1988. On October 18, 1989, the accused pleaded guilty to ten charges and was convicted and fined \$3 500 on each charge for a total fine of \$35 000. The remaining charges were withdrawn.
Mattresses – United Buy and Sell Service B.C. Inc. and John Volken (Coquitlam, Richmond, the District of Maple Ridge and elsewhere in the Province of British Columbia)	Three charges were laid on January 3, 1989. The accused pleaded not guilty but, on December 11, 1989, the company was convicted and fined \$1 000 on each charge for a total fine of \$3 000. The individual was acquitted.

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. On March 13, 1989, the charge against Steven LeVine was withdrawn. The remaining charges were subsequently withdrawn.

Various Products –

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

Three charges were laid on September 21, 1988. The accused pleaded not guilty but, on March 31, 1989, the company was convicted and fined \$3 000 on each charge for a total fine of \$9 000. On August 28, 1989, the individual was acquitted.

Automobiles –

Kern Chevrolet Oldsmobile Ltd., c.o.b. as Kern Chevrolet-Oldsmobile, and Bryan Douglas Kern (Vancouver, British Columbia)

One charge was laid on January 20, 1989. The accused pleaded not guilty but, on June 22, 1989, were convicted and fined \$500 each for a total fine of \$1 000.

Various products –

146935 Canada Inc., c.o.b. as Excel-Tech Advertising Specialties Reg — Les promotions Excel-Tech Enrg., and Maria Majella Castellano (Montréal, Quebec)

Four charges were laid on May 23, 1989. On December 5, 1989, the company pleaded guilty to two charges and was convicted and fined \$2 000 on each charge for a total fine of \$4 000. The remaining charges were withdrawn.

Prohibition Orders Without Convictions

Television Sets –

Sanyo Industries Canada Inc./Les Industries Sanyo Canada Inc. (Nation-wide)

An order of prohibition under subsection 34(2) was granted by the Federal Court of Canada on consent on September 26, 1989.

Polystyrene Insulation –

Plasti-Fab Ltd. (Nation-wide)

An order of prohibition under subsection 34(2) was granted by the Federal Court of Canada on consent on January 11, 1990.

Polystyrene Insulation –

Reach Plastics Ltd. and Reach Insulation Products Ltd. (Nation-wide)

An order of prohibition under subsection 34(2) was granted by the Federal Court of Canada on consent on January 11, 1990.

Automobiles –

Donpat Investments Ltd. (Halifax, Nova Scotia)

An order of prohibition under subsection 34(2) was granted by the Federal Court of Canada on consent on January 16, 1990.

Vacuum Cleaners –

Tom Bresciani (Nation-wide)

An order of prohibition under subsection 34(2) was granted by the Federal Court of Canada on consent on March 9, 1990.

Appendix VIII

Misleading Advertising and Deceptive Marketing Practices Provisions: Proceedings Pending

Products, Names of Accused and Location of Offence	Action Taken and Results
Paragraph 52(1)(a): False or Misleading Representation in a Material Respect	
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 1982 Inc., Robert Niddery, Kenneth Gertner, Victor Palermo and 506223 Ontario Inc. were jointly charged with respect to the other 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.
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 Wheeler were jointly charged with respect to 22 charges and all three accused were jointly charged with respect to three additional charges. On September 25, 1986, the accused were acquitted. The Crown has filed an appeal.
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.
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. The Crown has filed an appeal.
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.
Motorcycles – 600548 Ontario Limited, c.o.b. as Honda Cycle Sports Toronto, and 570039 Ontario Ltd., c.o.b. as Yamaha Toronto and Toronto Yamaha (Toronto, Ontario)	Eight charges were laid against 600548 Ontario Limited and six charges were laid against 570039 Ontario Ltd. on August 14, 1986. On May 12, 1987, the accused were acquitted. An appeal was filed by the Crown on May 29, 1987. On December 20, 1989, the appeal was allowed and a new trial ordered.
Furniture – Greco-Latino Furniture & Appliances Ltd., c.o.b. as Cross Canada Liquidators, and George Pozios (Hamilton, Ontario)	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 ordered. On January 9, 1989, the accused filed a notice of appeal.

Product, Names of Accused and Location of Offence	Action Taken and Results
Books - R.L. Polk & Co. Ltd./R.L. Polk & Cie Ltée, c.o.b. as Halbert's, Douglas Haslinger and Ron Adamson (Nation-wide)	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 Ron Adamson. The charges against Douglas Haslinger remain outstanding.
Waterbeds - The Waterbed Gallery Ltd., c.o.b. as Waterbed Gallery, and Larry Paulson (Vancouver and Victoria, British Columbia)	Twenty-one charges were laid on April 22, 1987. On May 4, 1988, the company was convicted of two charges and fined \$3 500 on each charge for a total fine of \$7 000. The remaining charges against the Waterbed Gallery Ltd., and all charges against the individual were dismissed. The company has appealed the conviction.
Vacation Packages - The Wholesale Travel Group Inc. and Colin Chedore (Toronto, Ontario)	Five charges were laid on September 21, 1987. On March 23, 1988, the charges were dismissed. On August 4, 1988, the Crown appeal was allowed and the matter was remitted to Provincial Court for trial. On November 23, 1989, upon further appeal by the accused to the Court of Appeal, the matter remained remitted for trial. Leave to appeal to the Supreme Court of Canada was granted on February 26, 1990.
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 - Donald Hoyt Smith, c.o.b. as Canadian Police News Independent, and Hoyt Smith Publishing Inc. (Toronto, Ontario)	Two charges were laid on April 15, 1988. On January 11, 1989, the charges were stayed. On September 15, 1989, an appeal by the Crown was allowed, the stay of proceedings set aside and the matter remitted for trial.
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 company pleaded guilty and was convicted and fined \$10 000. An order of prohibition was granted. The charges against Guy 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, the companies pleaded guilty to one charge and were convicted and fined \$5 000 each. The remaining charges against them were withdrawn. An order of prohibition was granted. The charges against Guy 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.

Product, Names of Accused and Location of Offence	Action Taken and Results
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 companies pleaded guilty to one charge and were convicted and fined \$5 000 each. The remaining charges against them were withdrawn. The charges against Guy Pothier remain outstanding.
Weight Loss – 146474 Canada Inc., Louis Luc Roy, c.o.b. as Raisinase RR, Shirley Thérout and Taisinase R.R. Inc. (Montréal, Quebec)	Forty-nine charges were laid on May 18, 1988.
Audio & Video Equipment – Multitech Warehouse Direct (Ontario) Inc. (Toronto, Ontario)	Two charges were laid on September 2, 1988.
Various Products – Amway of Canada Ltd. (Edmonton, Alberta)	Six charges were laid on September 28, 1988. On September 18, 1989, two of the charges were stayed. On December 6, 1989, two charges were dismissed. The Crown has appealed this decision. The stayed charges were withdrawn on March 19, 1990. Two other charges remain outstanding.
Rugs – Stephano Cervone and Tapis Orientaux Amir Ltée, c.o.b. as Maison d'Encan Internationale (Lachine, Quebec)	Twelve charges were laid on October 26, 1988.
Diet Drink – Steward Sherwood and 603022 Ontario Inc., c.o.b. as House of Sherwood (Hamilton, Ontario)	Twenty-one charges were laid on November 3, 1988.
Furs – Peter Gaye Furs Limited, c.o.b. as Peter Gaye Furs (Winnipeg, Manitoba)	Three charges were laid on December 22, 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.
Employment Opportunity – 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.
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.
Chinese Carpets – Simpson's Limited/Simpson's Limitée, c.o.b. as Simpsons (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.
Travel Savings Card – Groupmark Canada Limited, c.o.b. as Encore, and Elwin D. Cathcart (Toronto, Ontario and elsewhere in Canada)	Eight charges were laid on February 21, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
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 re-laid on March 17, 1989.
Colour Televisions – 279707 Alberta Ltd. and Rean Investments Ltd., c.o.b. as Visions Electronic Superstores (Calgary, Alberta)	Fourteen charges were laid against 279707 Alberta Ltd. and sixteen charges were laid against Rean Investments Ltd. on March 7, 1989. On October 2, 1989, Rean Investments Ltd. was acquitted. 279707 Alberta Ltd. pleaded not guilty but, on October 18, 1989, was convicted and fined \$500 on each charge for a total fine of \$7 000. The accused has filed an appeal.
Ceramic Tiles – Color Your World, Inc. and Ed Baggaley Limited (London, Ontario)	Six charges were laid on March 28, 1989.
Fitness Club Membership – The Fitness People Ltd., Ralph W. Darling, Zoran Lizender, Mike Darling and Gavin Garbutt (Toronto, Ontario)	Three charges were laid on April 14, 1989. On December 20, 1989, the company pleaded guilty to one charge and was convicted and, on February 2, 1990, fined \$10 000. The other charges remain outstanding.
Blinds – St. Clair Wallpaper (1980) Ltd., c.o.b. as St. Clair Paint and Wallpaper, St. Clair Paint Ltd., c.o.b. as St. Clair the Paint and Paper People, Louis Litwin and Yvon Lamoureux (Hamilton, Brantford, St. Catharines, Ancaster and else- where in Ontario)	Thirty-two charges were laid on May 9, 1989.
Weight Loss Product – François Reny (Montréal, Quebec)	Two charges were laid on May 24, 1989.
Blinds – L'Univers des stores verticaux de Montréal Inc. (Laval and Montréal, Quebec)	Two charges were laid on May 30, 1989.
Term Certificates, Financial Loans, Mortgages, Promissory Notes and/or other Forms of Investments – Donald Mercer Cormie, Kenneth Nelson Marlin, Christa Ute Petracca and John Mills Cormie (Edmonton, Alberta, and elsewhere in Canada)	Six charges were laid on July 19, 1989. Kenneth Marlin and Donald Mercer Cormie were charged jointly in respect of one charge. Christa Petracca and Kenneth Marlin were charged jointly in respect of one charge. Donald Mercer Cormie was charged solely in respect of two charges. John Mills Cormie was charged solely in respect of two charges.
Fur Coats – Hamel Fourrures Inc./Hamel Furs Inc., Jean Hamel, Jean Hamel Fourrures Inc. and Daniel Dellazizzo (Montréal, Quebec; Ottawa, Ontario; and elsewhere in Canada)	Seventeen charges were laid on July 25, 1989. The accused were charged jointly in respect of two charges. Both individu- als and Jean Hamel Fourrures Inc. were charged jointly in respect of four charges. Both companies and Jean Hamel were charged jointly in respect of eleven charges.
Catalogue – 3 Suisses Canada Inc. (Montréal, Quebec)	One charge was laid on July 28, 1989.
Fur Coats and Jackets – Bissell & Bissell Ltd. (Montréal, Quebec)	Three charges were laid on August 1, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
Furniture, Appliances and Electronic Home Furnishings – Cross Canada Liquidators (1984) Inc., c.o.b. as Cross Canada Liquidators, Young's Furniture Sales Limited, Flavio Pincente, George Pozios and Robert Young (Hamil- ton, St. Catharines, Toronto and elsewhere in Ontario)	Thirteen charges were laid on August 4, 1989.
Electrolysis Treatment – Oakwell-Morgan Inc., c.o.b. as OMI Electrolysis, and Robert Bruce Oakwell-Morgan (Toronto and elsewhere in Ontario)	Eighteen charges were laid on August 16, 1989.
Advertising Specialties – K.T. Promotions Ltd., c.o.b. as K.T. Promotions, Inc., Kernan Todd Robinson and Alex Morris (Burnaby, Kelowna, 100 Mile House, Surrey, Vananda, Vancouver and Westwold, British Columbia; Edmonton, Medicine Hat and Red Deer, Alberta; Toronto, Ontario, Montréal, Quebec; and Dartmouth, Nova Scotia)	Fourteen charges were laid on August 17, 1989. The accused were charged jointly in respect of seven charges. The com- pany and Kerman Robinson were charged jointly in respect of seven charges.
Watches – Tormont Global Time Corporation, John Bell Sales Agencies Inc., John Bell, T.D.M. Drugs Inc., c.o.b. as Howie's, and Shoppers Drug Mart Limited (Toronto and elsewhere in Ontario)	Three charges were laid on August 17, 1989. The accused were charged jointly in respect of one charge. Tormont Global Time Corporation, John Bell Sales Agencies Inc., John Bell and T.D.M. Drugs Inc. were charged jointly in respect of two charges.
Vertical Blinds – Labadie Decor-Sol Inc. (Québec, Quebec)	Two charges were laid on August 24, 1989.
Skis and Tennis Racquets – Sporting Life Inc., Brian McGrath and David Russell (Toronto, Ontario)	Four charges were laid on September 6, 1989. On January 30, 1990, the accused sought <i>certiorari</i> to quash the information, which was denied and the matter remitted for trial. On Febru- ary 1, 1990, the accused filed a Notice of Appeal.
Promotional Material – Estrol Marketing Corporation, Prudential Marketing Limited, Foremost Advertising Limited, Mutual Marketing of Ottawa Limited, Commercial Ad Services of Ottawa Limited and JAJU (Ashton) Advertising Corp. (Ottawa, Ontario)	One charge was laid on September 18, 1989.
Motor Vehicles – D.W.S. Automotive Group Inc., c.o.b. as Hyundai South, and Wayne R. Pitt (London, Ontario)	Two charges were laid on September 25, 1989.
Advertising Space and Service Memberships – National Auto League Inc., c.o.b. as Ontario Automobile Association (O.A.A.), Nalcorp Publishing Corporation, Michael J. McGrath, David C. Allison and Peter G. Watson (London, Ontario, and elsewhere in Canada)	Three charges were laid on October 26, 1989.
Carpets, Flooring and Tiles – Claude Hémaire, c.o.b. as Monsieur Tapis, and Claude Hémaire (Cap-de-la-Madeleine, Quebec)	Thirty-seven charges were laid on October 26, 1989.
Cellular Telephones – 351582 Ontario Limited, c.o.b. as Wellington Car Radio, and Gary Earl Mascarin (London, Windsor and Sarnia, Ontario)	Four charges were laid on November 2, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
<p>Carpets – Cogi Holdings Limited and B & K Carpet Warehouse Company Limited, c.o.b. as B & K Carpet (Stephenville, Newfoundland)</p>	Two charges were laid on November 20, 1989.
<p>Video Cassette Recorders – Stereo People of Canada Ltd. and Danny Leung (Vancouver, British Columbia)</p>	Two charges were laid on November 30, 1989.
<p>Sewing Machines – Réjean Vallée and Les Ateliers de L'Électroménager R. Vallée Inc. (Trois-Rivières, Quebec)</p>	Three charges were laid on December 1, 1989.
<p>Fitness Club Memberships – 313471 Ontario Limited, c.o.b. as The Muscle Factory and The Fitness Connection, 678367 Ontario Inc., c.o.b. as The Muscle Factory, 690489 Ontario Limited, c.o.b. as The Muscle Factory, 733784 Ontario Inc., c.o.b. as The Muscle Factory, Michael John DeGenova, Lloyd Johnston, Clark Kent and Roger Issa, a.k.a. Roger Jacobs (Toronto and elsewhere in Ontario)</p>	Six charges were laid on December 22, 1989. All but Clark Kent and Roger Issa were charged jointly in respect of 3 charges. All but Clark Kent were charged jointly in respect of one charge. 690489 Ontario Limited, Michael John DeGenova, Lloyd Johnston and Clark Kent were charged jointly in respect of two charges.
<p>Window Blinds – Michael Guluk and Super Shade Ltd. (Toronto and elsewhere in Ontario)</p>	Twenty charges were laid on December 22, 1989.
<p>Blinds – Consoltex Inc., c.o.b. as Comptoir manufacturier de textile (Lévis, Quebec)</p>	Three charges were laid on January 25, 1990.
<p>Blinds – Barry Laughren and Designer Blinds of Saskatoon Inc., c.o.b. as Designer Blinds by Stephen (Saskatoon, Saskatchewan)</p>	Seven charges were laid on February 3, 1989. On November 15, 1989, the accused were convicted and on January 26, 1990, the company was fined \$1 500 on each charge for a total fine of \$10 500 and the individual was fined \$500 on each charge for a total fine of \$3 500. An appeal was filed by the accused on February 23, 1990.
<p>Rugs – Sheikh Oriental Rugs Inc. and Nazar Sheikh (Calgary and elsewhere in Alberta)</p>	Six charges were laid on February 2, 1990.
<p>Business Interest – Michel Leduc and 2168-5391 Quebec Inc., c.o.b. as Rolland Lecompte Meuble C.D.L. (Valleyfield and Dorion, Quebec)</p>	Two charges were laid on February 2, 1990.
<p>Blinds – Textiles Poliquin Inc. / Poliquin Textile Inc. (Québec City, Quebec)</p>	One charge was laid on February 7, 1990.
<p>Blinds – Murray Morgan Ltée, Fabricville Distributors Limited and Frantelle Investments Limited, all c.o.b. as Fabricville Co. (Ste-Foy, Quebec)</p>	One charge was laid on February 13, 1990.

Product, Names of Accused and Location of Offence	Action Taken and Results
Furs – Les Fourrures Prémont Inc., Les Fourrures Shuchat Canada Ltée and A. Giguère Québec Ltée (Montréal and Québec City, Quebec)	Eighteen charges were laid on February 13, 1990. Les Fourrures Shuchat Canada Ltée and A. Giguère Québec Ltée were charged jointly in respect of ten charges. Les Fourrures Prémont Inc. and Les Fourrures Shuchat Canada Ltée were charged jointly in respect of eight charges.
Campground Memberships – Paul Britton, Marjorie Loreen Britton and 291001 Ontario Limited, all c.o.b. as Lake Huron Resort (County of Huron and elsewhere in Ontario)	Three charges were laid on February 26, 1990.
Blinds – Blind Love Distributors Inc. and Stephen Steinman (Victoria, District of Saanich, Township of Esquimalt and Sidney, British Columbia)	Ten charges were laid on February 27, 1990.
Vitamins – Cana Promotions Inc., formerly K.E.P. Research Inc., Raymond Briddon and Gerald Doren (Mississauga and Carleton Place, Ontario; Winnipeg, Manitoba; Truro, Nova Scotia; and elsewhere in Canada)	Three charges were laid on February 28, 1990.
Envelope Stuffing – Gordon Venson Hughes, c.o.b. as Hughes Enterprises and H & H Enterprises (Sudbury, Barry's Bay, Orillia, Belleville, Sault Ste. Marie, Peterborough, Ontario; Medicine Hat, Alberta; Cranbrook, British Columbia; and elsewhere in Canada)	Thirteen charges were laid on March 28, 1990.

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. The Crown has filed an appeal.
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. The Crown has filed an appeal.
Hair Regrowth Product – 132013 Canada Ltd., c.o.b. as Niagara Labs and as Niagara Labs Hair and Scalp Specialists, and Stanley H. Weisberg (Hamilton and St. Catharines, Ontario)	Five charges were laid on April 3, 1987. On May 7, 1988, the accused were convicted of 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 – Donald Hoyt Smith, c.o.b. as Canadian Police News Independent, and Hoyt Smith Publishing Inc. (Toronto, Ontario)	Three charges were laid on April 15, 1988. On January 11, 1989, the charges were stayed. On September 15, 1989, an appeal by the Crown was allowed, the stay of proceedings set aside and the matter remitted for trial.

Product, Names of Accused and Location of Offence	Action Taken and Results
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, a stay of proceedings was entered against the company. The charge against Guy Pothier remains 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, the charges against the two companies were withdrawn. The charges against Guy 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 (Montreal, 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 (Montreal, Quebec)	Thirty charges were laid on April 28, 1988.
Oil Fortifier – 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 two companies were withdrawn. The charges against Guy 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.
Diet Drink – Steward Sherwood and 603022 Ontario Inc., c.o.b. as House of Sherwood (Hamilton, Ontario)	Twenty-one charges were laid on November 3, 1988.
Weight Loss Product – François Reny (Montréal, Quebec)	Two charges were laid on May 24, 1989.
Electrolysis Treatment – Oakwell-Morgan Inc., c.o.b. as OMI Electrolysis, and Robert Bruce Oakwell-Morgan (Toronto and elsewhere in Ontario)	Ten charges were laid on August 16, 1989.
Advertising Space and Service Memberships – National Auto League Inc., c.o.b. as Ontario Automobile Association (O.A.A.), Nalcorp Publishing Corporation, Michael J. McGrath, David C. Allison and Peter G. Watson (London, Ontario, and elsewhere in Canada)	Two charges were laid on October 26, 1989.

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

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.
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Product, Names of Accused and Location of Offence	Action Taken and Results
Motorcycles – 600548 Ontario Limited, c.o.b. as Honda Cycle Sports Toronto, and 570039 Ontario Ltd., c.o.b. as Yamaha Toronto and Toronto Yamaha (Toronto, Ontario)	Three charges were laid on August 14, 1986. On May 12, 1987, the accused were acquitted. An appeal was filed by the Crown on May 29, 1987. On December 20, 1989, the appeal was allowed and a new trial ordered.
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.
Furs – Peter Gaye Furs Limited, c.o.b. as Peter Gaye Furs (Winnipeg, Manitoba)	One charge was laid on December 22, 1988.
Chinese Carpets – Hudson's Bay Company, c.o.b. as The Bay (Toronto, Ontario)	One charge was laid on February 21, 1989.
Chinese Carpets – Simpson's Limited/Simpson's Limitée, c.o.b. as Simpsons (Toronto, Ontario)	One charge was laid on February 21, 1989.
Fur Coats – Hamel Fourrures Inc./Hamel Furs Inc., Jean Hamel, Jean Hamel Fourrures Inc. and Daniel Dellazizzo (Montréal, Quebec; Ottawa, Ontario, and elsewhere in Canada)	Seven charges were laid on July 25, 1989. The accused were charged jointly in respect of two charges. Both individuals and Jean Hamel Fourrures Inc. were charged jointly in respect of four charges. Both companies and Jean Hamel were charged jointly in respect of one charge.
Furniture – Cross Canada Liquidators (1984) Inc., c.o.b. as Cross Canada Liquidators, Young's Furniture Sales Limited, Flavio Pincente, George Pozios and Robert Young (Stoney Creek, Ontario)	Thirteen charges were laid on August 4, 1989. The accused were charged jointly in respect of 11 charges. The individuals and Cross Canada Liquidators (1984) Inc. were charged jointly in respect of two charges.
Watches – Tormont Global Time Corporation, John Bell Sales Agencies Inc., John Bell, T.D.M. Drugs Inc., c.o.b. as Howie's, and Shoppers Drug Mart Limited (Toronto and elsewhere in Ontario)	Three charges were laid on August 17, 1989. The accused were charged jointly in respect of one charge. Tormont Global Time Corporation, John Bell Sales Agencies Inc., John Bell and T.D.M. Drugs Inc. were charged jointly in respect of two charges.
Skis and Tennis Racquets – Sporting Life Inc., Brian McGrath and David Russell (Toronto, Ontario)	Forty-four charges were laid on September 6, 1989. On January 30, 1990, the accused sought <i>certiorari</i> to quash the information, which was denied and the matter remitted for trial. On February 1, 1990, the accused filed a Notice of Appeal.
Carpets – Cogi Holdings Limited and B & K Carpet Warehouse Company Limited, c.o.b. as B & K Carpet (Stophenville, Newfoundland)	Three charges were laid on November 20, 1989.
Video Cassette Recorders – Stereo People of Canada Ltd. and Danny Leung (Vancouver, British Columbia)	Two charges were laid on November 30, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
Sewing Machines – Réjean Vallée and Les Ateliers de L'Électroménager R. Vallée Inc. (Trois-Rivières, Quebec)	Three charges were laid on December 1, 1989.
Window Blinds – Michael Guluk and Super Shade Ltd. (Toronto and else- where in Ontario)	One charge was laid on December 22, 1989.
Blinds – Consoltex Inc., c.o.b. as Comptoir manufacturier de textile (Lévis, Quebec)	Three charges were laid on January 25, 1990.
Rugs – Sheikh Oriental Rugs Inc. and Nazar Sheikh (Calgary and elsewhere in Alberta)	One charge was laid on February 2, 1990.
Blinds – Textiles Poliquin Inc./Poliquin Textile Inc. (Québec, Quebec)	One charge was laid on February 7, 1990.
Mattress and Box Spring Sets – Leon's Furniture Limited and Mark Leon (Hamilton, St. Catharines, Niagara Falls and elsewhere in Ontario)	Twenty-one charges were laid on February 13, 1990.

Section 57: Nonavailability

Automobiles – Mahinder Tandon and Scarsview Motors Ltd. (Toronto, Ontario)	Sixteen charges were laid on July 12, 1988. On January 15, 1990, the charges were dismissed. The Crown has filed an appeal.
Audio and 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)	Fourteen charges were laid against 279707 Alberta Ltd., and sixteen charges were laid against Rean Investments Ltd. on March 7, 1989. On October 2, 1989, Rean Investments Ltd. was acquitted. 279707 Alberta Ltd. pleaded not guilty but, on October 18, 1989, was convicted and fined \$500 on each charge for a total fine of \$7 000. The accused has filed an appeal.
Ceramic Tiles – Color Your World, Inc. and Ed Baggeley Limited (London, Ontario)	Six charges were laid on March 28, 1989.
Motor Vehicles – D.W.S. Automotive Group Inc., c.o.b. as Hyundai South, and Wayne R. Pitt (London, Ontario)	Two charges were laid on September 25, 1989.
Televisions, Video Recorders and Compact Disc Players – Multitech Warehouse Direct Inc., Multitech Warehouse Direct (Manitoba) Inc. and Michael J. McKenna (Winnipeg, Manitoba)	Forty-four charges were laid on September 29, 1989.

Product, Names of Accused and Location of Offence	Action Taken and Results
Automobiles – Ken Simard Sales Inc. and Kenyon Allen Simard (Oshawa, Ontario)	One charge was laid on January 15, 1988. The accused pleaded not guilty but on September 7, 1989, the company was convicted and the individual was acquitted. On October 5, 1989, the company was fined \$10 000. An appeal against conviction and sentence was filed by the accused on October 31, 1989.

Section 58: Sale Above Advertised Price

Motor Vehicles –
D.W.S. Automotive Group Inc., c.o.b. as Hyundai South,
and Wayne R. Pitt (London, Ontario)

One charge was laid on September 25, 1989.

Section 59: Promotional Contests

Festival –
Tom Kourtesis (Toronto, Ontario)

One charge was laid on October 29, 1986.

Vacuum Cleaner –
632018 Ontario Ltd., c.o.b. as Tri-Star, and Carter
Brisebois (Barrie, Ontario)

Six charges were laid on December 23, 1988.

Fitness Club Membership –
The Fitness People Ltd., Ralph W. Darling, Zoran Lizender,
Mike Darling and Gavin Garbutt (Toronto, Ontario)

Three charges were laid on April 14, 1989.

Catalogue –
3 Suisses Canada Inc. (Montréal, Quebec)

One charge was laid on July 28, 1989.

Advertising Specialties –
K.T. Promotions Ltd., c.o.b. as K.T. Promotions, Inc.,
Kernan Todd Robinson and Alex Morris (Burnaby,
Kelowna, 100 Mile House and Westwold, British Columbia;
and Medicine Hat, Alberta)

Six charges were laid on August 17, 1989. The accused were charged jointly in respect of three charges. The company and Kernan Robinson were charged jointly in respect of three charges.

Cellular Telephones –
351582 Ontario Limited, c.o.b. as Wellington Car Radio,
and Gary Earl Mascarin (Sarnia, Ontario)

One charge was laid on November 2, 1989.

Fitness Club Memberships –
313471 Ontario Limited, c.o.b. as The Muscle Factory and
The Fitness Connection, 678367 Ontario Inc., c.o.b. as The
Muscle Factory, 690489 Ontario Limited, c.o.b. as The
Muscle Factory, 733784 Ontario Inc., c.o.b. as The Muscle
Factory, Michael John DeGenova, Lloyd Johnston and
Roger Issa, a.k.a. Roger Jacobs
(Toronto and elsewhere in Ontario)

Two charges were laid on December 22, 1989. The accused were charged jointly in respect of one charge. All but Roger Jacobs were charged jointly in respect of one charge.

Product, Names of Accused and Location of Offence	Action Taken and Results
Campground Memberships – Paul Britton, Marjorie Loreen Britton and 291001 Ontario Limited, all c.o.b. as Lake Huron Resort (County of Huron and elsewhere in Ontario)	One charge was laid on February 26, 1990.
Vitamins – Cana Promotions Inc., formerly K.E.P. Research Inc., Raymond Briddon and Gerald Doren (Mississauga and Carleton Place, Ontario; Winnipeg, Manitoba; Truro, Nova Scotia; and elsewhere in Canada)	One charge was laid on February 28, 1990.

Appendix IX

Misleading Advertising and Deceptive Marketing Practices Provisions: Discontinued Inquiries

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Undertakings		
Agricultural Machinery	52(1)(a) & 52(1)(b)	Complaints were received from farmers concerning claims being made by Kverneland Inc. in pamphlets to its dealers regarding a machine called the "Silawrap". The impression being given was that it could be used to wrap dry bales of hay in plastic for storage. The inquiry revealed that the machine could be used for this purpose but only at an elevated cost and following a complicated procedure. The company requested an alternative case resolution and, because it met the eligibility criteria, an undertaking was negotiated by representatives of the Director. As the Director was satisfied that the undertaking, which included measures to compensate customers for damages incurred, was effective in stopping the practice in question, preventing its reoccurrence and, in part, restoring the market to its original state, the inquiry was discontinued.
Textile Products	52(1)(a)	Sears Canada Inc. was offering for sale various textile products bearing the representation "Made in Canada for Sears". Preliminary examination revealed that the products were fabricated outside of Canada. During the course of the inquiry, it became clear that the representation had been affixed by the products' manufacturers and that Sears Canada Inc. was not directly aware of the Canadian content and countries of origin of the products. The company requested an alternative case resolution and, because it met the eligibility criteria, an undertaking was negotiated with representatives of the Director. As the Director was satisfied that the undertaking received was effective in stopping the practice in question, preventing its reoccurrence and, in part, restoring the market to its original state, the inquiry was discontinued.
Vacuum Systems	52(1)(a)	A complaint was received concerning claims by Electrolux Corporation of Canada Inc. that its built-in vacuum system was the "World's Most Powerful". Examination revealed that this representation was untrue. The company requested an alternative case resolution and, because it met the eligibility criteria, an undertaking was negotiated by representatives of the Director. After proof was provided that the terms of the undertaking had been met, the inquiry was discontinued.

Industry	Section of Act	Nature of Inquiry and Conclusion Reached
Other Reasons		
Window Coverings	52(1)(a)	A complaint was received concerning ordinary selling price claims. The company claimed to be selling at "50% off". Examination disclosed that the "50% off" price was based on the manufacturer's suggested retail price and neither this company nor any of its competitors had ever sold at that price. During the course of the inquiry, it was discovered that the firm was no longer in operation, its telephone had been disconnected and the store was empty. A corporate registry check indicated that a 1989 Annual Return had not been filed. In view of the fact that the company was no longer active, further inquiry was not justified.
Furs	52(1)(a)	A complaint was received concerning the advertising of a "Close Out Sale" by a retail furrier. Examination revealed that, during the period of the sale, 200 additional furs had been received from the furrier's supplier. During the course of the inquiry, it was learned that, prior to the sale, the furrier had contracted with its supplier to supply a quantity of furs. Subsequent to this order, but prior to delivery of the furs, the furrier was forced to close down because of financial difficulties. The supplier, which had purchased an interest in the furrier for the purpose of liquidating the furs ordered, contended that it was entitled to advertise them as part of the stock to be liquidated since they were ordered prior to the sale. As the furrier was no longer in business and it was not known where its former records were located, the inquiry was discontinued.
Automobile Loans	52(1)(a)	An inquiry was initiated following the receipt of an application pursuant to section 9 regarding promotional material for automobile loans which was distributed by a financial institution. The complaint alleged that the loans were available in respect of new cars only and that all the assets of the borrower, rather than the value of the car as collateral, were considered in determining eligibility for the loan. The inquiry revealed that the loans were available for new or used cars and a consideration of a prospective borrower's overall financial situation was a normal practice established to screen out unsuitable candidates. Accordingly, the inquiry was discontinued.
Kitchenware	52(1)(a)	An inquiry was initiated regarding the contents of a publicity sheet containing comparisons between the alleged "value" of kitchenware and "special" prices and indicating the reasons for its liquidation. The inquiry revealed that the "special" prices corresponded with the regular market prices and that the reason given for the liquidation of the products was false. Further inquiry indicated that the company had subsequently modified its promotional material to conform with the Act and that it had been recently reincorporated. As any further action that might have been taken would have had little or no impact, the inquiry was discontinued.

Appendix X

Recent Publications of the Bureau of Competition Policy

Misleading Advertising Bulletin (issued quarterly)

News releases (issued periodically)

Information Bulletin No. 3: Program of Compliance

Competition Policy in Canada. The First Hundred Years

Canadian Competition Policy: Its Interface with Other Economic and Social Policies. A Framework for Discussion

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

C.S. Goldman

- April 1989 Canadian Bar Association — Ontario (Toronto, Ontario)
Topic: The Competition Act and the Professions (S-10222)
- May 1989 Law Society of Upper Canada, Program on Competition Law (Toronto, Ontario)
Topic: Recent Experience with Merger Review in Canada (S-10240)
- August 1989 Canadian Bar Association (Vancouver, B.C.)
Topic: Merger Review Under Canadian Competition Law — The Quest for Balance (S-10260)
- October 1989 OECD Development Centre, Committee on Competition and Policy.
Symposium on Competition and Economic Development (Paris, France)
Topic: Maintaining Structurally Competitive Markets: Controls of Mergers and Joint Ventures (S-10270)
- October 1989 National Conference on the Centenary of Competition Law in Canada (Toronto, Ontario)
Topic: The Impact of the Competition Act of 1986 (S-10266)
- October 1989 Empire Club of Canada (Toronto, Ontario)
Topic: Merger Review in a Changing Global Environment (S-10268)

H.I. Wetston*

- December 1989 Insight Educational Services Conference (Toronto, Ontario)
Topic: Compliance into the 1990's (S-10290)
- February 1990 Canadian Club (Montréal, Quebec)
Topic: The Evolving Role of Competition Policy in the 1990's (S-10298)

* Howard I. Wetston became Director on October 30, 1989 and replaced Calvin Goldman

Speeches by the Deputy Directors of Investigation and Research and by the Deputy Minister that are Publicly Available

- April 1989 Canadian Exporters Association (West Coast Chapter) and the Vancouver Board of Trade (Vancouver, B.C.)
Speaker: Wayne D. Critchley, Deputy Director of Investigation and Research (Resources and Manufacturing)
Topic: Notes for an Address (S-10208)
- May 1989 Law Society of Upper Canada. Program on the Competition Act (Toronto, Ontario)
Speaker: Wayne D. Critchley, Deputy Director of Investigation and Research (Resources and Manufacturing)
Topic: The Pricing Practices Provisions of the Competition Act (S-10246)
- October 1989 National Conference on the Centenary of Law and Policy in Canada (Toronto, Ontario)
Speaker: Ian D. Clark, Deputy Minister
Topic: Legislative Reform and the Policy Process: The Case of the Competition Act (S-10272)

A number of earlier speeches by the Director and former Directors are maintained on file and are available to the public. Those wishing to obtain copies of these documents may write directly to:

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

Appendix XI

How to Contact the Bureau of Competition Policy

General Information

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.

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
Fax: (604) 666-5031

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
Fax: (416) 224-4032

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
Fax: (514) 496-2316

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 at the address noted below:

Consumer and Corporate Affairs Canada
Mergers Branch
19th Floor
50 Victoria Street
Hull, Quebec
K1A 0C9
Telephone: (819) 953-7092
Fax: (819) 953-6169

The Bureau recommends that notification filings be hand-delivered to the Prenotification Unit at the address above.

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
Hull, Quebec
K1A 0C9
Telephone: (819) 997-4282
Fax: (819) 953-2557

Pacific Region

Marketing Practices Branch
1400-800 Burrard Street
Vancouver, British Columbia
V6Z 2H8
Telephone: (604) 666-8659
Fax: (604) 666-5031

Prairie Region

Marketing Practices Branch
Oliver Building
10225 100th Avenue
Edmonton, Alberta
T5J 0A1
Telephone: (403) 495-2489
Fax: (403) 495-2466

Marketing Practices Branch
Sam Livingston Building
510 12th Avenue S.W.
Suite 309
Calgary, Alberta
T2R 0H3
Telephone: (403) 292-5608
Fax: (403) 292-5188

Marketing Practices Branch
260 St. Mary Avenue
Room 345
Winnipeg, Manitoba
R3C 0M6
Telephone: (204) 983-5567
Fax: (204) 983-3159

Ontario Region

Marketing Practices Branch
Federal Building
451 Talbot Street
Suite 300
London, Ontario
N6A 5C9
Telephone: (519) 645-4119
Fax: (519) 645-5114

Marketing Practices Branch
4900 Yonge Street
6th Floor
Willowdale, Ontario
M2N 6B8
Telephone: (416) 224-4065
Fax: (416) 224-4032

Marketing Practices Branch
10 John Street South
Room 600
Hamilton, Ontario
L8N 4A7
Telephone: (416) 572-2873
Fax: (416) 572-4216

Quebec Region

Marketing Practices Branch
Guy Favreau Complex
200 René Lévesque Blvd. W.
Suite 502, East Tower
Montréal, Quebec
H2Z 1X4
Telephone: (514) 283-7712
Fax: (514) 283-3096

Marketing Practices Branch
112 Dalhousie Street
3rd Floor
Québec, Quebec
G1K 4C1
Telephone: (418) 648-3939
Fax: (418) 648-4120

Atlantic Region

Marketing Practices Branch
50 Brown Avenue
P.O. Box 38001
Burnside Industrial Park
Dartmouth, Nova Scotia
B3B 1X2
Telephone: (902) 426-6002
Fax: (902) 426-4536

Marketing Practices Branch
Cormack Building
2 Steers Cove
Suite 202
St. John's, Newfoundland
A1C 6J5
Telephone: (709) 772-5519
Fax: (709) 772-4649

Appendix XII

Table of Cases

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

Alex Couture Inc. c. Canada (Procureur Général), C.S. Qué., April 6, 1990 (unreported, declaratory judgment).

Barbecon Inc. v. Canada (Director of Investigation and Research), 62 D.L.R. (4th) 565, 27 C.P.R. (3d) 430 (B.C.S.C., June 21, 1989, indexed as *Ref. re. Competition Act*).

Canada (Director of Investigation and Research) v. Air Canada, [1989] 1 S.C.R. 236 (intervenor status).

Canada (Director of Investigation and Research) v. Air Canada (1989), 44 B.L.R. 154, 27 C.P.R. (3d) 476 (C.T., Reasons for Consent Order).

Canada (Director of Investigation and Research) v. Air Canada, C.T., July 7, 1989, (unreported, Consent Order).

Canada (Director of Investigation and Research) v. Asea Brown Boveri Inc., C.T., Dec. 18, 1989 (unreported, Order modifying the Consent Order of June 15, 1989, and Consolidated Order).

Canada (Director of Investigation and Research) v. Asea Brown Boveri Inc., C.T., March 16, 1990 (unreported, reasons for Dec. 18, 1989 Order).

Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., C.T., May 25, 1989 (unreported, examination for discovery).

Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., C.T., July 5, 1989 (unreported, claims of privilege).

Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., 27 C.P.R. (3d) 1 (C.T., Oct. 13, 1989, Consent Order).

Canada (Director of Investigation and Research) v. Chrysler Canada Ltd., C.T., Feb. 20, 1990 (unreported, Reasons and Order re: jurisdiction in contempt proceedings).

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