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# ANNUAL REPORT

Director of Investigation  
and Research

*Competition Act*

For the year ended March 31, 1992

Canada

COMMUNICATIONS CANADA

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Director of Investigation  
and Research

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*Competition Act*


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For the year ended March 31, 1992  
to the Hon. Pierre Blais, Minister

Canada

"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 15 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)

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ISBN 0-662-59171-2  
Catalogue No. RG 51-1992  
CCAC No. 10868 B 92-10



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November 25, 1992

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, 1992.

Howard I. Wetston, Q.C.  
Director of Investigation  
and Research

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# PREFACE

The twelve months covered by this Annual Report have been a watershed in the evolution of Canadian competition policy and law. Fiscal year 1991-92 has seen important developments in a variety of fields—key judicial decisions, the issuance of enforcement guidelines concerning mergers and misleading advertising, record fines, and greatly increased participation by the Bureau of Competition Policy in the international arena.

The developments on the enforcement front were of particular importance during the year. Several landmark cases under the *Competition Act* were heard or decided by the Supreme Court of Canada and the Competition Tribunal, and these matters have contributed greatly to the growing body of jurisprudence interpreting the Act. The Supreme Court's decisions<sup>1</sup> resolved a number of constitutional issues that threatened our capacity to enforce key provisions of the *Competition Act*. They have signalled, in my view, an important shift by the judiciary toward a recognition of the central contribution of a vigorous competition policy to a dynamic economy.

The PANS case is perhaps the most important recent decision in Canadian competition law. In that case, the Court recognized that the *Competition Act* is a "central and established feature of Canadian economic policy", and noted that the conspiracy provision is not just another regulatory provision but "rests on a substratum of values" to the effect that competition is inherently in the public interest. The Court endorsed an approach to the analysis of anti-competitive agreements that involves consideration and balancing of both the market power of the parties and the behavioural aspects of the agreement. Finally, the PANS decision appears to lower the threshold at which agreements will "lessen competition unduly" and thus fall within the purview of the section that deals with anti-competitive agreements. This case represents an important shift in the application of the law against collusion, and provides a clear analytical framework that will provide useful guidance to the government and the business community in the enforcement of the Act.

Another significant decision pertaining to the scope of application of the Act was the matter of *R. v. Donald Cormie*. In that case, the accused was convicted under the

false and misleading advertising provisions in relation to a statement made in the Chairman's message contained in The Principal Group's Annual Review. The decision recognizes that the misleading advertising provision applies to representations falling outside traditional forms of advertising, particularly where members of the public rely upon such statements in making investment decisions.

The Cormie case also represented one of two significant sentencing decisions received during the fiscal year. The \$500 000 fine awarded in that case was the highest ever levied against an individual under the *Competition Act*. In another case under the conspiracy provisions, sentences levied against five companies and two individuals in the compressed gas industry yielded the highest corporate fines ever awarded in a competition law case: \$1.7 million against a single firm and \$6.15 million in total. Clearly, these fines reflect acceptance by the courts of the high costs to society of anti-competitive business activities. They send a clear signal that such activities will be treated seriously through higher fines, for both individuals and corporations.

Three decisions<sup>2</sup> were also handed down this year by the Competition Tribunal, further contributing to the body of jurisprudence in relation to civil matters, including merger review. These cases provided further guidance on the approach of the Tribunal in applying these provisions of the Act, and should contribute to a better understanding of the parameters of the law.

Our growing jurisprudence in the competition field ensures a continuous evolution of the application of the law in relation to the goals and principles upon which it is based. Overall, I sense that the PANS and other decisions reflect an endorsement by the Courts, and by Canadian society generally, of the central importance of competition law and policy. Continued support for the effective enforcement of the law will assure that we enjoy the benefits of competition—greater efficiency, lower costs and prices, higher quality goods and greater innovation. These are some of the building blocks upon which Canada's future prosperity will be based.

Howard I. Wetston, Q.C.

1 The decisions referred to are: *R. v. Pharmacy Association of Nova Scotia (PANS)*, *R. v. The Wholesale Travel Group Inc.*, *Canada (Competition Tribunal) v. Chrysler Canada Ltd. and Canada (A.G.) v. Alex Couture Inc.* The last decision was a denial of leave to appeal a unanimous decision of the Quebec Court of Appeal upholding the constitutionality of the Competition Tribunal and the merger provisions of the Act.

2 These decisions are: *Canada (Director of Investigation and Research) v. Laidlaw Waste Systems Ltd.*, *Canada (Director of Investigation and Research) v. Hilldown Holdings (Canada) Ltd.*, and *Canada (Director of Investigation and Research) v. Southam Inc.*



# CHAPTER I

## THE COMPETITION ACT: ITS PURPOSE AND APPLICATION

### PURPOSE

The *Competition Act* (the 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 s. 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 all sectors of the economy. All business is subject to the Act, with the exception of selected activities specifically exempted such as collective bargaining, amateur sport or regulated industries subject to 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.

Part VI of the Act prohibits criminal offences such as 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 (the Tribunal) including mergers, abuse of dominant position, refusal to deal, tied selling, delivered pricing and specialization agreements.

The Tribunal is a specialized tribunal established under 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 (the Minister). Only the Director of Investigation and Research (the Director) may bring an application before the Tribunal except when private parties apply to the Tribunal to register a specialization agreement.

Under sections 125 and 126 of the Act, the Director is authorized to make representations regarding competition matters before federal or provincial regulatory boards, commissions and tribunals. The Director may intervene before federal boards on his own initiative, at the request of the board, or when directed to do so by the Minister. He may intervene before provincial regulatory bodies only when requested by such boards, or on his own initiative with their consent.

### THE ENFORCEMENT PROCESS

Numerous complaints are received annually from the public concerning conduct that may be subject to the 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 believes, on reasonable grounds, 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 Director is also obliged to commence an inquiry when the Minister so directs, or when six Canadian residents make an application in accordance with s. 9 of the Act.

All inquiries are conducted in private. Any person whose conduct is being investigated or any person who applies for an inquiry under s. 9 may write the Director and request to be informed of the progress of an inquiry.

The Director may use a number of investigative tools once an inquiry has begun. 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 under oath or affirmation.

If the Director concludes that a matter does not justify further inquiry, he may discontinue the inquiry at any time. An inquiry may also be discontinued if the Director

SELECTED ACTIVITIES OF THE BUREAU OF COMPETITION POLICY – CRIMINAL AND CIVIL MATTERS ONLY<sup>1</sup>

	1987-88	1988-89	1989-90	1990-91	1991-92
<b>Number of Complaints, Examinations and Inquiries</b>					
Total complaints received	930	820	988	1 177	1 023
Preliminary examinations (two or more days of review)	182	180	184	152	149
Applications for inquiries under s. 9	9	6	4	5	6
Inquiries in progress at year end	76	43	46	47	40
<b>Disposition of Matters</b>					
Inquiries formally discontinued <sup>2</sup>	15	29	4	9	1
Matters referred to the Attorney General of Canada	15	19	7	5	9
Matters referred where further action is not warranted <sup>3</sup>	3	—	2	—	—
Prosecutions or other proceedings commenced	12	14 <sup>4</sup>	7	6	8
Applications to the Competition Tribunal	—	1	2	1	—
<b>Interventions before regulatory bodies</b>					
Federal	7	6	5	8	2
Provincial	9	3	5	5	2

1 New table as of 1991-92. See comparable statistics for the Merger Branch in Chapter II and Marketing Practices Branch in Chapter V.

2 Includes one matter resolved through undertakings.

3 May include matters referred during previous years.

4 Includes nine matters forming one proceeding.

decides that further inquiry is not warranted because of voluntary corrective conduct, or because undertakings have been given and complied with which remedy the competitive concerns arising from the matter under inquiry.

The Director is required to report in writing to the Minister when an inquiry is discontinued. If the inquiry was commenced as a result of a six-resident application under s. 9, the Director must inform the applicants of the decision and the grounds for discontinuance. The Minister may, on the written request of applicants under s. 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.

## CRIMINAL MATTERS

Criminal matters are referred to the Attorney General of Canada. The Attorney General determines whether charges should be laid and conducts prosecutions under the Act. Section 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 s. 34(2).

## REVIEWABLE MATTERS

The Director initiates legal proceedings in reviewable matters by filing an application with the Tribunal. The Tribunal may issue orders designed to remedy the effects of the conduct in question. The Tribunal may also issue orders with the consent of the Director and the persons in respect of whom the order is sought.

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. This Act also provides rights of intervention before the Tribunal to provincial attorneys general.



## MERGER REVIEW

The Director also initiates legal proceedings in merger matters by filing an application with the Tribunal. However, 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 litigation.

It is open to the parties at any stage in the process, up to and including contested proceedings before the Tribunal, to propose changes in the original transaction that would address the Director's competition concerns. The Director has a strong preference for proposals which remove the concerns before the transaction closes, sometimes called the "fix-it-first" approach, although the Director 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.

## INFORMATION AND COMPLIANCE PROGRAMS

Canada has historically relied on investigation and prosecution in the enforcement of its competition law. This approach will continue to be a primary method of enforcement. But it is 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 which stresses voluntary compliance with the Act. More emphasis is now being placed on communication and public education as a means of promoting a better understanding of the Act.

## THE SPEECH PROGRAM

The Director and senior members of the Bureau undertook a number of speaking engagements throughout the year before trade associations and other business and professional groups interested in competition policy. Central themes in these addresses included a discussion of Canadian merger policy in an increasingly integrated world economy, case law developments, enforcement priorities, and initiatives to make the Act's provisions more transparent. Information on how to obtain copies of speeches is provided in Appendix VIII.

The Director participated in a number of smaller scale consultation meetings with representatives of various business sectors, the legal profession, the academic community, Members of Parliament and associations representing business and consumer interests.

## THE PROGRAM OF ADVISORY OPINIONS

The Program of Advisory Opinions is designed to assist the business community in avoiding conflict with the Act. Under this program, the Director invites company officials, lawyers and others to request an opinion on whether a proposed business plan or practice would give grounds to initiate an inquiry under the Act.

Opinions take into account jurisprudence, previous opinions and the stated policies of the Director. The Director has no authority to regulate business conduct or to determine its legality. Those who seek an opinion are not bound by the advice provided and remain free to adopt the plan or practice on the understanding that the matter may be tested before the Tribunal or the courts. Nor can the Director bind himself or his successors.

### INFORMATION AND COMPLIANCE DATA

	Misleading Advertising Provisions		Remaining Sections of the Act		Total	
	1990-91	1991-92	1990-91	1991-92	1990-91	1991-92
Requests for Information	26 950	33 470	1 961	1 465	28 911	34 935
Oral Advisory Opinions	819	809	97	59	916	868
Written Advisory Opinions	377	558	14	17	391	575
Media Contacts	276	232	180	297	456	529
Speeches/Educational Seminars/Consultative Meetings	89	73	35	53	124	126

Advisory opinions are given in relation to a specific set of facts. Should details of the proposed plan differ when implemented, or conditions change that would alter the impact of the proposal on the market, the matter may be subject to further examination.

To further facilitate compliance with the merger provisions, the Act authorizes the Director to issue advance ruling certificates for those mergers which do not raise competition concerns.

## INFORMATION BULLETINS

A high priority has been placed on expanding the information provided to the public about the Act and its administration. During the past fiscal year, a revised *Misleading Advertising Guidelines* was issued and, jointly with the Consumer Affairs Bureau, *Guiding Principles for Environmental Labelling and Advertising*.

Work continued on two information bulletins, the *Predatory Pricing Enforcement Guidelines* and the *Price Discrimination Enforcement Guidelines*. The *Predatory Pricing Enforcement Guidelines* were released on May 21, 1992 and the *Price Discrimination Enforcement Guidelines* were released on September 14, 1992.

## MEDIA CONTACTS

Bureau officials regularly inform the public about competition matters through the media. The Bureau recognizes the important role played by frequent and effective media contacts in its program of public information and education. News releases and background papers were issued throughout the year that detailed important cases or explained the rationale for the Bureau's position. News conferences were also held to assist the media in understanding the application of the Act in given situations.

## CHAPTER II MERGERS

The Director may consider all mergers, proposed or otherwise, in all sectors of the economy, which come to the Director's attention. Where he concludes that a transaction prevents or lessens, or is likely to prevent or lessen, competition substantially, the Director may ask the Tribunal to issue a remedial order in accordance with the statute. The law provides a list of factors which the Tribunal may consider in making its determination, and further states that:

- the Tribunal's finding cannot be based solely on evidence of concentration or market share;
- an exception exists for situations where the merger brings about, or is likely to bring about, gains in efficiency, where such gains 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 were made and;
- no application can be made by the Director in respect of a merger more than three years after that merger has been substantially completed.

With respect to proposed mergers, the Tribunal may order the parties not to proceed with all or part of the merger. In the case of completed mergers, the Tribunal may issue an order of dissolution or require divestiture of assets or shares. Regardless of whether the merger is proposed or completed, the Tribunal may also, on consent of the Director and those against whom the order is directed, require that any other action be taken. Where an application is made to the Tribunal for a consent order, the Tribunal may make the order on those terms.

Of the total number of merger transactions coming to the attention of the Mergers Branch over the past five years, slightly less than 20% required significant examination (more than two days of review by an officer). Most cases examined in a significant fashion are ultimately determined to raise no competition issue and the file is closed. In such cases, when requested by the parties, the Director will provide either an advance ruling certificate or an advisory opinion. In those few cases where the Director has concluded that sufficient grounds existed to bring an application before the Tribunal, parties have chosen to either abandon the transaction, proceed to the Tribunal on the basis of a consent order or on a contested basis or, alternatively, to restructure the transaction to alleviate the Director's concerns.

More information pertaining to the merger provisions of the Act is contained in *Information Bulletin No. 5 (Merger Enforcement Guidelines)*, or the MEG's) and in *Information Bulletin No. 2 (Advance Ruling Certificates)*.

### NOTIFIABLE TRANSACTIONS

Part IX (sections 108 to 123) of the 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 such assets, must exceed \$35 million. In the case of an amalgamation, this second threshold is \$70 million for the two companies together. Further information pertaining to notifiable transactions is also contained in the MEG's.

**TABLE 1: PUBLICLY REPORTED MERGERS**

This list is compiled by calendar year from published reports of acquisitions that appear in the financial and daily press and industry and trade publications. It records reported mergers in industries subject to the Act.

Year	Foreign <sup>1</sup>	Domestic <sup>2</sup>	Total
1987	622	460	1 082
1988	593	460	1 053
1989	691	400	1 091
1990	676	268	944
1991	544	195	739

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

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

## MERGER EXAMINATIONS 1991-92

Overall merger activity in Canada dropped significantly in 1991 according to the list of publicly reported mergers (Table 1). Nonetheless, the number of examinations commenced during fiscal year 1991-92 by the Mergers Branch continued at levels comparable to earlier years. Of the examinations commenced, approximately 90% arose from either notifiable transactions or requests for an advance ruling certificate (ARC). Despite the drop in overall merger activity levels, there was a very slight increase in the volume of notifiable transactions and a 13% increase in the number of applications for an ARC from fiscal year 1990-91. (Table 2)

Efforts undertaken within the Bureau to refine the means of quickly identifying cases which raise competition issues have greatly improved the timeliness of our assessment process. Another significant factor in reducing the time spent on reviews was the publication of the *Merger Enforcement Guidelines* in April 1991. It is apparent from the submissions received by the Bureau since the MEG's publication that their primary objective of providing guidance has been achieved.

Given little change in the economic conditions facing firms, many of the trends identified in last year's Annual Report continued to drive merger transactions in fiscal year 1991-92. The trend towards greater concentration on core businesses and the accompanying sale of activities

**TABLE 2: MERGER EXAMINATIONS**

	1987-88	1988-89	1989-90	1990-91	1991-92
<b>Examinations commenced (2 or more days of review)</b>					
Arising from notifiable transactions	65	92	109	75	76
Arising from advance ruling certificate requests	40	70	87	87	98
Other examinations	41	29	23	31	21
Total examinations commenced	146	191	219	193	195
<b>Examinations Concluded</b>					
As posing no issue under the Act	120	166	204	170	183
With monitoring only	7	10	13	10	5
With pre-closing restructuring	2	1	—	—	—
With post-closing restructuring/undertakings	2	3	1	2	—
With consent orders	—	—	3	—	—
Through contested proceedings	—	—	—	—	1
Parties abandoned proposed mergers in whole or in part as a result of Director's position	2	2	2	1	1
Total examinations concluded <sup>1</sup>	133	182	223	183	190
Advance ruling certificates issued <sup>2</sup>	26	59	72	70	65
Advisory opinions issued <sup>2</sup>	21	20	17	17	9
<b>Examinations ongoing at year end<sup>3</sup></b>	27	36	32	42	47
<b>Total examinations during the year<sup>3</sup></b>	160	218	255	225	237
<b>Applications and Notices of Application before Tribunal</b>					
Concluded or withdrawn	—	2	3	—	1
Ongoing	2	2	1	3	2
Intent to file	—	2	—	—	—

<sup>1</sup> Includes advance ruling certificates and advisory opinions issued and matters which have been concluded or withdrawn before the Competition Tribunal.

<sup>2</sup> Included in "Total examinations concluded".

<sup>3</sup> Certain figures have been revised from those reported in previous annual reports.

perceived as peripheral to these plans remained prominent. As many of these sales were made to existing or potential competitors, the number of horizontal transactions did not decline in the same proportion as total merger activity. Transactions in response to the Government's privatization and regulatory reform initiatives were also common throughout the period.

## EXAMINATIONS CONCLUDED

A detailed list of the mergers the Director examined during the year can be found in Appendix II. 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. Inquiries under the mergers provisions of the Act which were discontinued during the year are described in Appendix III. The following is a brief summary of some of the significant mergers examined by the Director this year.

### DE HAVILLAND AEROSPACE CANADA INC./ BOEING OF CANADA LTD. (DE HAVILLAND DIVISION)

In December 1990, **Alenia-Aeritalia e Selenia Spa** (Alenia) of Italy and **Aérospatiale SNI** (Aérospatiale) of France, through their wholly-owned Canadian subsidiary, **de Havilland Aerospace Canada Inc.**, notified the Director of their intent to purchase the **de Havilland Division** from **Boeing of Canada Ltd.** A detailed examination was conducted to assess the impact of this proposed transaction on competition in the market for commuter aircraft. In September 1991, the Director concluded that the matter raised insufficient competition concerns in Canada to justify making an application to the Tribunal. In October 1991, the transaction was blocked by the Commission of the European Communities, acting pursuant to its Merger Regulation. Alenia and Aérospatiale discontinued purchase attempts in November 1991. In March 1992, **de Havilland Inc.**, a company owned 51% by **Bombardier Inc.** and 49% by the **Ontario Government**, purchased the de Havilland Division from Boeing of Canada Ltd.

### MAPLE LEAF MILLS LIMITED/OGILVIE MILLS LTD.

In September 1990, **Maple Leaf Mills Limited** and **Ogilvie Mills Ltd.**, Canada's two largest flour millers, announced their agreement to enter into a partnership to combine their respective flour and related bakery products businesses. The Director's examination involved a number of complex issues including the assessment of geographic markets, the potential of foreign competition to offset the

creation of a dominant firm in domestic markets, and the treatment of efficiency claims.

After being advised of the Director's conclusion that the transaction as originally proposed would lessen competition substantially in certain markets, in lieu of litigating the matter before the Competition Tribunal, the parties approached the Director with a number of proposals to resolve his competition concerns. The parties rejected the Director's initial proposal that they defer the transaction until six months after the removal of import restrictions on U.S. wheat products, including flour, under the Canada-United States Trade Agreement to allow for factual verification of the degree of U.S. entry alleged by the parties. Such import restrictions, which had effectively precluded foreign flour millers from competing in the Canadian market since the early 1940s, were removed on May 10, 1991.

The Director concluded that under freer trade in flour, the potential for entry by U.S. millers, outside of the British Columbia lower mainland and Southern Ontario, would not impose sufficient competitive discipline to constrain the merged entity from increasing prices post-merger. He determined that the balance of Western Canada and the market for flour comprising Quebec and Atlantic Canada were sufficiently isolated from potential U.S. competition through a combination of high transportation costs, limited excess capacity in flour mills in contiguous areas of the U.S., extensive vertical integration between Canadian millers and bakers which limits the potential for new entry, and product quality differences which generally favour Canadian millers. Indeed subsequent monitoring of the actual extent of import competition in the relevant markets considered indicated that imports of flour of U.S. origin represented less than 1% of 1991 Canadian flour consumption.

In lieu of a delay, the Director was prepared to accept an undertaking from the parties to divest a mill in Medicine Hat and a mill in Montreal to viable third parties after completing the transaction. The resolution proposed by the Director would have also provided that a volume of the hard wheat flour supplied to the merged entity's bakery operations in Western Canada be put out to tender to further facilitate additional entry. The Director was prepared to monitor the Ontario market for a period of one year to assess the extent of U.S. entry. Failing sufficient entry in the Ontario market at the end of one year, the parties were advised that the Director would take the necessary action to address his competition concerns. After approximately six weeks of discussions with the Director, the parties decided to abandon the proposed merger on May 15, 1991.

## TÉLÉSYSTÈME NATIONAL LIMITÉE/ TELESAT CANADA

The Government of Canada announced in its February 20th, 1990 Budget that it intended to sell its 49.3% interest in **Telesat Canada** (Telesat). For further information concerning the sale of the government's shares and the involvement of the Director in the sale process, please refer to the description of the **Alouette Telecommunications Inc./Telesat Canada** merger in the following section on "Ongoing Matters."

**Téléystème National Limitée** (Téléystème National) announced publicly that it intended to submit a bid for the government's shares of Telesat. The Director reviewed this bid in a manner similar to that followed for the bid submitted by Alouette Telecommunications Inc. The Director concluded that the bid submitted by Téléystème National would not result in a substantial lessening or prevention of competition, since he was satisfied that there was very little competitive overlap between the operations of the two companies.

## SHELL CANADA PRODUCTS LTD/ PAY LESS GAS CO. (1972) LTD.

As reported at last year-end with regard to the acquisition of certain assets of **Pay Less Gas Co. (1972) Ltd.** by **Shell Canada Products Ltd.**, the Director was reviewing proposals put before him by the parties to this transaction and a resolution acceptable to the Director was expected. The parties were eventually successful in making modifications through which the transactions between the parties were sufficiently restructured so as to alleviate the Director's concerns. The Director also accepted undertakings from the parties whereby he would receive prior notice of the exercise of any provisions, or of any proposed amendments to the transactions which might translate into a substantive change in the relationship between the parties, or the ultimate control thereof.

## ONGOING MATTERS

The review of several significant transactions was still in progress at year-end. Here are brief comments on nine of these matters.

### ALOUETTE TELECOMMUNICATIONS INC./ TELESAT CANADA

As noted in the section on "Examinations Completed", the Government of Canada announced in its February 20th, 1990 Budget that it intended to sell its 49.3% interest in Telesat. The formal process to complete this sale began when the *Telesat Canada Reorganization and Divestiture Act* was passed into law on December 17, 1991. In order to address the competition policy aspects of the sale, the federal government required, as part of the sale process, a thorough review of all bids under the merger provisions of the *Competition Act*.

First round bids were to be received by midnight January 30th, 1992. The potential candidates would then be evaluated from a financial, commercial and policy perspective to identify a short list of persons to be invited to make second round bids. As part of the conditions of sale, second round bids, due by March 10th, 1992, were required to contain either an advance ruling certificate or a "no issue" letter from the Director. In addition, the Director was to provide his conclusions to the Government as to the likely impact on competition of each of the bids submitted, including whether he would have grounds to apply to the Competition Tribunal under the merger provisions of the Act should the Government accept the bid in question.

**Telecom Canada** (now known as **Stentor**) and **Spar Aerospace Limited**, through a corporation called **Alouette Telecommunications Inc.** (Alouette), submitted a bid pursuant to the procedure set out in the privatization legislation to acquire the Government's shares in Telesat. The fact that they were bidding was made public by Alouette. The members of Telecom Canada already collectively owned 41% of the shares in Telesat prior to their bid.



With regard to the bid submitted by Alouette, the Director concluded that while there would be a lessening or prevention of competition it would not be substantial. This conclusion was reached only after a very thorough review of the impact of the proposed transaction on competition. Considerable information was obtained from a wide variety of persons with an interest in or knowledge of the telecommunications industry. The Director identified three product markets for the purpose of his examination: the provision of telecommunications services (including voice, data and image signals) to terrestrial carriers; the provision of telecommunications services to broadcasters; and the provision of telecommunications services to business customers ("competitive business services").

The Director determined that there was a lack of significant competitive overlap in the present business activities of the two parties and that this lack of overlap was primarily due to the inherent advantage of one technology over the other in specific business applications. As such, he could not conclude that the acquisition would substantially lessen or prevent competition. It is the Director's intention to continue to monitor the effects of this transaction in the industry.

## TELECOMMUNICATIONS

A number of events have occurred recently in the Canadian telecommunications industry, including the reorganization of **Telecom Canada** into the **Stentor** group of companies; the changes in management and ownership at **Teleglobe Canada**; the sale of the Government's shares in **Telesat Canada**; the introduction by the Government of Bill C-62, an *Act Respecting Telecommunications*; and the recent decision by the CRTC concerning competition in the provision of public long distance voice telephone services and related resale and sharing issues. The Director has received complaints concerning the impact of certain of these changes on competition in the industry. As reported in the media, one of the complaints that the Director has received was in the form of a six-resident application under section 9 of the *Competition Act* from **ACC Long Distance Ltd.** regarding the business practices of **Bell Canada** as they relate to telecommunications resellers. The Director is currently examining these complaints with respect to the various provisions of the *Competition Act*.

## CANRON INC./SCEPTER MANUFACTURING COMPANY LIMITED

This matter involved a proposed joint venture which would combine the plastic pipe manufacturing operations of **Canron Inc.** and **Scepter Manufacturing Company Limited**. Other operations of both companies were unaffected by the transaction. Analysis of the competitive impact of the transaction led to the conclusion that it was not likely to lessen competition substantially, notwithstanding the significant market share of the parties in the supply of plastic pipe. Factors which alleviated the concern raised by the high market share were the availability of substitutes for some end uses for the product, significant competition from imports of plastic pipe from the United States and relatively low barriers to entry to the industry.

## GREAT ATLANTIC & PACIFIC COMPANY OF CANADA, LIMITED/STEINBERG INC.

(For a fuller discussion of the Director's assessment of this transaction, please refer to last year's Annual Report.) This transaction involved the acquisition by the **Great Atlantic & Pacific Company of Canada, Limited** (A&P) of most of the grocery retailing assets in Ontario of **Steinberg Inc.** (Steinberg). In order to mitigate the competition concerns identified by the Director, A&P provided undertakings to the Director on October 22, 1990 which required the divestiture of 11 supermarkets in Central and South-western Ontario. By March 1992, A&P had been unable to find buyers for the divestiture stores in Welland and Windsor and, as provided for in the undertakings, was required by the Director to place these stores with a trustee for sale. The trustee was unable to find a buyer for either store. The Director concluded that the process followed had established that there was no demand for these two stores and was satisfied that there was no benefit to be gained, given the conditions in these two specific geographic markets, from substituting other locations. He, therefore, released A&P from its obligation to divest these two locations.

The divestiture of one of the remaining stores was completed in February, 1992. Negotiations with prospective buyers for all remaining stores were in an advanced state at the end of March 1992. The Director, therefore, determined that it would be preferable, at this time, to permit A&P to continue its negotiations rather than require that the stores be placed with a trustee as the undertakings provide. The Director will continue to follow closely the progress of A&P and is prepared to invoke the Trustee provision, should he deem it necessary.

#### **IBM CANADA LTD./ WESTBRIDGE COMPUTER CORP.**

In March 1991, **Westbridge Computer Corporation** (Westbridge) announced plans to acquire all the shares of **STM Systems Corp.** from **International Semi-Tech Microelectronics Inc.** (ISTM) and to enter into an agreement with **IBM Canada Ltd.** (IBM) to become a major investor in Westbridge. Westbridge had been formed in 1988 to assume certain information technology activities of the Government of Saskatchewan, which became a major shareholder in Westbridge through **Saskatchewan Telecommunications** (SaskTel). The proposed transaction was completed in June 1991 whereby IBM acquired a 27% interest in Westbridge. In addition to IBM, SaskTel and ISTM each held 27% of Westbridge shares with the remainder widely held. In connection with this transaction IBM was granted an option which would enable IBM to acquire 51% of the shares of Westbridge. IBM advised the Director at the time of the initial transaction that it did contemplate exercising this option in the near future.

After a thorough examination of the transaction which considered the resulting market share of the merged entity, the relative ease of entry into the outsourcing market (defined as the contracting of information management systems functions to outside vendors) and the rapid growth and existence of a number of significant competitors, the Director advised the parties that the merger would not likely result in a substantial lessening or prevention of competition. The Director's examination took into consideration IBM's intention to increase its share interest. In early 1992, Westbridge changed its name to **ISM Information Systems Management Corporation** (ISM) and in March 1992, IBM exercised its option to acquire 51% of the shares in ISM.

#### **MERLIN GERIN (CANADA) INC./SQUARE D CANADA ELECTRICAL EQUIPMENT INC.**

During the year, the acquisition of **Square D Canada Electrical Equipment Inc.** (Square D Canada) by **Merlin Gerin (Canada) Inc.** (Merlin Gerin) was the subject of a comprehensive examination. The matter arose from the acquisition by **Schneider S.A.** (Schneider), a French company, of **The Square D Company** (Square D Company), the United States based parent company of Square D Canada. In Canada the transaction resulted in the common ownership of Square D Canada, Merlin Gerin, **Télemécanique Canada Ltée** and **Federal Pioneer Limited**. These companies were engaged in Canada in the manufacture and supply of electrical distribution equipment and industrial controls.

The matter was announced on March 4, 1991 when Schneider released its public takeover bid for the shares of Square D Company. On the basis of the information available at the time, the Director commenced a formal inquiry on April 18, 1991. The transaction between Schneider and Square D Company was completed in the United States, after Schneider provided hold separate undertakings to the Director to allow sufficient time for the assessment of the competitive impact of the transaction in Canada.

Full assessment of the evidence obtained in the inquiry resulted in the Director concluding that the merger would not likely result in a substantial lessening of competition. The analysis concluded that the relevant product markets affected by the transaction were industrial controls and electrical distribution equipment. In both cases the relevant geographic market was found to be Canada. With respect to industrial controls the available evidence indicated that the combined market share of the parties in Canada did not exceed the threshold levels established in the Merger Enforcement Guidelines for either market dominance or interdependence. With respect to electrical distribution equipment the available evidence indicated that the parties had significant market shares. However, evidence with respect to remaining effective competition from firms such as **Westinghouse Canada Inc.** and **Siemens Electric Limited**, and the likely entry into the Canadian market of **General Electric Company**, one of the largest suppliers of electrical distribution equipment in the United States, led the Director to conclude that the merger would not likely lessen competition substantially.

The Director decided that it was appropriate in the circumstances to monitor the effects of the merger in the market place for the three-year period allowed under s. 97 of the Act. Accordingly, the inquiry into the merger had not been discontinued at year end.

### **WOLVERINE TUBE (CANADA) INC./NORANDA METAL INDUSTRIES LIMITED**

This matter involved the acquisition by **Wolverine Tube (Canada) Inc.** (Wolverine) of the assets of **Noranda Metal Industries Limited** (Noranda), which was completed on October 31, 1988 following a comprehensive examination by the Director. The parties were the only two domestic manufacturers of seamless copper and copper alloy tube. At that time the Director concluded that the merger would not likely lessen competition substantially due to evidence indicating that, absent the merger, Noranda was prepared to exit the market and no other competitively preferable purchaser was available for the assets of Noranda.

In June 1991, an application under s. 9 of the Act was received on behalf of members of the **Canadian Association of Industrial, Mechanical and Allied Workers** (CAIMAW) and the **Office and Technical Employees Union** alleging that the acquisition had resulted in a substantial lessening or prevention of competition. The Director commenced an inquiry into the matter on June 12, 1991 pursuant to s. 10 of the Act. In particular, the allegations by the applicants noted the actions of Wolverine in closing the New Westminster plant formerly owned by Noranda and refusing to sell the plant to a group organized by the unions and interested businessmen. The applicants further alleged that Wolverine had manufactured substandard copper tubing.

Available evidence gathered in the course of the inquiry did not support the allegations made by the applicants. In particular, the evidence indicated that since the merger of Wolverine and Noranda imports of copper tube from the United States had increased significantly and accounted for effective competition to Wolverine's position as the only domestic manufacturer of the product. The results of the Director's inquiry were conveyed to the applicants who subsequently filed an application for mandamus against the Director under section 18 of the *Federal Court Act* in the Federal Court (Trial Division). This application was dismissed after a hearing on November 15, 1991 at which the Court found that it lacked jurisdiction.

The applicants also alleged that Wolverine's actions constituted an abuse of a dominant position contrary to s. 79 of the Act. This matter was also subject to the Director's formal inquiry initiated on June 12, 1991. The s. 79 aspect of the inquiry was ongoing at the end of the year.

### **MATTERS FROM PRIOR YEARS**

Of the significant mergers examined by the Director in prior years, the following developments occurred during this fiscal year regarding these three matters.

#### **CONSUMER PACKAGING INC./DOMGLAS INC.**

As reported in last year's Annual Report, on April 25, 1989, the Director announced that the merger of the glass container manufacturing operations of **Consumers Packaging Inc.** (Consumers) and **Domglas Inc.** would not be challenged. One factor in the Director's decision was the commitment of Consumers to apply for accelerated tariff reduction under the Canada-United States Trade Agreement. The application by Consumers has not been included in the accelerated reduction packages announced to date.

#### **IMPERIAL OIL LIMITED/TEXACO CANADA INC.**

The Director's Annual Report for the year ended March 31, 1990 provided details on the resolution by means of a consent order of competition concerns arising from the acquisition by **Imperial Oil Limited** (Imperial) of the shares of **Texaco Canada Inc.** (Texaco). After lengthy public hearings, the Competition Tribunal issued an order on February 6, 1990 that requires Imperial to divest all of Texaco's downstream assets in Atlantic Canada, as well as 9 storage terminals and 410 service stations in other regions of the country. Imperial must also supply a specified volume of gasoline to independent petroleum marketers in Ontario and Quebec for a period of up to ten years and comply with certain other terms and conditions.

Last year's Annual Report gave an account of a number of events that occurred during the period March 31, 1990 to March 31, 1991 inclusive. Since the publication of last year's Report, the following developments took place with respect to this matter:

- Imperial secured the Director's approval to divest three of the petroleum product storage terminals to be divested outside of Atlantic Canada and received a time extension for the one remaining terminal in

order that it could complete ongoing negotiations with a prospective purchaser.

- Imperial divested or received permission to divest 53 of the remaining 71 retail gasoline stations to be divested outside of Atlantic Canada and was granted additional time to complete negotiations on the sale of seven company-owned outlets. Dealer-owned outlets are being divested as their contractual arrangements with Imperial expire.
- Imperial exceeded its supply commitments to Ontario and Quebec independents.
- **Ultramar Canada Inc.** (Ultramar), which acquired Texaco's Atlantic assets, undertook to the Director in the fall of 1990 to continue the operation of the Eastern Passage refinery for a period of seven years, to divest five service stations in Nova Scotia and Prince Edward Island, and to divest petroleum product storage terminals in Chatham, New Brunswick and Dartmouth, Nova Scotia. During the past year Ultramar received the Director's approval to divest the five service stations. In addition, Ultramar found prospective buyers for the two terminals and entered into negotiations with them. It is anticipated that the Director will approve the divestiture of these terminals before the end of 1992.
- Last year it was reported that one of the intervenors at the hearings, **Barron Hunter Hargrave Strategic Resources Inc.** (Barron), had filed an appeal against the Tribunal order in the Federal Court of Appeal on March 6, 1990. This appeal contended that the Tribunal erred when it ruled that its jurisdiction was limited to matters in the Draft Consent Order (DCO) brought before it by the Director which prevented the introduction of evidence on matters not covered by the DCO, such as the upstream sector of the Canadian petroleum industry. The appellant also argued that the notice given in respect of the DCO violated the principles of natural justice. Barron had asked the Court to set aside the consent order and re-open the proceedings before the Tribunal, or in the alternative, to require Imperial to divest all Texaco assets or shares with the underlying assets intact. The Court heard the appeal on March 10, 1992 and rendered its decision the same day. The Court dismissed Barron's appeal with costs.

## TREE ISLAND INDUSTRIES LIMITED/ DAVIS WIRE INDUSTRIES LTD.

This matter was reported in last year's Annual Report, which indicated that at year-end the Director was awaiting the sale of **Davis Wire Industries Ltd.** (Davis Wire) pursuant to undertakings which had been provided by **Tree Island Industries Limited** and its parent company, **Georgetown Industries, Inc.** The sale of Davis Wire to **David Lloyd** was completed on May 23, 1991.

## APPLICATIONS BEFORE THE COMPETITION TRIBUNAL

During the fiscal year, the Competition Tribunal issued its decision regarding the application filed by the Director with respect to the acquisition of certain meat rendering operations of **Canada Packers Inc.** by **Maple Leaf Mills Limited** (Maple Leaf). At year-end a decision was still awaited with respect to the Director's application regarding a number of acquisitions made by **Southam Inc.** (Southam) in the British Columbia lower mainland. Finally, the matter concerning the acquisition by **Alex Couture Inc.** (Couture) of two Montreal-based waste-rendering firms was, at year end, before the Supreme Court of Canada. These matters are summarized below.

### MAPLE LEAF MILLS LIMITED/ CANADA PACKERS INC.

On July 4, 1990, **Hillsdown Holdings (Canada) Inc.** (Hillsdown), through its subsidiary, Maple Leaf, acquired 56 percent of the common shares of **Canada Packers Inc.** Hillsdown acquired, among other things, the **Orenco** rendering facility in Dundas, Ontario while Maple Leaf already controlled existing rendering operations at Moorefield, Ontario. On February 15, 1991, the Director filed an application with the Competition Tribunal. The Director sought an order that Hillsdown divest of Orenco as he believed that the acquisition of Orenco resulted in a substantial lessening of competition in the Ontario market for the provision of rendering services. The hearing was held in Ottawa from November 25 to December 18, 1991. On March 8, 1992, the Tribunal issued its decision refusing to grant the order requested by the Director. While the Tribunal found that the merger will result in a lessening of competition, it was not convinced that there would be a substantial lessening of competition as required by s. 92 of the Act.



## **SOUTHAM INC./ LOWER MAINLAND PUBLISHING LTD.**

The Director challenged the acquisition by Southam of *The Vancouver Courier*, the *North Shore News* and the *Real Estate Weekly*. Southam filed an application in the Federal Court of Canada, Trial Division, challenging the constitutionality of the *Competition Act* and the *Competition Tribunal Act*. Southam also sought a stay of the Tribunal Proceedings but their motion was dismissed. This decision was appealed, but on May 22, 1991, the Federal Court of Appeal dismissed the appeal. On April 29, 1991, the Competition Tribunal issued an order regarding confidentiality of documents, and on June 20, 1991, the Competition Tribunal issued an order regarding the use of material obtained on discovery. Both of these decisions are being appealed by the Director. The Director sought and obtained leave to amend his notice of application so as to deal more clearly with the issue of multi-market newspaper retail advertising services. On August 9, 1991, the Tribunal denied a request for leave to intervene. This request came from a freelance journalist who was concerned about a monopoly on the dissemination of information. Hearings on the merits of the Director's application commenced on September 4, 1991 and continued until October 25, 1991 when they were adjourned. Hearings resumed on January 13, 1992 and concluded on January 24, 1992. At year-end a decision was still awaited.

## **ALEX COUTURE INC. (SANIMAL INDUSTRIES INC.)/ LOMEX INC., PAUL & EDDY INC.**

At year-end, because of outstanding constitutional issues, the Competition Tribunal had not yet heard the Director's application concerning **Alex Couture Inc.'s** (Couture) purchase of the Montreal rendering firms, **Lomex Inc.** and **Paul & Eddy Inc.** Couture is owned by **Sanimal Industries Inc.** In September 1991, the Quebec Court of Appeal overturned the decision of the Quebec Superior Court, which had ruled that certain provisions of the *Competition Act* pertaining to mergers and the Competition Tribunal were unconstitutional. The Court of Appeal found that subparagraphs 92(1)(c)(i), 92(1)(f)(i) and

92(1)(f)(ii) of the Act did not adversely affect the freedom of association guaranteed in subsection 2(d) of the *Canadian Charter of Rights and Freedoms* and also found that the creation and composition of the Competition Tribunal provided sufficient guarantees of independence and impartiality in accordance with subsection 11(d) of the *Charter*. The Appeal Court upheld the trial judgment with respect to two questions. First, the Court ruled that the *Competition Act* is *intra vires* Parliament under its trade and commerce powers. This ruling followed the Supreme Court of Canada's decision in *GM v City National Leasing*. Second, the Court ruled that the activities carried out by Couture were not regulated by the province in a manner which gave rise to the regulated conduct defence. In November 1991, Couture filed an application with the Supreme Court of Canada for leave to appeal the decision of the Court of Appeal. As of March 1992, the Supreme Court had not yet decided whether it would hear the appeal.

## **FAILURE TO NOTIFY AS REQUIRED BY PART IX OF THE ACT**

In March 1991, the press revealed that an investment bank had purchased 15.7% of the common shares of an insurance company, giving it a total of 27.2% of the company's shares. Upon verification, it became apparent that the transaction was subject to the provisions of Part IX of the Act and that notice should therefore have been given before the transaction was finalized. Based on the information obtained, it was determined that the failure to notify had been inadvertent. Moreover, as soon as the error was pointed out to the investment bank, it quickly provided all the pertinent information on the transaction. A review of this information enabled the Director to conclude that the transaction did not pose a competition problem pursuant to the Act. Pursuant to subsection 23(1), the Director remitted the records to the Attorney General of Canada for consideration as to whether charges under subsection 65(2) of the Act were appropriate. After reviewing the file, and given the circumstances, the Attorney General concluded that charges would be inappropriate.

## CHAPTER III REVIEWABLE MATTERS

Part VIII of the 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 following are reviewable matters under the legislation:

- **Refusal to deal:** a situation where a person is substantially affected in his or her business or is precluded from carrying on 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 in the market (s. 75);
- **Exclusive dealing:** a situation where a purchaser is required to deal only or primarily in particular products or refrain from dealing in specific products as a condition of obtaining supply, the practice is engaged in by a major supplier or is widespread, and competition is or is likely to be lessened substantially (s. 77);
- **Tied selling:** a situation 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 (s. 77);
- **Market restriction:** a situation 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 (s. 77);
- **Abuse of dominant position:** a situation where one or more persons substantially or completely control a class or species of business, and have engaged in or are engaging in a practice of anticompetitive acts which have the effect of preventing or lessening competition substantially; the Act provides a non-exhaustive list of types of conduct which would constitute an anticompetitive act (s. 78 and s. 79);
- **Delivered pricing:** a situation 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 (s. 80 and s. 81);

- **Specialization agreements:** the Tribunal may register an agreement on the application of any party where it finds that the implementation of an agreement is likely to bring about gains in efficiency and the Director has been given a reasonable opportunity to be heard; registration exempts an agreement from the conspiracy and exclusive dealing provisions of the Act (sections 86 through 90).

The Act sets out the types of orders that may be issued in relation to each of the matters it describes. In most cases, the remedy takes the form of an order to cease the conduct in question. However, with respect to the abuse of dominance provision only, the Tribunal may direct a firm to take remedial action to overcome the effects of the practice in the market including the divestiture of assets. In the case of refusal to deal, the Tribunal may order one or more suppliers to accept a person as a customer on usual trade terms.

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

### APPLICATIONS TO THE COMPETITION TRIBUNAL

One of the Bureau's objectives is the development of jurisprudence on key issues pertaining to the reviewable matters provisions. Several Tribunal decisions have contributed to this goal in regard to the abuse of dominance and refusal to deal provisions.

The decision in the *Director v. The NutraSweet Company* (NutraSweet) dealt with provisions in agreements between **The NutraSweet Company** (NutraSweet) and its customers relating to the supply of aspartame, an intense sweetener. By imposing a condition of exclusivity and other restrictions, such agreements made it difficult for competitors to obtain a toe-hold in the Canadian market for aspartame. On October 4, 1990, the Tribunal ruled that these provisions contravene the abuse of dominance and the exclusive dealing sections of the Act, and prohibited NutraSweet from enforcing or entering into contracts containing such provisions. The Tribunal's reasons provide valuable guidance concerning its interpretation of



several terms which appear in the Act and how it will generally approach issues such as market definition. The decision also provided important direction as to the type of issues not specifically identified in the Act that it was prepared to consider before exercising its discretion to issue a remedial order.

The Tribunal's decision also underscores the complexities inherent in applying the abuse of dominance provision to a given set of facts. It clarifies that the nature of a particular practice is not determinative, and establishes that the purpose of the practice must be considered as well as structural conditions in the market. In the case of *NutraSweet*, the finding was linked to the Tribunal's view that the practices were engaged in for the purposes of impeding new entry and inhibiting the expansion of existing firms, and were not undertaken to enable efficient distribution of the product. The decision makes it clear that not all exclusivity clauses of contracts will be subject to challenge.

Further clarification of some of the issues arising out of the *NutraSweet* decision emerged from the Tribunal's decision in the application made against **Laidlaw Waste Systems Ltd.** (Laidlaw), which was filed by the Director in March, 1991. The application alleged that Laidlaw was engaging in practices which constitute an abuse of dominance in the supply of containerized solid waste collection services to commercial customers in three districts on Vancouver Island, British Columbia. The practices in question included a series of acquisitions of competitors, extensive use of restrictive long-term service agreements, various objectionable contracting techniques, selective anti-competitive pricing practices and the use of threatened or actual litigation to exclude competitors from the markets. It was alleged that such acts lessened competition substantially, by creating high barriers to entry and by restricting the ability of remaining competitors to compete effectively.

Hearings before the Tribunal commenced on October 28, 1991 and the Tribunal rendered its decision on January 20, 1992. An Order was subsequently issued by the Tribunal on February 11, 1992 prohibiting Laidlaw from acquiring additional competitors in the three relevant geographic markets for a period of three years. The Tribunal further ordered Laidlaw to reduce the duration of their service agreements, prohibited them from requiring their customers to obtain waste collection service exclusively from Laidlaw and ordered them to cease enforcing or including certain objectionable clauses in their existing and future service agreements.

The *Laidlaw* decision is the first involving the service sector of the economy. Like the *NutraSweet* decision, the

*Laidlaw* decision provides valuable guidance regarding market definition and identification of anti-competitive acts not specifically identified under s. 78. Of particular significance was the Tribunal's finding that Laidlaw's series of acquisitions, its exclusive long-term service agreements and its threatened or actual use of litigation against competitors and customers were anti-competitive acts. While the Tribunal recognized that these practices are generally not anti-competitive, having legitimate economic and business rationale, it concluded that Laidlaw had no legal, economic or business justification for these practices other than to exclude competitors from the relevant geographic markets.

In determining whether Laidlaw's contracts were anti-competitive, the Tribunal considered the nature and purpose of the clauses and the effect they had in the relevant markets, the commercial interests of the parties served by the contract, the degree of restraint or distortion of competition resulting from the contracts, and the nature of the intent to engage in anti-competitive practices.

In determining the relevant geographic market, the Tribunal took a functional approach, considering the existence of regulatory constraints, past and present conduct of providers of the relevant product, transportation costs, preferences of customers and population density. The Tribunal concluded that the criteria considered in defining the relevant geographic market in merger cases were not necessarily applicable to abuse of dominance cases since, in the latter, the issue relates to an existing situation rather than a prospective one.

Laidlaw did not appeal the decision.

In regard to the refusal to deal provisions, **Xerox Canada Inc.** (Xerox) was ordered during the previous fiscal year to accept the **Exdos Corporation** as a customer for the supply of certain Xerox copier parts, manuals and related resources on usual trade terms. The Tribunal's decision confirmed that proprietary replacement parts can be considered a relevant product for the purposes of this provision.

The decision does not mean that all situations where a supplier discontinues selling its products to a customer will fall within the section. The Director will focus on fact situations that demonstrate the existence of insufficient competition among suppliers and that show the inability to obtain adequate supplies occurs because of this. The existence of sound business reasons for a refusal, or other relevant factors, will be considered before a decision is made to bring an application for a remedial order. For example, the Tribunal in both the *Xerox* case and in a case

involving **Chrysler Canada Ltd.** (Chrysler) (described below) made it clear that it is willing to consider evidence of either an administrative burden or other costs placed upon a supplier, or evidence of economic efficiencies that would justify a refusal.

Appeals were filed and are ongoing in both the *NutraSweet* and *Xerox* cases. In *NutraSweet*, the appeal relates to both the decision and the issue of whether the manner in which the Tribunal is constituted affords sufficient safeguards of judicial independence and impartiality. No grounds of appeal have been identified in *Xerox* as of the end of the fiscal year. The appeal in *NutraSweet* was expected to be heard in late spring 1992.

On November 14, 1991, Chrysler filed an application to the Supreme Court of Canada, challenging the order of the Competition Tribunal and the judgment of the Federal Court of Appeal on the grounds that the Competition Tribunal had defined the terms "product", "market" and "substantially affected in his business" too narrowly. Chrysler also alleged that no argument had been made showing a causation between "substantially affected" and "inability to obtain adequate supplies." Furthermore, Chrysler argued that s. 75 of the Act does not apply to a situation where there is only one supplier (because the statute refers to "suppliers"). Finally, Chrysler argued that the Competition Tribunal interpreted s. 75 in a manner that rendered it *ultra vires* to the Parliament of Canada when it stated that s. 75 is a matter of contractual relationship, which is a subject matter within the exclusive property and civil rights jurisdiction of the provinces within s. 92(13) of the *Constitution Act*. The decision of the Supreme Court of Canada on leave to appeal was awaited at the end of the fiscal year.

One of the unanticipated outcomes of the Tribunal orders in these matters is the time and effort required by the Bureau to ensure compliance. In February 1990, contempt proceedings were initiated before the Tribunal for alleged violations of the terms of a supply order issued against Chrysler in 1989, which concerned the supply of automotive parts for export purposes to R. Brunet of Montreal. On July 10, 1990, the Federal Court of Appeal ruled that the Tribunal has no power to punish for contempt committed *ex facie curiae* or outside the presence of the Tribunal. The Attorney General can, however, bring criminal contempt proceedings if a Tribunal ruling is

breached. The Attorney General has sought leave to appeal the decision on the contempt issue in the Supreme Court of Canada. The Supreme Court of Canada heard the matter on January 31, 1992. The decision of the Supreme Court of Canada was awaited at the end of the fiscal year.

## OTHER MATTERS

In addition to the above noted inquiries that were the subject of Tribunal proceedings, there were seventeen formal inquiries and a number of preliminary examinations underway during the year which also absorbed considerable human and financial resources. Six of the formal inquiries were initiated during the fiscal year.

Wherever feasible, matters were resolved through alternative case resolution procedures. For example, in a press release dated October 2, 1991, it was announced that the Director had accepted undertakings from **Mark Breslin and his group of companies** (Mr. Breslin's companies) by which they would refrain from engaging in anti-competitive acts and exclusive dealing in the stand-up comedy segment of the Canadian entertainment industry. These practices restricted the ability of stand-up comics to freely market their services and reduced competition by restricting the access of booking agencies and availability of venues to stand-up comedians. While undertakings had been accepted by the Director with respect to other provisions of the Act, this case represented the first time that undertakings had been accepted in an abuse of dominant position or exclusive dealing case.

The Director had concluded, following a formal inquiry, that Mr. Breslin's companies substantially controlled the business of supplying stand-up comedy entertainment in Ontario and that they were engaging in a practice of anti-competitive acts and exclusive dealing which was having, or was likely to have, the effect of preventing or lessening competition substantially in the Ontario market for stand-up comedy services. During the course of the Bureau's inquiry, the anti-competitive acts identified which were addressed by the undertakings included: a requirement that stand-up comics provided with stage time by Mr. Breslin's companies perform only at venues approved by them and a practice of refraining from booking performances through any booking agency not authorized by Mr. Breslin's companies.

After the serious competition concerns raised by these policies were drawn to the attention of Mr. Breslin's companies, and after being advised of the Director's intention to take the matter before the Competition Tribunal in the absence of an alternative resolution, Mr. Breslin's companies gave undertakings to the Director not to engage in these anti-competitive acts. In this case, resolution through undertakings provided for a quick solution to the Director's concerns.

Also during the fiscal year there were a number of complaints alleging refusal to supply which were resolved either when the supplier decided to change its practice, or when the parties affected made other arrangements.

In another matter, legislation reforming the federal laws relating to financial institutions (the *Trust and Loan Companies Act*, the *Bank Act*, the *Insurance Companies Act* and the *Co-operative Credit Associations Act*) received Royal Assent in December 1991. Staff members of the Bureau of Competition Policy provided input into the development of this legislation over a period of many years. As well, staff have developed a number of consequential amendments to the *Competition Act* that will form part of this package of legislation. It is anticipated that the federal financial legislation, as well as the consequential amendments to this Act, will come into effect shortly.

The major amendments to the *Competition Act* relate to agreements or arrangements under s. 49 and exemptions to the merger provisions of the Act under sections 94(b) and 113, both of which previously only applied to banks. Section 49 will now apply to "federal financial institutions," meaning banks, companies to which the *Trust and Loan Companies Act* applies or companies or societies to which the *Insurance Companies Act* applies. Similarly, the merger exemptions described in sections 94(b) and 113 will now apply to federal financial institutions where the Minister of Finance has certified to the Director that the merger is in the best interest of the financial system.

## CHAPTER IV CRIMINAL OFFENCES IN RELATION TO COMPETITION

Part VI of the 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 s. 61, which may be loosely characterized as offences in relation to competition, are treated separately from the misleading advertising and deceptive marketing practices provisions found in sections 52 through 60. The following offences are included in this group:

- Conspiracies, combinations, agreements or arrangements to lessen competition unduly in relation to the supply, manufacture or production of a product (s. 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 (s. 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 (s. 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 (s. 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 (s. 50(1)(c));
- Granting to a purchaser an allowance for advertising or display purposes that is not offered on proportionate terms to competing purchasers (s. 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 (s. 61(1)); and
- Attempting to induce a supplier to refuse to supply a product to a particular person because of that person's low pricing policy (s. 61(6)).

Other provisions relate to the implementation of foreign directives, agreements relating to participation in professional sport and agreements among banks. A number of exclusions and exceptions are applicable to these provisions,

as well as certain defences. For greater certainty, readers are advised to consult the legislation.

The offences described above are indictable. The maximum penalty for violating the conspiracy provision is a fine of \$10 million, or five years imprisonment, or both. The penalty applicable to s. 46, which relates to the implementation of foreign directives, is a fine at the discretion of the court, as only companies may be charged. In all other cases, the maximum penalty is either two years or five years imprisonment, or an unlimited fine at the discretion of the court.

### COURT PROCEEDINGS: HIGHLIGHTS

During the year ended March 31, 1992, the Bureau continued to focus its efforts in the criminal area on offences in relation to anti-competitive agreements among competitors, that is, conspiracy, bid-rigging and some forms of price maintenance. The most significant court proceeding during the year was the guilty pleas of five major suppliers of compressed gas in a conspiracy to fix prices. The fines collected to date against the companies and against two individuals are the highest in the history of Canadian competition law.

On September 6, 1991, **Canadian Oxygen Limited** and **Union Carbide Canada Limited** pleaded guilty to conspiring to fix the price of compressed gases sold or supplied in bulk liquid form, and were fined \$700 000 and \$1.7 million, respectively. On September 13, 1991, **Canadian Liquid Air Ltd.** and **Liquid Carbonic Inc.** pleaded guilty to similar charges and were fined \$1.7 million each. On October 18, 1991, two corporate executives pleaded guilty in relation to their roles in the conspiracy and were fined \$75 000 each. A fifth company, **Air Products Canada Ltd.**, pleaded guilty on October 25, 1991 and was fined \$200 000. The record fines of \$6 150 000 collected to date in this case highlight the importance of the conspiracy provision and should act as an effective deterrent to others. A significant feature of this case is that the Attorney General recommended reduced penalties for the individual and corporate accused who cooperated with the investigation and also extended immunity to some individuals. While the prosecution of the companies has ended, charges against other individuals involved in this matter are expected.

Another significant development during the year was the issuance of the Nova Scotia Court of Appeal's decision in *R. v. Nova Scotia Pharmaceutical Society (No. 2)*. The Court of

Appeal reversed the lower Court's ruling that the conspiracy provision is unconstitutional because the word "unduly" is too vague and uncertain and it allows for the conviction and imprisonment of an accused without a sufficient finding of criminal intent. The case has been appealed to the Supreme Court of Canada. (The decision of the Supreme Court, released July 9, 1992, is discussed in the Preface.)

The uncertainty as to the constitutional validity of the conspiracy provision caused a number of court proceedings to be postponed, nevertheless, a number of examinations and inquiries into collusive behaviour continued throughout the year.

## COURT PROCEEDINGS: ACTIVITY LEVELS

The constitutional challenges mentioned above have had an impact on the operational statistics for the fiscal year, as the following suggests. Twenty-two cases were outstanding from previous years, and ten new cases arose during the year. Of the five proceedings concluded during the year, one conviction was upheld, two guilty pleas were accepted, one resulted in an acquittal and one resulted in an order of prohibition. Of the cases concluded, \$340 000 in fines were imposed. Nine proceedings were still before the courts at the end of the year. In the compressed gas case, five firms and two corporate executives have thus far pleaded guilty to conspiring to fix prices. A complete listing of court proceedings pending is provided in Appendix IV.

## OTHER MATTERS

The Bureau continued to devote considerable resources this year to respond to widespread public concern over

the retail price of gasoline. Dr. George L  rmer, Dean of the Faculty of Management at the University of Lethbridge, prepared an economic analysis of retail gasoline prices to explain the observed price disparities between several communities within the provinces of Alberta and Ontario. This study concluded that although gasoline prices in some markets were higher than in others, they were not unusual in comparison to the refinery sector's costs of production and distribution. The Bureau's spot investigations into retail gasoline prices in several markets did not result in the referral of a significant number of new cases to the Attorney General for prosecution.

The Director began to develop a program of immunity, in concert with the Attorney General, aimed at providing greater incentives for corporations and individuals to voluntarily report their participation in conspiracies and bid-rigging activities before they come to the Director's attention. Although only the Attorney General has the authority to grant immunity from prosecution under the Act, the Attorney General has historically given the Director's recommendations careful and serious consideration.

## ACTIVITY LEVELS IN RELATION TO INQUIRIES

During the fiscal year, the Director initiated 13 formal inquiries in relation to sections 45, 47 and 61 of the Act. Search orders under s. 15 were issued in eight inquiries. At the close of fiscal year, three cases previously referred to the Attorney General for prosecution or other proceedings were still under review. Nine additional cases were referred to the Attorney General during 1991-92.

### COURT PROCEEDINGS: 1990 TO 1992

Section	Proceedings Commenced		Conviction		Completed Proceedings Order of prohibition		Non-conviction	
	1990-91	1991-92	1990-91	1991-92	1990-91	1991-92	1990-91	1991-92
45	2	—	—	—	—	1	1	—
47	—	1	—	1	—	1	—	—
50(1)(a)	—	—	—	—	—	—	—	—
50(1)(c)	—	—	—	—	—	—	—	—
51	—	—	—	—	—	—	—	—
61(1)(a)	2	2	—	2	1	—	—	1
61(1)(b)	1	—	1	—	1	—	1	—
61(6)	—	—	—	—	—	—	—	—
Other	—	—	—	—	1	—	—	—
Totals	5	3	1	3	3	2	2	1



## CHAPTER V 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:

- Representations which are false or misleading in a material respect (s. 52(1)(a));
- Performance claims not based on adequate and proper tests (s. 52(1)(b));
- Misleading representations as to the price at which a product is ordinarily sold (s. 52(1)(d));
- Advertising a product at a bargain price, where the advertiser does not have the product available in reasonable quantities (s. 57);
- Supplying a product at a price higher than the price which is currently being advertised by the vendor (s. 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 (s. 59).

Other provisions relate to warranties, tests and testimonials, double ticketing, and pyramid and referral selling. A number of exclusions, limitations and defences are provided in the provisions. Generally, penalties for violations are maximum fines of \$25 000 and/or imprisonment for up to one year in the case of summary conviction proceedings and maximum fines at the discretion of the Court and/or imprisonment for up to five years where proceedings are by way of indictment. For greater certainty, readers are advised to consult the legislation.

### COURT PROCEEDINGS

The Bureau continued a high level of activity under the misleading advertising and deceptive marketing practices provisions of the Act during the fiscal year. Prosecutions were commenced in 44 new cases while 43 cases were concluded by convictions. Several cases among these resulted in significant fines. For example, on

June 25, 1991, **IFA Intercontinental Fine Arts Ltd.** was fined \$100 000 following a conviction for making misleading representations regarding art prints. On September 4, 1991, **139834 Canada Inc.**, carrying on business as **Distribution Copie Centrale/Distribution Copy Central**, was fined \$120 000 for misleading telephone solicitations promoting the sale of photocopier toner. On January 22, 1992, **Donald Mercer Cormie** was convicted of making a misleading statement in the Principal Group's 1985 annual review. He was fined \$500 000 – the highest fine ever against an individual under the Act.

Total fines under these provisions remained high, surpassing last year's total as second highest ever. This reflects, at least in part, the Bureau's emphasis on cases of national significance in terms of social or economic impact or the development of jurisprudence. However, this focus has had an impact on the complexity of cases and has resulted in the number of prosecutions remaining relatively constant, compared to earlier years, and the number of referrals to the Attorney General of Canada returning to the level of two years ago. This also reflects the fact that the investigation of some of these cases can straddle two fiscal years.

The *Charter* has continued to have an impact on the length and complexity of cases, although the decision of the Supreme Court of Canada in *R. v. Wholesale Travel Group Inc.* has resolved some doubts regarding the enforceability of the general misleading advertising provision. That case upheld the onus on the accused to establish that, in its advertising, it exercised due diligence and took reasonable precautions to avoid a misleading effect. The decision also avoided significantly raising the burden of proof on the Crown in such prosecutions. However, the timely retraction prerequisite to making use of the due diligence defence was unanimously held to be unconstitutional and therefore no longer remains in effect.

A more litigious climate may be developing in the business community. Whether because of the *Charter* or business' greater appreciation of the adverse impact of prosecutions on their interests, voluntary cooperation may be beginning to decline. Accordingly, it may become necessary to rely more frequently on search warrants and other time-consuming formal means of acquiring evidence in the future.



## UNDERTAKINGS RECEIVED

The Bureau enjoyed continued success in resolving cases involving misleading advertising offences through the use of negotiated undertakings. Recent cases have incorporated agreements to effect restitution or reimbursement to affected parties, to run corrective advertisements to alert consumers to the fact that the Director has questioned earlier representations and the establishment of advertising policies consistent with the requirements of the law. The 24 undertakings received have resulted in resource savings by reason of diminished reliance on costly litigation as well as by more efficient investigations.

Readers interested in learning the details of cases in which prosecutions resulted in convictions, or those involving negotiated undertakings or prohibition orders received during the year, may refer to issues of the *Misleading Advertising Bulletin*, a quarterly Bureau publication.

## OTHER MATTERS

Green marketing, promoting the environmental attributes of products or services, continues to increase in visibility and importance. The *Guiding Principles for Environmental Labelling and Advertising*, which were developed jointly by the Marketing Practices Branch and the Consumer Products Branch of the Bureau of Consumer Affairs, have been assisting businesses for the past year regarding such claims. The Bureau has encouraged those businesses making environment-related claims to follow these principles as an important step in preserving and enhancing consumer confidence in such claims. However, as sufficient time has now passed for businesses to familiarize themselves with the principles, the Bureau is now moving away from a focus on voluntary compliance and towards enforcement action in appropriate cases.

### OPERATIONS UNDER THE MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS<sup>1</sup>

	1987-88	1988-89	1989-90	1990-91	1991-92
<b>Number of complaints, examinations and inquiries</b>					
Total complaints received	13 496	13 237	14 610	14 517	15 130
Number of files opened	12 374	12 043	13 448	13 745	14 557
Applications for inquiries under section 9	1	—	2	—	4
Inquiries commenced	98	90	76	90	82
<b>Disposition of Matters</b>					
Completed examinations/inquiries	670	612	493	496	407
Information contacts	1 517	1 325	1 310	1 324	1 511
Inquiries formally discontinued <sup>2</sup>					
Cases involving undertakings <sup>3</sup>	—	—	3	11	2
Other cases	3	3	4	4	1
Undertakings received	—	—	8	14	24
Matters referred to the Attorney General of Canada	83	75	56	90	55
Matters where further action is not warranted	—	5	6	—	9
Prosecutions commenced	75	75	52	53	44
Prohibition orders without conviction	2	3	5	1	1
Prosecutions concluded <sup>4</sup>					
Convictions	—	—	—	47	43
Non-convictions <sup>5</sup>	—	—	—	29	44 <sup>6</sup>
Total fines	\$661 500	\$812 980	\$907 850	\$1 020 850	\$1 353 400
Fines in outstanding matters	\$172 850	\$206 500	\$115 350	\$340 500	\$132 000

1 See also activities noted in Chapter I related to Information and Compliance Programs.

2 See Appendix VII for a list of discontinued inquiries.

3 Discontinued inquiries involving undertakings are reported for the fiscal year in which they were discontinued.

4 Not reported prior to 1990-91 on a "prosecution" basis. See Appendix VI for a list of cases prosecuted.

5 "Non-convictions" includes dismissals, withdrawals, stays of proceedings, conditional and absolute discharges. As a prosecution may result in the conviction on some accused and the acquittal of others, there will be some overlap between this figure and the preceding one.

6 This number reflects, in part, the impact of the Supreme Court of Canada's decision in *R. v. Askov*.

The Bureau also focused attention on artificial price structures and related savings claims made by major retailers with particular emphasis on the paints and fur industries, as well as telemarketing schemes that deceptively market advertising novelties.

During this fiscal year, the Bureau devoted considerable time towards the introduction in Parliament of legislation regarding multi-level marketing plans and pyramid selling schemes, with a view to simplifying the law and prohibiting certain deceptive practices not covered by the current legislation.

On September 30, 1991, Ms. Rachel Larabie-LeSieur was appointed Deputy Director of Investigation and Research (Marketing Practices), replacing Mr. Klaus Decker, who retired from the position which he had held since 1977.

## CHAPTER VI REPRESENTATIONS BEFORE BOARDS, COMMISSIONS OR OTHER TRIBUNALS

Under sections 125 and 126 of the Act, the Director is authorized to make representations to, and call evidence before, federal and provincial boards, commissions or other tribunals. In addition, the Minister 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 or with the consent of the agency concerned. As an advocate of competition, the Director also makes selected non-statutory representations to bodies such as government committees or task forces in cases where his particular expertise can bring a unique perspective to bear upon the issues.

### TRANSPORT

In June 1991, the Director made further representations to the Royal Commission on Passenger Transportation, which was established to inquire into and report upon a national integrated inter-city passenger transportation system to meet the future needs of Canadians.

The Director had made written and oral submissions to the Commission in the fall of 1990. Upon the release of its interim report in April 1991, the Commission invited the Director to provide additional comments. Elaborating on his view that such a system should give primacy to economic efficiency through, among other things, greater reliance on competition and commercially principled management of the transportation infrastructure, the Director noted that enhanced efficiency in passenger transportation could also facilitate the attainment of equity-oriented policy objectives.

The Commission had not issued its final report at the end of the fiscal year.

The Ontario-Quebec Rapid Train Task Force, to which the Director made a submission in May 1990, issued its report in May 1991. The Task Force concluded that a high speed passenger rail service could make a significant contribution to business and personal travel in the Quebec City - Windsor corridor. However, it further concluded that a final decision could not and should not be made before the results of more studies and consultation, the outline of which the Task Force set out in the report.

With regard to transport matters, staff continued their participation in a working group reporting to the Canadian Council of Motor Transport Administrators (CCMTA). The genesis of the working group is described in the 1990 Annual Report. In May 1991, the working group submitted its third annual report which reviews major elements considered by provincial regulators in their administration of transitional public interest entry criteria contained in the *Motor Vehicle Transport Act, 1987*.

The Bureau continued to participate in an ongoing interdepartmental review of the *Shipping Conferences Exemption Act, 1987*. This legislation exempts certain practices of international ocean shipping conferences (cartels) from the application of the *Competition Act*. Bureau staff contributed to the design and conduct of consultants' studies to assess the rationale for continuing exemption of conferences from Canadian competition law as well as issues relating to the content and application of the present exemption legislation. In addition, staff monitored a parallel review of shipping conferences legislation in the U.S. by a presidentially-appointed review commission.

Finally, in the airline industry, the Director's staff continued to be involved in interdepartmental consultations on the approach to negotiating a new air services agreement with the United States. These negotiations are ongoing.

### TELECOMMUNICATIONS

Representations in the telecommunications field continued to focus upon introducing more competition into this industry and limiting the ability of the incumbents to extend their market power to potentially competitive services.

In April 1991, the Canadian Radio-Television and Telecommunications Commission (CRTC) began the central hearing to examine the applications filed by **Unitel Communications Inc.** and **The B.C. Rail Telecommunications/Lightel**, who are seeking the right to interconnect with the networks of several Canadian telephone companies. The Director's involvement included the presentation of direct evidence and the cross-examination of other parties, followed by submis-

sion of a final argument in July 1991. In that submission, the Director emphasized the benefits of introducing competition in the provision of long-distance services, particularly in terms of price and service innovation. The Director also emphasized the desirability of the further liberalization of the rules governing resale and sharing.

In October 1991, the **Competitive Telecommunications Alliance** (CTA) requested the CRTC to review and vary Telecom Decision 91-11, which approved the introduction of the "Advantage Canada" long distance volume discount service by the member companies of **Telecom Canada**. The CTA sought to have lifted restrictions barring access by resellers to the "Advantage Canada" tariff. The Director made a submission to the CRTC in November 1991, stating that such restrictions should be reduced as much as possible. The Director noted that resale is a key element in stimulating the efficient supply of telecommunications services. Furthermore, the Director described a vibrant resale market as a necessary condition for workable competition. As of March 31, 1992, the decision of the CRTC concerning the application by the CTA was still pending.

In December 1990, the CRTC initiated a proceeding to examine the regulation of **Teleglobe Canada Inc.** (Teleglobe). A public hearing convened in August 1991, where the Director's intervention centred on broad policy and regulatory matters that incorporated competition policy issues. In the Director's view, competition between alternative overseas service providers promised to satisfy consumer demand for innovative services and to pressure service providers to become more efficient. The Director submitted that an important first step in introducing competition would be to permit resale and sharing. However, in the interim period, before the emergence of alternative service providers, the CRTC should continue to regulate Teleglobe, adopting a more flexible scheme of incentive regulation. On December 19, 1991, the CRTC issued Telecom Decision 91-21 which, among other matters, approved the resale and sharing of Teleglobe's international private lines on a joint use basis, subject to certain conditions. Given the insufficient record of evidence submitted by Teleglobe, the CRTC declined to alter its rate of return methodology, preferring to revisit the issue of the preferred method of regulating Teleglobe in 1993.

On March 3, 1992, the CRTC issued Telecom Decision 92-1, effectively bringing to a close the Directory Data Base proceeding, which was begun in 1988. The issue was whether **Bell Canada's** subscriber listings data base would continue to be provided on an exclusive basis to a Bell Canada affiliate, **Tele-Direct (Publications) Inc.**, or would instead be made at least partially available in machine readable form on a general, tariffed basis. The Director intervened in the matter and argued for the proposed tariffed access on the grounds that this data base is, for all practical purposes, non-duplicatable and, furthermore, it represents a vital input for would-be participants in a variety of information based businesses, such as telephone directory advertising. The CRTC has ruled that certain elements of the non-residential subscriber data file will be made available pursuant to a tariff, which will take effect in July 1992.

## AGRICULTURE

In May 1991, the Director made a submission to the Ontario Chicken Producers' Marketing Board. A previous submission was made to the Board in August 1989. Both submissions were made in response to the Board's request for the Director's views on pricing issues in the marketing of live chickens in Ontario, within the confines of the supply management system.

The issue addressed was that of premiums, i.e. a price in excess of the official established price paid by chicken processors to chicken producers for live chickens. The Board was attempting to ban premiums in favour of implementing a "lock-in" arrangement, whereby chicken producers would be required to supply specific chicken processors.

The May, 1991 submission reviewed the experience under a lock-in regime between 1989 and 1991 in light of the analysis and recommendations made in the 1989 submission. The Director stated that the experience confirmed his prediction in 1989 that it is impossible to prevent the payment of premiums in a market or exchange economy where there is a multitude of methods to effect business transactions.

The Director recommended that market-based arrangements are more consistent with maintaining and promoting an efficient and competitive processing sector than regulation of the price paid to chicken producers for live chickens combined with the regulation of the market shares of chicken processors. He recommended that the premium issue be addressed within the present supply management system, by securing an increased allocation of production of chickens for Ontario.

In March 1992, the Ontario Minister of Agriculture agreed to a proposal by the Board to revert to an open system for marketing live chickens in Ontario with the objective of making the market more responsive. The lock-in and premium ban are now eliminated.

Following recommendations contained in the reports of the National Poultry Task Force and the National Dairy Task Force, established within the framework of the Growing Together initiative, the Canadian International Trade Tribunal is conducting an inquiry into the allocation of import quotas for dairy and poultry products. Neither the overall amount of import quotas nor the setting of domestic production quotas are at issue. The Tribunal deals solely with the matter of devising appropriate methodologies to allocate the existing quotas.

The Director registered as an interested party of record actively monitoring proceedings. The Director retains the option to intervene should developments merit it.

## ENERGY

In June 1991, a submission was made on behalf of the Director before the Nova Scotia Law Amendments Committee concerning the removal of regulatory barriers in the petroleum industry. Effective July 1991, the Nova Scotia government removed price and entry restrictions in that province.

## PROFESSIONS

The Director has maintained a long-standing interest in developments pertaining to the regulation of the professions. In general, he has maintained that the mandate of professional self-governing bodies should be confined to matters which bear directly on quality of service and public safety, without unduly restricting competition in pricing, advertising and other important dimensions of competition. Further to this position, on August 14, 1990, a representation was made to a Quebec Legislative Committee examining that province's *Real Estate Brokerage Act*. It was recommended that new regulation in this industry should be precisely defined to limit the ability of a proposed self-regulatory body to draft regulations which would provide a broad shield from the application of the Act. The *Real Estate Brokerage Act* was given assent on June 20, 1991 and certain sections of the Act came into force on September 11, 1991.

On November 5, 1991, The British Columbia Royal Commission on Health Care and Costs submitted its report to the provincial government. The report endorsed several of the recommendations that the Bureau made in its written submission to the Commission. One of the report's recommendations, for example, was to remove legislation and regulations which place otherwise anti-competitive activities beyond the reach of the *Competition Act*.

## CHAPTER VII 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 affecting 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 effect of proposed legislation on competition. In addition, members of the Director's staff are often requested to prepare studies or other submissions on various competition policy-related issues for interdepartmental use.

### COMPETITION AND THE CANADIAN MARKETPLACE

During the fiscal year, the Bureau's policy development activities were principally focused on the state of competition in the Canadian marketplace, and the role that framework laws and policies play in fostering a competitive environment.

The Bureau worked closely with Industry, Science and Technology Canada (ISTC), the Department of Finance and other federal departments on several such projects in 1991-92. Bureau staff participated in the management of a major study of the competitive advantages of Canadian industry, which was completed in the fall of 1991 under the direction of Professor Michael Porter of Harvard University. The study, entitled "Canada at the Crossroads", focused on the importance of competitive rivalry in the domestic market in promoting the international competitiveness of Canadian firms, and underlined the important role played by the effective enforcement of the *Competition Act* in promoting Canada's future prosperity. Bureau staff also contributed to the two federal govern-

ment documents on prosperity and competitiveness produced by ISTC and Finance, also in the fall of 1991, and to the subsequent work of the Prosperity Secretariat which was established at the same time. The Bureau as well participated with other federal departments on a survey of the corporate response to globalization conducted by the Conference Board of Canada. The initial results from the survey were available late in the 1991-92 fiscal year and the full report is expected to be available in the summer of 1992.

In addition to these matters, the Bureau concluded its work on the departmental policy project, "Canadian Marketplace/International Directions." The purpose of the project was to assess the implications of the changing nature of international business for the departments' marketplace framework policies in the 1990s. Project work included the completion of surveys on CCAC's current international activities and on the department's longer term data-base needs, examining the role of the federal government in formulating standards policy, and an extensive literature review of global business and economic trends. The project's results emphasized the growing importance of CCAC's marketplace framework laws, including the *Competition Act*, in fostering Canadian economic integration and prosperity and our ability to compete successfully in the international marketplace. The project's final report proposed a number of follow-up projects to further explore the linkages among policy fields and the interactions between competition at home and competitiveness abroad.

In addition, staff members of the Bureau of Competition Policy completed an analysis of competition policy and its relation to the federal system, as an input to the assessment of issues concerning the Canadian economic union. The analysis highlighted the role of competition policy as a unifying instrument in various foreign economic unions and trans-national arrangements as well as in Canada. A paper incorporating the results of this analysis was published in the Canadian Competition Policy Record.



## COMPETITION AND TRADE POLICIES

During the past year, the Bureau was actively involved in the development of international trade and competition policy in a variety of forums. As an active participant in the Canadian delegation in the Investment Working Group in the NAFTA and in the GATT negotiations, the Bureau contributed to the research and development of substantive Canadian positions. It also assisted in the interdepartmental work in support of discussions on the International Monetary Fund, the GATT Trade Policy Review Mechanism, the Multilateral Steel Agreement and the European Energy Charter.

In addition to its role as a regular contributor to the work of the OECD Competition Law and Policy (CLP) Committee, the Bureau also undertook an initial exploration of the interaction and linkages between competition and trade policy, preparing a paper on the issue for future discussion by the OECD Trade Committee and the CLP.

The Bureau continued its involvement during the year in interdepartmental work aimed at developing the Canadian position in the negotiations pursuant to Article 1907 of the Canada-United States Trade Agreement, which addresses the problems of subsidies and anti-dumping. Efforts to date have focused on the potential to substitute competition law for the existing anti-dumping regime. The Bureau believes that the technical work carried out by the Bureau, other federal agencies and business groups suggests that the replacement regime would be economically desirable, technically feasible and to the mutual advantage of the parties under the Agreement. Current work includes consultations with industry groups and the academic community, and pursuing these issues at various international forums, including the OECD.

The U.S.-Japan Structural Impediments Initiative (SII) was a major development of the early 1990s which illustrated the growing role of competition policy and its relation to other national and international economic policies. A Bureau staff member prepared an analysis of the competition policy aspects of the SII negotiations and their implications for Canada. A paper based on this analysis was published in the Canadian Competition Policy Record.

Recently, there has been growing interest in the role of "grey market" goods in the Canadian economy, and the use of trade-marks to limit the scope for the importation of grey goods. The Bureau of Competition Policy commissioned a study of these issues and their relation to competition policy by Professor Nancy Gallini of the University of Toronto. The study emphasizes the pro-competitive functions of trade-marks and their application in international trade as well as possible concerns relating to the anti-competitive use of trade-marks.

## INTERNATIONAL RELATIONS

### BILATERAL

The Bureau maintains bilateral relations with antitrust agencies in several foreign countries. These 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. Canada and U.S. antitrust cooperation is governed by a separate Memorandum of Understanding signed in 1984. Under the MOU, two bilateral meetings were held with the U.S. antitrust agencies. One purpose of these bilaterals was to discuss further refinements to the Canada-United States MOU. The Director invites Canadian businesses to bring to his attention those situations in which restrictive business practices originating in other nations affect competition in a Canadian market.

During the fiscal year, Canada gave five notifications to, and received eight notifications from, other countries. All of these notifications involved the U.S. antitrust agencies. Officials of the Bureau held meetings with competition representatives from the European Economic Community, Brazil, Mexico, Australia, New Zealand and Japan. The purpose of these meetings was to further explore mechanisms for improving antitrust cooperation bilaterally and internationally, and to assist countries like Brazil and Mexico in the development of modern competition laws. In addition, a member of the Bureau was part of a

technical assistance mission to Malaysia designed to assist the Malaysian government in developing a competition law and enforcement agency. As the Commission of the European Communities Directorate-General IV, responsible for Competition Policy, has expanded its scope of activities, the frequency of interaction with the EC has grown commensurately.

An exchange of personnel with the Australian Competition Bureau is presently underway. As well, the Bureau will be hosting an officer of the New Zealand Commerce Commission.

### **MULTILATERAL**

The Bureau is a long-standing participant in the work of multilateral groups such as the Organization for Economic Cooperation and Development (OECD) Committee on Competition Law and Policy. This 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 past year, the Bureau worked closely with the OECD Secretariat on a medium-term work program designed to place greater emphasis on the implications of globalization, policy linkages and convergence for antitrust enforcement internationally and within member states. Based on that work program, Bureau staff submitted a draft discussion paper to OECD members on the linkages between competition policy and other policy

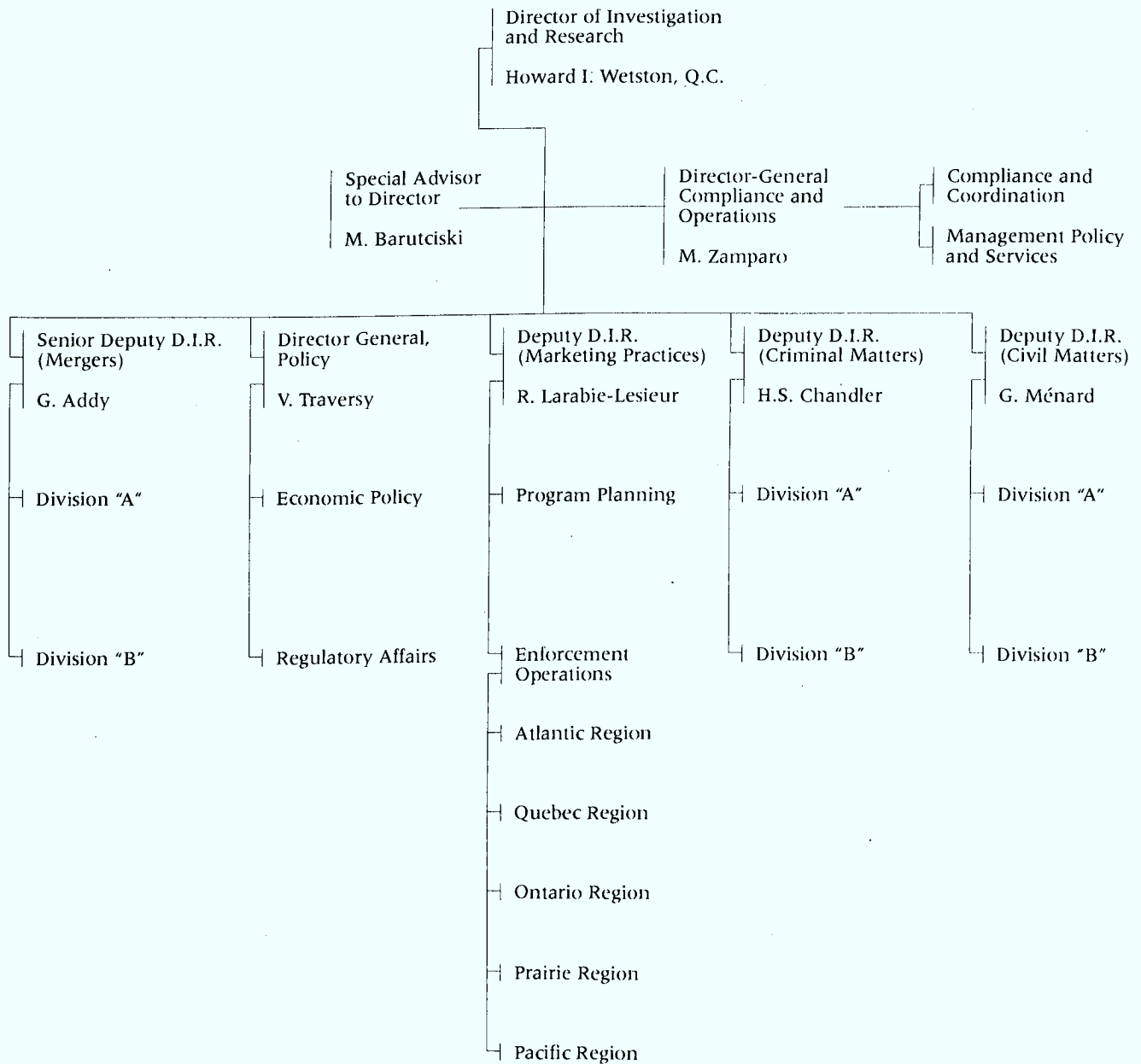
fields, are participating with other OECD members on a study to explore the potential for greater harmonization in merger policy and enforcement practices, and made a speech on the growing interactions between trade and competition policy presented to the OECD symposium on the "Trade Issues of the 1990's" held in November 1991. Based in large part on the Bureau's efforts, the OECD Competition Law and Policy Committee commenced a joint work program with the OECD Trade Committee.

The Director, as Chairman of the OECD's Working Party Four completed a study on competition policy and franchising and the committee subsequently agreed to its publication.

The Bureau also regularly participates in the work of the United Nations Conference on Trade and Development Intergovernmental Group of Experts on Restrictive Business Practices.

# APPENDIX I

## BUREAU ORGANIZATION



## APPENDIX II MERGER EXAMINATIONS CONCLUDED

The following table records mergers that have been examined by the Director under the Act, where the Director concluded his examination during fiscal year 1991-1992. 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.

<b>Company Making Acquisition<sup>1</sup></b>	<b>Name of Company Being Acquired<sup>2</sup></b>	<b>Industry</b>	<b>Result<sup>3</sup></b>	<b>Process<sup>4</sup></b>
'21' International Holdings Inc.	Foamex Limited Partnership	Foam (upholstery products)	FC	ARC
347883 Alberta Ltd.	Moose Jaw Asphalt Ltd.	Asphalt manufacturing	FC	ARC
494650 Alberta Ltd.	NovAtel Communications Ltd.	Cellular telephone equipment and systems	FC	
509162 Alberta Ltd./ Noranda Inc.	Webb International Minerals, Inc. (certain oil and gas properties)	Oil and natural gas production	FC	ARC
512152 Alberta Limited	The Grocery People Ltd.	Food wholesale, petroleum, hardware, dry goods, crop supplies, feed products, lumber and building materials	FC	ARC
597375 Saskatchewan Ltd.	Maple Leaf Foods Inc. (Moose Jaw Operations)	Beef slaughter	FC	
939943 Ontario Inc.	Cango Petroleum Ltd.	Retail gasoline marketing	FC	
2680939 Canada Inc./ Supremex Inc.	Abitibi-Price Inc. (Innova Envelope Division)	Commercial and business envelopes	FC	
2819288 Manitoba Ltd./ Pepsi-Cola Canada Ltd.	Blackwoods Beverages Ltd.	Soft drinks	FC	
A R Co.	Olympia & York CC Limited	Real estate	FC	ARC
ADM Milling Co.	George Weston Limited (flour milling assets)	Flour milling	FC	ARC

<sup>1</sup> With respect to joint ventures or partnerships, the parties to the transaction are listed under "Company Making Acquisition" and the name of the venture or partnership is listed under "Company Being Acquired".

<sup>2</sup> In instances where only certain interests of a company were being acquired, the interests in question are specified.

<sup>3</sup> CT Application to the Competition Tribunal.

FC File closed; concluded as posing no issue under the Act.

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.

TA Transaction abandoned in whole or in part as a result of Director's position.

<sup>4</sup> AO Transaction processed under Program of Advisory Opinions.

ARC Transaction processed under advance ruling certificate.

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Agropur, Coopérative agro-alimentaire	126236 Canada Ltée (Groupe Casavant)	Milk and milk products	FC	
Agropur, Coopérative agro-alimentaire	Purdel, Coopérative agro-alimentaire	Liquid milk	FC	
Agropur, Coopérative agro-alimentaire	Le groupe Anco	Specialty cheese	FC	
Alcatel Cable S.A.	Noranda Inc. (Canada Cable and Wire Division)	Wire and cable manufacturing	FC	ARC
Alcatel N.V.	Rockwell International of Canada Ltd.	Telecommunications equipment	FC	ARC
Amalgamated Dairies Limited	Perfection Foods Limited	Dairy products	FC	
Amalgamated Metal Corporation plc	Samuel, Son & Co.	Steel service centres	FC	
American Telephone and Telegraph Company	NCR Corporation	Computers	FC	
Amex Bank of Canada	Royal Trust Co.	Financial services and credit cards	FC	
Amoco Canada Petroleum Company Limited, Amoco Canada Resources Limited, Encor Energy Corporation Inc. and Maligne Resources Limited	Amoco Canada Petroleum Company Limited, Amoco Canada Resources Limited, Encor Energy Corporation Inc. and Maligne Resources Limited (certain assets - Canadian oil and gas properties)	Oil and gas exploration and development	FC	ARC
Amoco Canada Petroleum Company Limited and Dow Chemical Canada Inc.	Crestar Energy Inc.	Oil and gas exploration and development	FC	ARC
Anderson Exploration Ltd.	Columbia Gas Development of Canada Ltd.	Oil and gas exploration and development	FC	
Associated Respiratory Services Inc.	VitalAire Corp.	Medical gases	FC	
Associates Commercial Corporation of Canada, Ltd.	Chase Manhattan Leasing Canada Limited (certain assets)	Equipment leasing	FC	ARC
Ault Foods Limited	Canada Packers Inc. (Black Diamond)	Cheese and butter	FC	
Auto Haulaway Inc.	McCallum Transport	Transport carriers-automotive	FC	AO



Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
B.C. Telephone Company and Westbridge Computer Corporation (now ISM Information Systems Management Corporation)	ISM Information Systems Management (B.C.) Corporation	Systems development	FC	
Ball Corporation	Ball Packaging Products Canada Inc.	Metal containers for food and beverages	FC	ARC
Banque Laurentienne du Canada	Standard Trust Company and Standard Loan Company	Financial services	FC	
Barnes Security Services Ltd.	Metropol Holdings Inc.	Security guard services in Ontario and Alberta	FC	ARC AO
BC Star Partners	Imperial Oil Limited (certain oil and gas properties in British Columbia)	Crude oil and gas production	FC	ARC
Beaver Lumber Company Limited	Wentworth Lumber Limited	Hardware stores	FC	ARC
Best Foods	Canada Packers Inc. (Squirrel Peanut Butter)	Food processing (Peanut butter)	FC	
BFI Acquisition Corp.	Beatrice Foods Inc./Palm Dairies Inc.	Food processing-dairy, baked goods and cheese	FC	ARC
Bolands Ltd./The Oshawa Group Ltd.	F.E. Wade Limited	Retail food	FC	ARC
Bombardier Inc.	Boeing Canada Inc. (de Havilland Division)	Commuter aircraft	FC	
Bombardier Inc.	UTDC Inc.	Heavy rail, light rail, commuter rail	FC	AO
BTR plc	Hawker Siddeley Group Inc.	Electronics, aerospace, rail	FC	ARC
Cadbury Beverages Canada Inc.	Everfresh Inc.	Beverages (fruit juices/drinks)	FC	
CAI Capital Corporation, CAI Capital Partners and Company, Limited Partnership, CAI Partners and Company, Limited Partnership, and Ontario Teachers' Pension Plan Board	Bio-Research Laboratories Ltd. (certain shares)	Research laboratory	FC	ARC
Cambridge Leaseholds Limited	Campeau Corporation. (Intercity Shopping Centre and New Sudbury Centre)	Shopping centres	FC	ARC

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Cambridge Leaseholds Limited	Markville Shopping Centre	Shopping centres	FC	ARC
Canada Packers Inc. and Schneider Corporation (Processed Meat Division)	National Meats Inc.	Ground meat products	FC	
Canadian Corporate News Inc.	Southam Inc. (certain assets)	Publishing	FC	
Caso Inc.	Noverco Inc.	Natural gas	FC	
Central Soya of Canada Ltd. and Saskatchewan Wheat Pool	Canada Packers Inc. (Edible Oil Division)	Canola/soya beans crushing and processing	FC	
CGGS Canadian Gas Gathering Systems Inc.	Gulf Canada Resources Limited (oil and gas properties)	Oil and gas	FC	ARC
Chemical Bank of Canada and Manufacturers Hanover Bank of Canada	Chemical Banking Corporation	Financial services	FC	ARC
Chevron Standard Limited	Petro Canada (Alberta Envirofuels)	Methyl tertiary butyl ethylene (MTBE)	FC	ARC
Confederation Leasing Ltd.	Chase Manhattan Leasing (Canada) Ltd. (lease and loan portfolio)	Equipment leasing and finance	FC	ARC
Consumers' Gas Company Ltd.	Tecumseh Gas Storage Ltd. and 923726 Ontario Ltd.	Natural gas storage	FC	
Coopérative Fédérée de Québec	Tyson Canada Inc.	Processed and further processed chicken, and processed turkey	FC	
Coopérative Fédérée de Québec (Meat Division) and Groupe Olympia Liée	Olymel Inc.	Pork slaughtering, cutting, and processing	FC	
Corporation of the Town of Markham	Toronto Airways Ltd.	Airport	FC	ARC
de Havilland Aerospace Canada Inc.	Boeing of Canada Ltd. (de Havilland Division)	Commercial aircraft	FC	
Didier Refractories Corporation	Plibrico (Canada) Limited	Refractories	FC	
Diversey Corporation	Dubois Chemicals of Canada Limited	Commercial and industrial cleaning supplies	MO	

Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
Dominion Trustco Capital Inc.	Seel Mortgage Investment Corporation	Mortgage loans	FC	ARC
E.D. Smith & Sons, Ltd.	Campbell's Soup Company Ltd. (Sweet Division)	Jams, syrups and marmalades	FC	
Edmonton Methanol Company	PanCanadian Petroleum Ltd. (certain shares)	Methanol production	FC	
Ensis Corporation Inc.	Federal Industries Ltd. (certain shares)	Miscellaneous manufacturing	FC	ARC
Eureko B.V.	Friends' Canadian Holdings Ltd.	Insurance	FC	ARC
Fiat SPA	Ford New Holland	Farm tractors, combines, bailers, mower conditioners, etc.	FC	
G.T.C. Transcontinental Group Ltd.	Southam Graphics Inc.	Heat-set printing for coated and semi-coated paper stock	FC	
Gan Canada Insurance Company	Simcoe Erie Investors Limited	Property and casualty insurance	FC	ARC
GEC Alsthom N.V.	Groupe MIL Inc. (MIL Tracy division)	Electro-mechanical equipment	FC	ARC
Gemala Industries Limited	Durabody & Trailer Limited	Truck trailers	FC	
General Accident Assurance Company of Canada	Crum & Forster of Canada Limited and United States Fire Insurance Company (Canadian Branch)	Insurance	FC	ARC
Gestetner Holdings plc	Savin Canada Inc.	Photocopiers	FC	ARC
Gewerschaft Eisenhutte Westfalia GmbH	DM Enterprises Inc.	Manufacturing of mining equipment	FC	ARC
Glen Dimplex	Chromalox Inc.	Manufacturing of electrical heating products	FC	AO
Glen Dimplex	Westcan Electric Heating Inc.	Manufacturing of electrical heating products	FC	AO
GPF Acquisition Corp./ Medis Health and Pharmaceuticals Services Inc.	Focus Pharmaceutical Group Inc.	Pharmaceuticals, over-the-counter products, health and beauty aids, tobacco products and cigarettes, and miscellaneous sundry products	FC	
H.J. Heinz Company	JL Foods Inc.	Food service products, quick frozen vegetables	FC	ARC

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Harcros Pigments Inc.	Federal Industries Industrial Group Inc.	Manufacturing of synthetic iron oxide pigments	FC	
Hasbro Inc.	Tonka Corporation	Toy manufacturing	FC	
Hollinger Inc.	Key Publishers Co. Ltd. (certain shares)	Publishing, newspapers and magazines	FC	
Imperial Oil Limited	771689 Ontario Inc./Orville Fuels (certain assets)	Home heating oil	FC	
Imperial Oil Limited	JEC Petroleum Inc.	Residential heating oil	MO	
Ingersoll-Rand Canada Inc. and Dresser Canada Inc.	Partnership to operate the parties' industrial pump divisions	Industrial pumps	FC	
International Forest Products Limited	Fletcher Challenge Canada Limited (certain assets)	Softwood lumber	FC	
International Murex Technologies	The Wellcome Foundation Ltd. (The Wellcome Diagnostics Division)	Rapid diagnostic tests	FC	
Ivanhoe Inc.	2853-0947 Québec Inc.	Office buildings	FC	ARC
J.S.J. Equity Holdings Limited	J.D.S. Investment Limited	Real estate holdings	FC	ARC
Kaufel Group Ltd.	Lumacell Inc.	Emergency lighting	MO	
L'Industrielle-Alliance Compagnie d'Assurance sur la vie	Coopérants-Vie Inc.	Life and general insurance	FC	ARC
Lasmo plc	Ultramar plc	Petroleum products	FC	
Lehman Brothers Inc., The First Boston Corporation and Lazard Frères & Co.	Paramax Incorporated	Electrical and defence industries products	FC	ARC
Linecreek Resources Limited	Shell Canada Limited (certain assets)	Coal mines (thermal and metallurgical)	FC	
Lockheed Canada Inc.	M.E.L. Defence Systems Ltd.	Defence electronic equipment	FC	
Loomis Armoured Car Service Ltd.	Universal ATM Services Inc.	Automated teller machines and armoured car service	FC	
M.I.M. (Canada) Inc.	Nunachiaq Inc. (certain shares)	Mining	FC	ARC
MacMillan Bloedel Limited	T.J. International Ltd.	Engineered wood products (beams and headers)	FC	

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Manulife Finance Holdings Limited	Firstline Trust Company	Residential mortgage lending	FC	ARC
Maple Leaf Foods Inc. and Schneider Corporation (Warehousing and Distribution Division)	Link Services Inc.	Prepared meats distribution	FC	
Maple Leaf Mills Limited	Ogilvie Mills Ltd.	Flour milling and bakery products	TA	AO
Maple Leaf Mills Limited	Canada Packers Inc.	Poultry, rendering, slaughtering, food products	CT	
Marion Merrell Dow Inc.	Nordic Laboratories Inc.	Pharmaceuticals	FC	ARC
MDS Health Group Limited	Nordion International Inc.	Radio isotopes and radio pharmaceutical products	FC	
Metallgesellschaft Corporation	Ocelot Industries Limited	Methanol production and sale	FC	ARC
Midland Walwyn Inc.	Dean Witter Financial Services Group Inc.	Investment dealers	FC	
Minesota Valley Engineering Inc.	Altank Industries Ltd.	Cryogenic, CO <sub>2</sub> , and propane/ NH <sub>3</sub> transportation equipment	FC	
Minorco (USA) Inc.	Inspiration Resources Corporation	Minerals	FC	
Misener Holdings Limited, CSL Group Inc. and James Richardson & Sons, Limited	Joint venture to operate parties' bulk carrier vessels	Marine transport industry	FC	
Mitsubishi Oil Company	Petro-Canada (certain assets - Syncrude interest)	Oil and gas	FC	ARC
National Grocers Co. Ltd.	Steinberg Inc. (certain Ontario assets)	Retail food	FC	
North America Packaging Inc.	Vulcan Packaging Inc. (plastic pail operations)	Industrial pails	FC	
North-West Telephone Company/British Columbia Telephone Company	National Pagette Ltd.	Radio paging and telephone answering service	FC	
Northumberland Co-operative Limited	Perfection Foods Dairy Limited and McKay's Dairy Ltd.	Dairy products	FC	

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Olympia & York Developments Ltd.	Campeau Corporation	Leasable commercial office space	FC	ARC
Olympia & York SP Corporation	Campeau Corporation (Scotia Plaza)	Commercial real estate	FC	
OMERS Realty Corporation	Twigg Yonge Adelaide Limited (certain assets)	Office space	FC	ARC
OMERS Realty Corporation	Campeau Corporation (Water Park Place)	Real estate	FC	
Ontario Teachers' Pension Plan Board	The Cadillac Fairview Corporation Limited (certain interests)	Shopping malls	FC	ARC
Ontario Teachers' Pension Plan Board, ORIX Corporation and Canada Life Assurance Company	CIBC Leasing Limited, Norex Leasing Inc. and Burloak Financial Services Inc.	Equipment leasing	FC	ARC
PCC Energy Inc.	Gulf Canada Resources Limited (certain assets)	Oil and gas exploration and production	FC	
Pembina Energy Transmission Ltd.	Peace Pipe Line Limited	Pipeline	FC	
Pepsi-Cola Canada Ltd.	Seven-Up Canada Inc., Conpac Beverages Ltd., 161275 Canada Inc., Pathfinder Beverages Ltd. and 782891 Ontario Inc.	Soft drinks	FC	
Permacon Group Inc.	Betomat Concrete Products Inc.	Landscaping and masonry products	FC	
PPG Canada Inc.	ICI Canada Inc. (automobile painting business)	Automobile paint	MO	
Procter and Gamble Inc.	Cellulose tissue business of Canadian Pacific Forest Products Ltd., Dominion Cellulose Limited and Facelle Company Limited	Cellulose tissue products	FC	ARC
PWA Corporation	Ontario Express Limited	Air transportation	FC	
PWA Corporation	Lignes Aériennes Inter-Québec Inc.	Air transport services	FC	
Québecor Inc.	Harlequin Enterprises Limited (Metroland Printing, Publishing & Distributing Division)	Commercial printing	FC	



Company Making Acquisition	Name of Company Being Acquired	Industry	Result	Process
RBC Dominion Valeurs Mobilières (Québec) Inc.	McNeil, Mantha Inc.	Investment services	FC	ARC
Régie Nationale des Usines Renault S.A.	AB Volvo	Motor vehicle manufacturing - Class 7 and 8 trucks	FC	AO
Robin Hood Multifoods Inc.	Campbell Soup Company Limited	Marinated condiments	FC	
Royal Mellon Trust Company	Royal Trustco Limited (certain assets) and National Trust Company (certain assets)	Stock transfer agent and corporate trust services	FC	AO
Royal Plastics Limited	Canron Ltd. (Plastic Pipe Division)	Plastic pipe	FC	
Samuel Son & Co., Limited	Newman Steel Ltd. (certain assets)	Metal fabrication/ steel plate processing	FC	
Sanofi Canada Inc. and Sterling-Winthrop Inc.	Sanofi Winthrop	Prescription and over-the-counter drugs	FC	ARC
Sara Lee Corporation	Playtex Apparel Inc.	Womens intimate apparel	FC	
Saskatchewan Oil & Gas Corporation	Imperial Oil Limited (certain assets)	Upstream oil and gas	FC	ARC
Sears Canada Inc.	Hudson's Bay Company (certain assets)	Retail locations	FC	
Shearson Lehman Hutton Capital Partners II, L.P., Shearson Lehman Hutton Merchant Banking Portfolio Partnership L.P., Shearson Lehman Hutton Offshore Investment Partnership L.P., Shearson Lehman Hutton Offshore Investment Partnership-Japan L.P., and FIMA Finance Management Inc.	LSS Holdings Corporation	Car seats	FC	ARC
Shell Canada Products Limited	Pay Less Gas Co. (1972) Ltd.	Gasoline - retail	FC	
Sherritt Gordon Limited	Canada Northwest Energy Limited	Oil and gas exploration and development	FC	ARC
Sigri GmbH	Great Lakes Canada Inc.	Carbon and graphite products	FC	
Slocan Forest Products Ltd.	Fiberco Pulp Inc.	Pulp and wood chip industry	FC	

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Société Immobilière Trans-Québec Inc.	DeMaisonneuve-Kennedy Holdings Limited (certain assets)	Real estate (office space)	FC	ARC
Sofati Liée and Compagnie Oris Industrie S.A.	Theratronics International Limited	Radiation therapy equipment	FC	
Sonoco Limited	Another Tech Corporation (Coretech)	Spiral wound fiber cores	FC	
Sonoco Products Co.	Paperboard Industries (Trenton Mill)	Paperboard, fiberboard, linerboard	FC	
Spruce Falls Acquisition Corp. and Tembec Inc. and as part of the same transaction: Ontario Hydro	Spruce Falls Power & Paper Company Limited; Smoky Falls Hydro Electrical Generating Station	Wood pulp, newsprint and other paper Electrical power	FC	ARC
St. Lawrence Cement Inc.	Lincoln Waste Management Inc.	Aggregates, asphalt	FC	ARC
Sunoco Inc.	133950 Canada Inc.	Retail gasoline marketing	FC	
Teck Corporation	Quintette Coal Limited (certain shares)	Coal mining	FC	ARC
Télésystème National Limitée	Telesat Canada	Telecommunications equipment	FC	
Tellin, Inc.	Everfresh Inc.	Fruit drinks	FC	
Texaco Canada Petroleum Inc.	Imperial Oil Ltd. (certain oil and gas properties)	Crude oil and natural gas production	FC	ARC
The Dominion of Canada General Life Insurance Company	The property and casualty insurance business in Canada of Safeco Insurance Company of America, General Insurance Company of America and First National Insurance Company of America	Property and casualty insurance	FC	ARC
The Manufacturers Life Insurance Company	Cabot Capital Corporation	Financial services	FC	ARC
The Oshawa Group Limited	The Knechtel Corporation	Supermarkets (retail groceries)	FC	
The Poplar Corporation	Crownx Inc.	Life insurance	FC	
Thomas J. Lipton Inc.	Salada Inc.	Tea production and distribution	FC	
Total Petroleum (North America) Ltd.	Total Canada Oil & Gas Ltd. and 175538 Canada Inc.	Oil and gas	FC	ARC

<b>Company Making Acquisition</b>	<b>Name of Company Being Acquired</b>	<b>Industry</b>	<b>Result</b>	<b>Process</b>
Transamerica Inc.	Commonwealth Hospitality Ltd.	Hotel accommodations	FC	ARC
Trillium Funeral Service Corporation	Swackhamer & Hiltz-Blachford & Wray Funeral Homes	Funeral homes	MO	
Trust La Laurentienne du Canada Inc.	La Financière Coopérants Prêts et Épargne Inc.	Financial services and products	FC	
Union Faith Canada Holdings Ltd. and LFHHC Holdings Ltd.	Husky Oil Limited	Petroleum and natural gas	FC	ARC
United Co-Operative of Ontario and Sunoco Inc.	UCO Petroleum Inc.	Petroleum	FC	
United Technologies Corporation (Pratt & Whitney Group), Pratt & Whitney Canada Inc. and MTU Motoren-Und Turbinen-Union Mucchen GmbH	Joint venture agreement to cooperate in the development of commercial aero-engines	Airplane engines and parts	FC	
Vancouver City Savings Credit Union	Citizens Trust Company	Financial services	FC	
W.R. Grace & Co.	Dupont Canada	Plastic packaging	FC	
Westbridge Computer Corporation (now ISM Information Systems Management Corporation)	ISM Canada Ltd. (Securities Industry Services Division)	Computer processing services	FC	
WIC Western International Communications Ltd.	Newco Niagara Television Ltd.	Television broadcasting	FC	ARC

## APPENDIX III MERGER AND REVIEWABLE MATTERS: DISCONTINUED INQUIRIES

### MERGERS

#### THOMAS J. LIPTON INC./SALADA INC.

This matter involved the acquisition of **Salada Inc.** by **Thomas J. Lipton Inc.**, a wholly owned subsidiary of **Unilever Canada Limited**. Based on a review of the information obtained from the parties and from relevant third party sources, the Director concluded that he had reason to believe that grounds existed for the making of an order by the Competition Tribunal under s. 92 of the Act. Therefore an inquiry was initiated pursuant to s. 10 of the Act on June 10, 1990. A thorough assessment of the impact of this transaction was conducted. This included a full review of the information provided by the parties to the transaction as well as that obtained from customers, competitors and others knowledgeable about the industry. At the completion of the assessment, the Director concluded that there were insufficient grounds to establish that competition in the Canadian tea market would be lessened substantially because of the transaction. His decision was based, in part, on the effectiveness of the remaining national and regional competitors and the role played by private label brands controlled by the major customers of the merging parties. The inquiry was, therefore, discontinued.

#### MAPLE LEAF MILLS LIMITED/OGILVIE MILLS LTD.

In September 1990, **Maple Leaf Mills Limited** and **Ogilvie Mills Ltd.** announced their proposal to form a partnership to operate their respective flour milling and related bakery products businesses. As the result of a thorough assessment of the likely impact on competition of the proposed partnership, the Director concluded that there was reason to believe that there were grounds for the issuance of an order by the Competition Tribunal and, therefore, initiated a formal inquiry under s. 10 of the Act on October 26, 1990. In March 1991 the Director advised the parties of his decision to seek an order of the Tribunal should they proceed with the transaction in its original form. Discussions subsequently took place between the Director and the parties with a view to resolving the Director's competition concerns. The Director advised the parties that he was prepared to not challenge the proposal if it were modified to address the concerns that he had identified. In May 1991, the parties decided that they would not agree to the Director's proposed resolution, and abandoned the proposed merger. Consequently, the inquiry was discontinued.

## APPENDIX IV CRIMINAL OFFENCES IN RELATION TO COMPETITION: PROCEEDINGS

### PROCEEDINGS CONCLUDED:

#### SECTION 45: CONSPIRACY

On February 20, 1992, following the receipt of written undertakings from the **Association of Ontario Land Surveyors** (the Association), the Director agreed to terminate his investigation under sections 45 and 47 of the Act into certain potentially anti-competitive aspects of the land surveying industry. As a result of the undertakings, surveyors are no longer prevented by the Association from advertising their services and prices, or from entering into competitive bidding situations. The Association also undertook to refrain from establishing suggested minimum prices for their members' professional services and products, and will instead conduct an annual fee survey and report a range of prices for certain surveying services for each participating region. Additionally, the Association agreed to withdraw its application to the Supreme Court of Ontario, which argued that certain acts by the Association's members are protected by the "regulated conduct" defence.

#### SECTION 47: BID-RIGGING

As a conclusion to the flour milling bid-rigging case reported last year, **Dover Mills Limited** pleaded guilty in the Court of Ontario (General Division) on April 9, 1991 and was fined \$100 000. On June 3, 1991, the same Court found **Rogers Foods Limited** guilty and granted an order of prohibition. All other companies convicted are also subject to orders of prohibition.

#### SECTION 61: PRICE MAINTENANCE

On January 31, 1991, **Pioneer Petroleum Inc.**, (Pioneer) was charged with four counts under s. 61(1)(a) of the Act in relation to the sale of gasoline in the Ancaster, Ontario area. On December 20, 1991, the Ontario Court (Provincial Division) acquitted Pioneer on all counts.

On May 23, 1991, **Ultramar Canada Inc.** (Ultramar) and **Perry Fuels Inc.** (Perry Fuels) were each charged with one count under s. 61(1)(a) in relation to the supply

of home heating oil in the Oshawa, Ontario area. On May 30, 1991, both firms pleaded guilty. Ultramar was fined \$150 000 and Perry Fuels was fined \$40 000.

On March 10, 1992, the Quebec Court of Appeal upheld the conviction of **Wenger's Limited** under s. 61(1) and the Court also upheld the fine of \$50 000 levied against the firm.

### PROCEEDINGS PENDING

#### SUBSECTION 34(6): FAILURE TO COMPLY WITH A PROHIBITION ORDER

As reported last year, the preliminary hearing in this matter involving a number of driving schools located in Sherbrooke, Quebec was remanded pending a decision on the constitutionality of the conspiracy provision. This case also involved a prosecution under sections 45 and 50(1)(c) as noted below.

#### SECTION 45: CONSPIRACY

As reported in Chapter IV, the trial on two counts under s. 45(1)(c) against **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**, and **Frank Forbes** was on hold pending a final judgment on the accuseds' constitutional challenge to the conspiracy provision. The appeal on this matter to the Supreme Court of Canada was heard on December 4, 1991. (Judgment was rendered July 9, 1992.)

As reported last year, four other cases were remanded pending the outcome of the constitutional challenge to the conspiracy provision. These cases involved funeral homes in Nova Scotia, driving schools in Sherbrooke, Quebec, pharmacists in Quebec and freight forwarders doing business between Ontario and Western Canada.

On May 10, 1990, the Director initiated an inquiry into the conspiracy and bid-rigging activities of the five major suppliers of compressed gas in Canada. Searches of these five firms were conducted during the months of May and June 1990. On September 6, 1991, **Union Carbide Canada Limited** and **Canadian Oxygen Limited** pleaded guilty to conspiring to fix the price of compressed gas sold or supplied in liquid bulk form and were fined \$1.7 million and \$700 000, respectively. On September 13, 1991, **Canadian Liquid Air Ltd.** and **Liquid Carbonic Inc.** also pleaded guilty to similar charges and were fined \$1.7 million each. On October 18, 1991, two individuals associated with Liquid Carbonic Inc., **V. N. S. Lorish** and **K. M. Hibbert**, pleaded guilty to conspiracy charges relating to their roles in this matter and were each fined \$75 000. **Air Products Canada Ltd.** pleaded guilty to conspiracy charges on October 25, 1991 and was fined \$200 000. Further charges against individuals are expected.

#### SECTION 47: BID-RIGGING

On March 18, 1992, seven bid-rigging charges were laid against three firms and two individuals relating to asphalt overlay contracts tendered by various municipalities located in the Regional Municipality of Ottawa-Carleton during the years 1986 and 1987. The firms charged were **George Wimpey Canada Limited**, **Dibblee Construction Limited**, and **Interprovincial Paving Company Limited**. The individuals charged were **Dale Stewart** and **Sergio DiGioacchino**.

#### SECTION 50(1)(C): PREDATORY PRICING

As reported last year, and as previously mentioned in this year's report under "Proceedings Pending", the preliminary hearing in the prosecution against a number of driving schools located in Sherbrooke, Quebec was remanded pending a decision on the constitutionality of the conspiracy provision.

#### SECTION 61: PRICE MAINTENANCE

On August 25, 1988, 14 counts under s. 61(6) were laid at Quebec City, Quebec against **E. E. Lemieux Inc.** and a corporate officer, **Simon Carmichael**, in relation to the sale of women's clothing. At the trial held in January and February, 1991, the defendants challenged the constitutionality of s. 61(6) and s. 61(9). On August 8, 1991, the

Court of Quebec (Criminal and Penal Division) rejected the defendants' constitutional challenges and ruled that they were to stand trial on all 14 counts. On September 23, 1991, the Court acquitted **E. E. Lemieux Inc.** and on October 24, 1991, granted a unconditional discharge to **Simon Carmichael**. The Crown has appealed both the acquittal and the discharge to the Quebec Court of Appeal.

On October 11, 1991, seven counts were laid under s. 61(1)(a) against **Beamscope Canada Inc.** and its two representatives, **Larry Wasser** and **Morey Chaplick**, in relation to the sale of Nintendo products. A preliminary hearing is scheduled for June 25, 1992.

On December 19, 1991, a total of four counts were laid under s. 61 against two real estate brokerage companies, **Royal LePage Real Estate Services Ltd.** and **Roberts Real Estate Ltd.**, and against three individuals. The charges relate to real estate commission rates. A preliminary hearing of the charges against **Roberts Real Estate Ltd.** and its principal, **Gerald Roberts**, is scheduled for August 4 and 5, 1992. A preliminary hearing of the charges against **Royal LePage Real Estate Services Ltd.**, **Ted Zaharko** (a Vice-President) and **John Roche** (Branch Manager) is scheduled for August 18 to 20, 1992.

#### OTHER MATTERS

On January 28, 1991, the Federal Court of Canada dismissed a Statement of Claim by the Attorney General which sought to clarify whether a **Winnipeg Real Estate Board** (Winnipeg Board) by-law, requiring that agents have no occupation other than real estate business, is contrary to specific provisions of a prohibition order issued on December 20, 1988 against the **Canadian Real Estate Association** (CREA) and several real estate boards (see page 22 of the 1989 Annual Report). Although the Winnipeg Board is not a respondent to the order, its activities are indirectly covered by virtue of its membership in CREA. The Court found that the order compelled CREA to obtain an agreement from all real estate boards indicating that they would comply, but that it did not require CREA to police activities of the member boards. An appeal of this decision was heard by the Federal Court of Appeal on March 5, 1992. A decision is pending.



## **APPENDIX V CRIMINAL OFFENCES IN RELATION TO COMPETITION: DISCONTINUED INQUIRIES**

There were no inquiries relating to criminal offences formally discontinued by the Director in the 1991-92 fiscal year.

# APPENDIX VI

## MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES OFFENCES: PROCEEDINGS

### ACCUSED CONVICTED

114978 Canada Inc.

129034 Canada Inc, c.o.b. as Consumer Advertising Specialty

132013 Canada Ltd., c.o.b. as Niagara Labs, Niagara Labs Hair and Scalp, and Stanley H. Weisberg (1988/89, appeal dismissed)

139834 Canada Inc., c.o.b. as Distribution Copie Centrale/ Distribution Copy Central

141086 Canada Ltée, c.o.b. as Institut Beauté Service Inc., and Claudette Daunais

279707 Alberta Ltd., c.o.b. as Visions Electronic Superstores (conviction affirmed on appeal)

291009 Ontario Limited, c.o.b. as Lake Huron Resort, Paul Britton and Marjorie Loreen Britton

480359 Ontario Limited, c.o.b. as Ceiling Fan Distributors

617325 Ontario Inc., c.o.b. as Hyundai of Mississauga

Alpha Auto Parts Limited, c.o.b. as Q.M.I. Canada

Angelo Dimeo and Angelo's Gold Factory Inc., c.o.b. as The Gold Factory

Banque Centrale des Entreprises du Canada (Cdn Corp) Inc.

Bissell & Bissell Ltd.

Chausseures Alté Ltée

Comtrans Inc.

Cross Canada Liquidators (1984) Inc., c.o.b. as Cross Canada Liquidators

Davca Building Supplies Limited

Dennis Haslinger a.k.a. Douglas Haslinger, c.o.b. as Halbert's

Donald Mercer Cormie

E.M.S. Weight Loss Centers Canada Inc., now c.o.b. as E.M.S. Vitrim Weight Loss Centers

European Toning Clinic Limited

Figure & Face Salons Ltd.

Fitzroy Jackson, c.o.b. as The Mortgage Saver Systems

Gemini Investments Ltd. and Andre J. Lavoie

IFA Intercontinental Fine Arts Ltd.

K.T. Promotions Ltd., c.o.b. as K.T. Promotions, Inc., and Kernan Todd Robinson

Kerry S. Scott, c.o.b. as The Trail Shop

La Maison de Tissus Bouclair Ltée

Louis Luc Roy, Raisinase R.R. Inc. and 146474 Canada Inc.

Lundrigans-Comstock Limited, c.o.b. as ABM Atlantic Building Material

MacLellan Lincoln Mercury Sales Limited

Magnetizer Canada Inc.

Marché A et C Ltée

Markalin Sales Limited, c.o.b. as M. Fleishman & Son Auctioneers

NEC Canada Inc.

Nottawasaga Bay Holdings Limited, c.o.b. as Thornbury Harbour Club

Sports Henri Deshaies Inc.

Stereo People of Canada Ltd.

Stroh Brewery Company (Canada) Limited

Sunil Handa, c.o.b. as Tai Pan Enterprises

T.D.M. Drugs Inc., c.o.b. as Howie's

The Marbowe Corporation

The Water Factory Inc.

Trim-A-Weigh Spa Inc.

## ACCUSED NOT CONVICTED<sup>1</sup>

421307 Ontario Limited, c.o.b. as Speedy Motors, and Jack Rafik

448881 Ontario Limited, Rhonda Emmerson (formerly Rhonda Louisa Parker) and Alan Parker

648017 Ontario Inc., formerly BDR Audiotex Inc., and 155066 Canada Inc., c.o.b. as Bell Canada (1990/91)

830953 Ontario Limited, Thompson-Chung Enterprises, c.o.b. as European Toning Clinic, Peter Rieser and Patty Rieser

836050 Ontario Limited, Shape Investments Inc., Omega Image Inc., Body Works Investments Inc., all c.o.b. as E.M.S. (Vitrim) Weight Loss Centers, and Peter Stavropoulos

Alda Instruments Limited, c.o.b. as Doering & Brown, Peter Mount and Salter de Gruchy Inc.

Alex Morris (1990/91)

Alexandre Kowalczyk, 167786 Canada Inc., c.o.b. as Vita Plante, and 161926 Canada Inc., c.o.b. as Scientex Corp. Inc., and Claudette Daunais

Allen Fleishman and Marvin Fleishman

Amway of Canada Ltd. (1990/91)

Ashley Walkley

Barbara Cox, c.o.b. as High-Tech Muscle Toning and Weight Loss Clinic

Cana Promotions Inc. (formerly K.E.P. Research Inc.), Raymond Briddon and Gerald Doren

Carousel Travel 1982 Inc., 506223 Ontario Inc., c.o.b. as Solar Sales & Management Consultants, Dolores Maher, Robert Niddery, Victor Palermo and Kenneth Gertner

Claude Hénaire, c.o.b. as Monsieur Tapis (acquitted on appeal)

David Samuel, David Kleiner and 471451 Ontario Limited, c.o.b. as Dana Trading Company (Crown appeal dismissed)

Ed Baggaley Limited (1990/91)

Endre Lillejord, Randy Widmer and Fuel Base Industries Inc.

Filter-Rite Water Systems Inc. and Alexander MacEachern

Flavio Pincente, George Pozios, Young's Furniture Sales Ltd. and Robert Young

Gordon Burgardt

Greco-Latino Furniture & Appliances Ltd. and George Pozios, both c.o.b. as Cross Canada Liquidators

Hamel Fourrures Inc./Hamel Furs Inc. and Daniel Dellazizzo

Ian James MacKenzie

James Mastropolo, c.o.b. as Westmont Corporation, Can Am Enterprises, Network Sound Inc., Great White North Inc. and Comtrans Inc.

James Philip Barczak and Carola Sherry Barczak

James Wong, c.o.b. as JHW Marketing Enterprises

John Bell Sales Agencies Inc. and Shoppers Drug Mart Limited

John Mills Cormie, Kenneth Nelson Marlin and Christa Ute Petracca

Joseph Andre Morin

Ken Simard Sales Inc. (acquitted on appeal)

Kenneth Shore

Le Bifhèque Restaurants Inc. and Stephen Sklar

Les Fourrures Shuchat Canada Liée

Malcolm G. Brendesh, c.o.b. as Netya Energy Solution Inc.

<sup>1</sup> Includes conditional and absolute discharges, withdrawals, stays of proceedings, etc.

Multitech Warehouse Direct Inc. (Winnipeg charges)

Navdeep S. Bhatia

Nelson Morley Sunshine

Nicholas Ward

Pepsi-Cola Canada Ltd., c.o.b. as Frito-Lay Canada

Power-Line Marketing Inc., Vito Pirri and Timmy Mark Kukovica

Power-Up Canada Ltd.

Sheldon Abramovitch and Stephen Sklar, c.o.b. as Liquidation Pals

Sherry Walsh and Karina Liber

Thomas Alberga

Victor Starecky, c.o.b. as Emstar Electronics

William S. Phillips

## **PROHIBITION ORDERS PURSUANT TO SUBSECTION 34(2)**

Dearborn Motors Ltd.

## **PROSECUTIONS COMMENCED**

1505-7110 Québec Inc., c.o.b. as Meubles Jacques Bigras Inc.

2619-7533 Québec Inc., c.o.b. as Les publications Groupe R.R. International Inc., Danielle Ouimet and Louis-Luc Roy

147869 Canada Inc., c.o.b. as Cumberland

617325 Ontario Inc., c.o.b. as Hyundai of Mississauga, and Navdeep S. Bhatia

782886 Ontario Limited, c.o.b. as Tiger Wholesale Industries, Herman Anthony Bowman, c.o.b. as Chief Wholesale, and Jorge Fonseca

Advanced Water Technology Inc., 671135 Ontario Ltd., c.o.b. as York Energy Conservation, David Lorenzetti and Mike Grabowski

Alpha Auto Parts Limited, c.o.b. as Q.M.I. Canada, 421307 Ontario Limited, c.o.b. as Speedy Motors, and Jack Rafik

Aztec Industries Eastern Limited, c.o.b. as Aztec Industries and/or Aztec Water Systems, James A. Bird and Jack Harrand

Banque Centrale des Entreprises du Canada (Cdn Corp) Inc. and Christian Varin

Carousel Travel 1982 Inc., c.o.b. as Carousel, Carousel Holidays, Carousel Tours, Club Carousel

Champions Fitness Ltd., c.o.b. as Champions and Champions Fitness Centres, Michael Dean Watson and Gene Alexander Kwiatowski

Cumberland Drugs (Merivale) Ltd./Pharmacentres Cumberland (Merivale) Ltée

Dalmar Motors Limited and Francis W. Dalglish

Décorasol Inc.

Dube's Furniture Warehouse (1984) Ltd. and Mario Charlebois

Encanteurs Continental Limitée

Filter-Rite Water Systems Inc. and Alexander MacEachern

Fuel Base Industries Inc., Randy Widmer and Endre Lillejord

Goodman's China and Gift Store Ltd. and Samuel Goodman

Great Universal Stores of Canada Limited, c.o.b. as Légaré Woodhouse

Hay-Tegh Pharmaceutique Inc., c.o.b. as Cumberland

Hudson's Bay Company, Compagnie de la Baie d'Hudson, c.o.b. as The Bay

I.B. Contracting Limited

Kerry S. Scott, c.o.b. as The Trail Shop

Les Magasins D.J. Shiller Inc.

Les manufacturiers de bijoux L.S.M. Ltée and Denis Perrier

Les publications Groupe R.R. International Inc., c.o.b. as La Société M.S.A.

Liquidation Couronne Inc.

Mazda Canada Inc., c.o.b. as Mazda

Nottawasaga Bay Holdings Limited, c.o.b. as Thornbury Harbour Club, and Joseph Andre Morin

Popsicle Industries Ltd., Robert (Bud) Hepburn and Myra Lofts

Power-Line Marketing Inc., Vito Pirri and Timmy Mark Kukovica

Produits naturels de Longpré Inc., Lucy Longpré, Euro-Produits naturels Inc. and Pascal Verrees

Publications Groupe R.R. International Inc., 2619-7533 Québec Inc. and Louis-Luc Roy

Richard Kowalczyk, c.o.b. as Distribution du Temple Enr.

Rist Accessories Inc. and Wesley Rist

Softtron International (Canada) Limited and Leo Adrien Renaud

Sports Henri Deshaies Inc.

Stroh Brewery Company (Canada) Limited and Ashley Walkley

Sunrise Lighting Distributors (Maritime) Limited, c.o.b. as Sunrise Lighting, and Mark Sadofsky

Uvex Toko Canada Ltd. and Andrew Murdison (1990/91)

V.O.C.M. Radio Newfoundland Limited and Joseph V. Butler

Victor Starecky, c.o.b. as Emstar Electronics

Vogue Furriers Limited and Ben Friedman

Worldwide Sleep Centre Limited, c.o.b. as Worldwide Bedroom Super Store, and David Turner

## APPENDIX VII

### MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES OFFENCES: DISCONTINUED INQUIRIES

Industry	Section of the Act	Nature of Inquiry and Conclusion Reached
<b>UNDERTAKINGS<sup>1</sup></b>		
Cellular Phones	52(1)(a)	631523 Ontario Limited, c.o.b. as Mark's Stereo Centre, Issue 2/3 1991
Automobiles	52(1)(a)	Cyrville Chrysler Plymouth Ltd., Issue 2/3 1991
<b>OTHER REASONS</b>		
Groceries	52(1)(a)	A complaint was received regarding a special offer made on a product's package. Investigation revealed that the firm in question had made sufficient efforts to inform the public of the complete terms of the offer.

<sup>1</sup> Where the receipt of an undertaking is the impetus for the discontinuance of an inquiry, reference can be made to the summary of the case which appears in the issue of the *Misleading Advertising Bulletin* noted.



## **APPENDIX VIII RECENT PUBLICATIONS OF THE BUREAU OF COMPETITION POLICY**

*Predatory Pricing Enforcement Guidelines*

*Price Discrimination Enforcement Guidelines*

*Guiding Principles for Environmental Labelling and Advertising*  
(developed jointly with the Bureau of Consumer Affairs)

*Misleading Advertising Bulletin* (issued quarterly)

News releases (issued periodically)

Copies of selected speeches made by the Director and former Directors are available to the public. Those wishing to obtain copies should contact:

Resource Centre  
Bureau of Competition Policy  
Consumer and Corporate Affairs Canada  
50 Victoria Street  
Hull, Quebec  
K1A 0C9

Telephone: (819) 994-0798  
Fax: (819) 953-5013

# APPENDIX IX

## HOW TO CONTACT THE BUREAU OF COMPETITION POLICY

### GENERAL INFORMATION

Anyone wishing to reach the Director or a member of the Bureau to obtain general information, make a complaint, or request an advisory opinion may contact the following offices. Complaints may also be forwarded to any of the Bureau's regional or district offices listed below.

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

### 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 below:

Mergers Branch  
Consumer and Corporate Affairs Canada  
50 Victoria Street, 19th Floor  
Hull, Quebec  
K1A 0C9

Telephone: (819) 953-7092  
Fax: (819) 953-6169

The Bureau recommends that notification filings be hand-delivered.

### 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. Correspondence or telephone calls may also be directed to the Marketing Practices Branch headquarters in the National Capital region.

Headquarters  
National Capital Region  
Marketing Practices Branch  
Consumer and Corporate Affairs Canada  
50 Victoria Street  
Hull, Quebec  
K1A 0C9

Telephone: (819) 997-4282  
Fax: (819) 953-2557

### REGIONAL AND DISTRICT OFFICES

1400-800 Burrard Street  
Vancouver, British Columbia  
V6Z 2H8

Telephone: (604) 666-8659  
Fax: (604) 666-5031

Sam Livingston Building  
510 12th Avenue S.W.  
Calgary, Alberta  
T2R 0H3

Telephone: (403) 292-5608  
Fax: (403) 292-5188

Oliver Building  
10225 100th Avenue  
Edmonton, Alberta  
T5J 0A1

Telephone: (403) 495-2489  
Fax: (403) 495-2466

260 St. Mary Avenue  
Room 345  
Winnipeg, Manitoba  
R3C 0M6

Telephone: (204) 983-5567  
Fax: (204) 983-3159

4900 Yonge Street, 6th Floor  
Willowdale, Ontario  
M2N 6B8

Telephone: (416) 224-4065  
Fax: (416) 224-4687

Federal Building  
451 Talbot Street, Room 300  
London, Ontario  
N6A 5C9

Telephone: (519) 645-4119  
Fax: (519) 645-5114

69 John Street South  
Second Floor  
Hamilton, Ontario  
L8N 2B9

Telephone: (416) 572-2873  
Fax: (416) 572-4216

112 Dalhousie Street, 3rd Floor  
Québec, Quebec.  
G1K 4C1

Telephone: (418) 648-3939  
Fax: (418) 648-4120

Guy Favreau Complex  
200 René Lévesque Blvd. W.  
Suite 502, East Tower  
Montreal, Quebec  
H2Z 1X4

Telephone: (514) 283-7712  
Fax: (514) 496-2316

50 Brown Avenue  
P.O. Box 38001  
Dartmouth, Nova Scotia  
B3B 1X2

Telephone: (902) 426-6002  
Fax: (902) 426-4536

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