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ANNUAL REPORT

Director of Investigation
and Research

Competition Act

For the year ended March 31, 1994

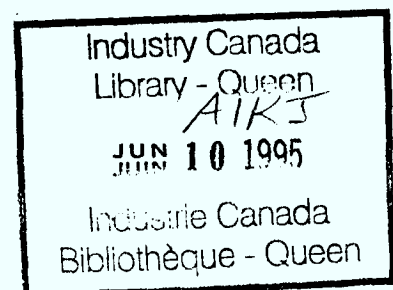
Canada

ANNUAL REPORT

Director of Investigation
and Research

Competition Act

For the year ended March 31, 1994
to the Hon. John Manley, Minister





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March 14, 1995

The Honourable John Manley, P.C. M.P.,
Minister of Industry Canada
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, 1994.

George N. Addy
Director of Investigation
and Research

"The Director shall report annually to the Minister on the proceedings under this Act, and the Minister shall cause the report to be laid before each House of Parliament on any of the first 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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REPORT OF THE DIRECTOR

INTRODUCTION

This is my first Annual Report since being appointed Director of Investigation and Research in December 1993. I consider myself fortunate to be able to lead the Bureau of Competition Policy at a time when there are significant public policy challenges and opportunities facing the organization as we approach the next millennium.

The Annual Report traditionally provides the most complete reading of the Bureau's activities and also allows the Director to outline enforcement policies, new initiatives as well as economic and legal issues affecting competition policy in Canada. The Annual Report this year is different from the traditional format. While it has fewer pages, its substantive content is comparable to past reports. I think we have succeeded in producing a more informative, and more relevant report. Concomitant with this change, the Bureau's public communications on significant case and competition policy developments will increase.

Today competition policy is acknowledged as a key element of the federal government's business framework laws. Whether in the Finance Minister's document "Agenda: Jobs and Growth" or the government's call for comments on policy directions as we move down the information highway, one theme is clear - a competitive marketplace is in the best interests of Canada. Over and again, the encouragement of competition, as an instrument of economic policy, has proven to be economically superior and less costly to the public than government direction or regulation of industry. Historically, competition policy has largely been seen as protecting price competition for the benefit of consumers. While this continues to be a significant part in the rationale for competition policy, there is a growing acceptance that competition policy fosters the best climate for economic growth and prosperity.¹ This recognition has led many developed countries, such as the United States, Japan and Sweden, to renew and invigorate antitrust enforcement and new democracies in Eastern Europe and developing countries in Latin America and Asia are developing their own competition laws. In my opinion, this points to a growing consensus among legislators and policy makers of the need to protect and foster the benefits of a competitive market economy.

Canada's economy is changing rapidly. The influence of deregulation, globalization and foreign competitors is pervasive, and international and inter-provincial trade barriers are being reduced and, in some industries, eliminated altogether. Firms and industries are restructuring, exploring new markets and constantly rethinking how they are doing business. Writ large, these are positive developments. However, the removal of institutional impediments to competition should not be supplanted by private restraints; otherwise, these economic benefits will be lost. Continued and vigorous enforcement of competition law and advocacy of the benefits of competition are needed to ensure that the objectives of a competitive market are not frustrated by unlawful or uninformed action. Important sectors of the economy, notably telecommunications, transportation and financial services, are undergoing significant and rapid change. The sound application of competition policy today will help to ensure that these industries continue to evolve into competitive, efficient and innovative industries in the future.

THE YEAR IN REVIEW

The administration and enforcement of the *Act* takes place within the environment of the federal public service, and like managers elsewhere in the public service, Bureau managers were preoccupied, at times, with administrative challenges during the 1993-94 fiscal year. On June 25, 1993, most of the former Department of Consumer and Corporate Affairs, including the Bureau, joined Industry, Science and Technology, Investment Canada and part of the Department of Communications. In November 1993, the Department became known as Industry Canada, and implementing legislation that will formally create the new Department should be passed by Parliament in the new fiscal year.

The institutional arrangements governing the Bureau and the enforcement and policy priorities of the Bureau have not changed with the restructuring of federal government departments. In my statutory role as Director of Investigation and Research, I continue to have the sole authority for the enforcement and administration of the *Competition Act*.

The Bureau, like all parts of the federal government, is experiencing ongoing resource constraints. At the end of the fiscal year, the Bureau's budget was reduced by nine percent and, consequently, staff reductions were undertaken. Marketing Practices Branch district offices

¹ See Michael Porter, *The Competitive Advantage of Nations* (New York: Free Press, 1990)

in London and Calgary were closed during the year, and responsibilities for their respective activities were transferred to the Marketing Practices offices in Toronto and Edmonton. Limited resources are an ongoing reality that will challenge the Bureau's ability to maintain its historical levels of service to the public without sacrificing quality. I believe that we are fulfilling our mandate despite financial limitations. Greater use of computers and case selection criteria in case management and litigation, better employee training, expanded compliance and public education initiatives as well as new deterrence strategies are among the innovative measures the Bureau has implemented to meet this challenge.

Bureau activities continue to focus on three areas:

- (1) enhancing compliance with the law through a combination of enforcement, persuasion and education;
- (2) promoting greater cooperation among enforcement agencies and harmonization of legal and economic principles and practices across competition policy regimes in the international arena; and,
- (3) improving the efficiency of the organization. While continuing to devote most of the Bureau's resources to enforcement and compliance activities, comparatively greater attention has been placed on the international antitrust agenda and interventions before regulatory proceedings during the past fiscal year.

ECONOMICS AND INTERNATIONAL AFFAIRS

The Economics and International Affairs Branch carries out several functions in support of competition law enforcement and policy advocacy. These functions encompass economic analysis of enforcement case matters and policy issues, formal and informal economic policy interventions and international cooperation and convergence work.

Rigorous economic analysis is a central feature of the Bureau's enforcement work. The Branch's Enforcement Economics Division, established formally in 1992-93, now has five economists specializing in industrial organization analysis, complemented by an academic visitor occupying the T.D. MacDonald Chair in Industrial Economics for an annual term. Don McFetridge of Carleton University in Ottawa completed his term as Chair in 1993-94, and was succeeded by Roger Ware of Queen's University in Kingston. The 1994-95 Chairholder will be Abraham Hollander of the University of Montreal.

In 1993-94, the Branch completed an extensive study entitled *Competition Policy As A Dimension Of Economic Policy: A Comparative Perspective* that will be published shortly as an Industry Canada Occasional Paper. During the year, the Department also released a study undertaken by the Bureau with other bureaus of the former Departments of Consumer and Corporate Affairs and Industry Science and Technology on the implications of large, "stateless" corporations. Other papers published by the Economics and International Affairs Branch are listed in Appendix IX. As an organization with specialized micro-economic expertise, it is important that we contribute actively to the public discussion of such issues.

International considerations are becoming a growing feature both from an enforcement and policy standpoint. The Bureau is playing a leading role in advancing the international antitrust agenda with respect to (i) achieving greater inter-agency cooperation, (ii) achieving greater harmonization of competition laws and enforcement practices, and (iii) promoting compatibility of competition, trade and other economic policies. The forces of globalization and freer trade as well as the anticompetitive potential of private collusive arrangements outside our borders dictate an increased emphasis for the Bureau in the international antitrust arena.

The Bureau maintains formal and informal bilateral relations with antitrust agencies in several foreign countries and also participates in the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) at the multilateral level. On a bilateral level, over the past year I met with my counterparts from a number of foreign agencies including Mexico and Australia as well as the United States with which the Bureau has annual bilateral meetings.

Reviewing bilateral instruments to ensure greater cooperation in enforcement matters has been the main focus of our meetings with officials from United States antitrust agencies. Chapter 15 of NAFTA calls for Canada, the United States and Mexico to cooperate in antitrust matters, and to establish a working group — the 1504 Working Group on Trade and Competition — where the Bureau is chairing the Canadian delegation. The first meeting of the Working Group was held in March 1994.

The Bureau's multilateral efforts continue to be directed first to the OECD, where I continued my predecessor's leadership as Chair of the Convergence

Steering group of the Competition Law and Policy Committee (CLP). The CLP report to the OECD Council of Ministers outlined the substantial progress made in competition policy convergence and cooperation over the past decade, and recommended a work program to further the harmonization process over the next five years. The Council of Ministers has fully accepted the Convergence report and instructed the OECD to continue to advance the convergence of competition laws and policies.

In addition, the Bureau participates in the work of the Intergovernmental Group of Experts on Restrictive Business Practices of UNCTAD. Also under the auspices of UNCTAD, the Bureau has been providing technical assistance for several years to developing economies in Latin America and Asia and the emerging democracies in Eastern Europe and the Commonwealth of Independent States as they undertake the development and implementation of competition laws in the move toward market based economies.

REPRESENTATIONS BEFORE REGULATORY BOARDS

During the fiscal year, I made seven representations to regulatory boards by virtue of sections 125 and 126 of the *Competition Act* which confers on the Director a statutory right of intervention before such boards². During the past year, our efforts concentrated on promoting the benefits of increased competition in regulated "network" industries that are experiencing both structural and regulatory change. In particular, priority was given to interventions dealing with telecommunications and air transportation matters before the Canadian Radio-Television and Telecommunications Commission (CRTC) and the National Transportation Agency (NTA). The regulation of hydro electricity is an area of increasing interest as is the convergence of telecommunications and broadcast technologies i.e., the "information highway."

Past Directors of Investigation and Research have consistently intervened before the CRTC promoting the benefits of competition in the telecommunications industry through liberalization of entry into domestic long distance telecommunications services. I believe that our representations were reflected in the pro-competition decisions by the CRTC in both the June 1992, **CRTC Decision 92-12**, allowing Unitel Communications Inc. to compete in the domestic long distance market as well as the **CRTC Telecom Decision 93-8**,

issued in July 1993, which extended interconnection through trunk side access to permit increased competition by long distance resellers.

In March 1993, the previous Director, Howard I. Wetston, intervened before the CRTC proceedings relating to the "Restructuring of Overseas Message Toll Service and Related Interconnection Agreement" between Teleglobe Canada Inc. and the members of Stentor (**Telecom Public Notice 93-16**). As part of the proceeding, the Bureau served interrogatories on the parties and provided a detailed written submission to the CRTC addressing competition issues. The submission specifically addressed a number of competition concerns in respect of the market exclusivity arrangements in the proposed Interconnection Agreement. In particular, the Bureau was concerned that the arrangements between Teleglobe and Stentor, both individually and taken together, would reduce actual and potential competition in the Canada-overseas, Canada-United States and the domestic telecommunication services markets. Indeed, with Stentor members committing not to enter the overseas transmission of telecommunications services market until 2003, the Teleglobe monopoly would effectively be extended to over 10 years, five years beyond the monopoly extension period granted by the Government. Having just realized more competitive access in telecommunications markets in Canada, it was important that private arrangements should not undermine these achievements.

In September 1993, the CRTC approved the Interconnection and Operating Agreement. The decision noted that the competitiveness of the market had increased substantially over the previous year with the development of competitive options to the traditional telephone companies as well as lower barriers to entry resulting from favourable regulatory rulings on long distance interconnection and equal access. In total, the CRTC decided that these factors largely negated the concerns of the loss of the potential of Teleglobe as a domestic service provider that could potentially result from the terms of the interconnection agreement.

In November 1993, I intervened before the CRTC in the Commission's Telecommunications Regulatory Framework proceeding (**CRTC 92-78**). During the public hearing we called Robert Crandall, a leading U.S. telecommunications economist, as an expert witness. In addition, a panel of three Bureau members testified on the relationship between competition law and regulation as well as the potential application of the *Competition Act* to the telecommunications industry. In January 1994, during Final Argument, I urged the

² The Civil Matters Branch has lead responsibility for regulatory intervention; however, during the fiscal year Criminal Matters, Mergers and the Economics and International Affairs Branches undertook regulatory intervention work as well.

CRTC to undertake sweeping changes to telecommunications regulation by replacing rate base rate of return regulation with a price cap regime to enhance market oriented pricing and economic efficiency in the provision of telecommunications services. I also made extensive representations on the advantages of the CRTC applying competition policy principles in the exercise of its newly acquired ability to forebear from active regulation under the new *Telecommunications Act*. At year end, a decision in this matter has yet to be rendered by the Commission.

In March 1993, the NTA commenced its review of **AMR Corporation's proposed investment in Canadian Airlines International** ("Canadian"). The NTA review followed the **Gemini** proceedings before the Competition Tribunal in February and March 1993. (Further discussion of the **Gemini** proceedings is contained in this Report under Mergers). Public hearings in March and April 1993 were held to determine whether the proposed investment would be in the public interest, including whether Canadian would still be "controlled in fact" by Canadians. The former Director made representations to the NTA on the competition aspects of the proposed transaction. On May 27, 1993, the NTA concluded that the proposed transaction was not against the public interest and that domestic control of Canadian would remain intact. The NTA's conclusions with respect to competition were consistent with those of the earlier Competition Tribunal decision in the **Gemini** matter, and the Agency's decision played an important role in the subsequent reorganization of Canadian. Clearly, the NTA's decision was critical to preserving competition in airline markets in Canada.

During the fiscal year, I intervened in the anti-dumping proceedings of the Canadian International Trade Tribunal (CITT) regarding **imports of fiberglass pipe insulation** from the United States. During the injury determination phase of the proceeding, the CITT did not agree with my submission that the Canadian firms' predicament was not attributable to imported product prices. In the following public interest phase, the CITT, while recognizing that prices would increase for domestic consumers, rejected my suggestion that the duty proposed should be less than the maximum allowable to reduce the adverse consumer welfare effect. I also challenged the CITT's refusal to provide the Director with access to its confidential record of the proceeding. While the Federal Court of Appeal upheld the CITT's decision, it noted that the provisions

governing access to the CITT record may frustrate my ability to address competition issues in proceedings before the CITT.³

As discussed in last year's Annual Report, in March 1993, the previous Director made a submission to the National Energy Board's **Review of Inter-utility Trade in Electricity**. The submission highlighted the potential economic benefits of freer trade in electricity and related competition policy issues. The Board's report on this matter, which was completed in January 1994, and released by the Minister of Natural Resources in June 1994, is generally consistent with the position taken in our submission in that it emphasizes the benefits that can be achieved through freer trade among utilities in electrical power.

Late in the current fiscal year, the Bureau sought and obtained intervenor status at the Ontario Energy Board hearing on the ongoing **structural reorganization at Ontario Hydro** and proposed changes to the utility's rate structure for 1995. The hearings will begin in May 1994, and our representations will focus on the implications of the current, and potential future, restructuring at Ontario Hydro for competition in the Ontario electricity sector.

CIVIL MATTERS

Most of the year in the Civil Matters Branch was devoted to preparing several cases which should proceed to the Competition Tribunal in 1994-95 and representations to regulatory boards. The Branch was also active on several policy fronts including telecommunications, transportation, financial services, self-regulating professions and health care.

In 1993-94, I started an inquiry relating to certain business practices of the **A. C. Nielsen Company of Canada Limited** ("A. C. Nielsen"), a company providing marketing research to packaged consumer products manufacturers. On April 5, 1994, I filed an application under the abuse of dominant position provisions with the Competition Tribunal, alleging that A. C. Nielsen has entered into exclusive contracts with major retailers for the purchase of scanner data that restrain the ability of others to compete with A. C. Nielsen. In certain respects, this application follows the same line of review of contractual practices as in the two previous decisions of the Competition Tribunal under the abuse provisions.⁴ The hearing will take place during 1994-95.

³ *Director of Investigation and Research v. The Canadian International Trade Tribunal et. al.* [1993] F.C.J. No. 1362 Appeal No. A-584-93

⁴ *Canada (Director of Investigation & Research) v. Nutrasweet Co.*, (1990), 32 C.P.R. (3d) 1 (Competition Trib.); and *Canada (Director of Investigation & Research) v. Laidlaw Waste Systems Ltd.* (1992), 40 C.P.R. (3d) 289 (Competition Trib.)

During the past year, a number of matters were resolved by parties altering their business practices after being advised of the Bureau's competition concerns. These resolutions were voluntary and did not necessitate applications to the Competition Tribunal on a contested or consent order basis. Included among such alternative case resolutions were refusal to deal matters relating to the sale and/or service of telecommunications equipment and legal database services. As well, a formal inquiry into allegations that a computer manufacturer engaged in tied selling of computer systems and related computer maintenance services was discontinued following a voluntary alteration of the computer manufacturer's sales practices.

Last year's Annual Report discussed two appeal court decisions relating to the 1989 order issued by the Competition Tribunal against **Chrysler Canada Ltd.** to supply Chrysler automotive parts for export to R. Brunet of Montreal. In September 1992, the Competition Tribunal dismissed an application in relation to earlier contempt proceedings before the Competition Tribunal that had been stayed. Following a private settlement between Chrysler Canada Ltd. and Mr. Brunet, the Competition Tribunal rescinded the 1989 supply order after a consent proceeding under section 106(b) in December 1993.

MERGERS

Overall merger activity in Canada continued to fall from 1091 reported cases in 1989 to 600 in 1993, according to the list of publicly reported mergers (Appendix III). There was also a decrease in the number of merger examinations commenced from 204 during the 1992-93 fiscal year to 192 during the 1993-94 period. No merger applications to the Competition Tribunal were filed during the year; however, two merger proposals were abandoned by parties as a result of concerns identified by the Bureau.

Regardless of the small number of transactions that raise substantive competition issues, merger cases often have a high public profile and involve very significant sectors of the economy. Enforcement activities during the year were dominated by the **Gemini** proceedings before the Competition Tribunal, the Federal Court of Appeal and the Supreme Court of Canada.

In November 1992, my predecessor applied to the Competition Tribunal under section 106 of the *Act* asking the Tribunal to modify a consent order issued in July 1989. The 1989 consent order enabled Air Canada and Canadian to merge their previously

independent computer reservation systems (CRS) under certain terms and conditions into a single system known as Gemini.

The application requested the Competition Tribunal to provide for the early termination of the hosting contract that bound Canadian to Gemini until at least 1999. The Bureau alleged that circumstances had changed since 1989 in that Canadian's financial position had deteriorated to the point that it could not survive on its own, and therefore the only alternative that would not substantially lessen competition was a proposed transaction with AMR Corporation. An integral part of the AMR proposal was the transfer of Canadian's internal reservation system from Gemini to Sabre, the CRS operated by AMR's wholly owned subsidiary, American Airlines, Inc.

In April 1993, the majority of the Competition Tribunal decided that it did not have jurisdiction to grant the relief requested. However, the Competition Tribunal unanimously indicated that if it had jurisdiction, it would have granted the order. The Competition Tribunal found that without completion of the AMR proposal, Canadian would likely fail or merge with Air Canada, and competition in domestic airline markets would undoubtedly be substantially lessened. In addition, the Competition Tribunal was not convinced on the evidence that the AMR proposal would cause Gemini to fail or lessen competition substantially in CRS markets.

In July 1993, the Federal Court of Appeal ruled that the Competition Tribunal did have jurisdiction, and the matter was sent back to the Tribunal for reconsideration under the substantive merger provisions of the *Act* whereby the Competition Tribunal was to consider, in the present changed circumstances, whether the 1989 Gemini merger would likely result in a substantial lessening of competition. The Supreme Court of Canada dismissed Air Canada's application for leave to appeal this decision.

After another decision by the Federal Court of Appeal, this time confirming the Competition Tribunal's decision to limit the scope of the forthcoming hearing, the Tribunal issued an order on November 24, 1993 varying the July 1989 consent order, as requested by the Director, thereby releasing Canadian from its obligations under the hosting contract with Gemini. Subsequent appeals of the decision and order were abandoned by Air Canada and the other respondents, clearing the way for Canadian to transfer its "hosting"

activities to American Airlines, Inc.'s Sabre CRS. On April 28, 1994, Canadian and AMR Corporation completed the equity transaction.

In my view, the **Gemini** case is notable for two reasons, the first and most important being the preservation of competition in domestic airline markets. This case also demonstrates that the Competition Tribunal process works, and can work quickly, even in very complex and hotly contested litigation.

Review of the proposed acquisition of **Purolator Courier Inc.** by **Canada Post Corporation** was another high profile matter requiring in-depth analysis. I concluded in November 1993, that the proposed acquisition of Purolator by Canada Post would not lessen competition substantially in the small package express courier market. A large part of the examination focused on the potential for subsidization of Purolator with revenues from Canada Post's statutory monopoly in letter mail. Competing courier firms argued that cross-subsidization would force them to leave the market thereby lessening competition substantially. After a thorough examination, I concluded that there were no grounds to believe that cross-subsidization had occurred or would occur following the completion of the Canada Post / Purolator transaction, which would likely result in a substantial lessening or prevention of competition.

Canada Post confirmed that Purolator would operate as a separate corporation and that all transactions between Canada Post and Purolator would be on an arm's length, commercial basis. As well, the effectiveness of remaining competitors, deregulation of the transport sector, relatively modest barriers to new entry and expansion by existing competitors as well as the presence of close substitute services such as less-than-truckload trucking companies that offer competitive services also had a significant bearing on my decision not to oppose the transaction.

As legal monopolies are allowed to expand their activities into commercial markets, particular attention will increasingly be brought to bear on consideration of potential cross-subsidization from monopoly to non-monopoly spheres of activities. Another issue raised by competing courier services in the Canada Post / Purolator matter was whether it was appropriate for a Crown corporation to acquire a private sector competitor to strengthen its position in a competitive market. This was not considered in our analysis. The *Competition Act* applies to the commercial activities of Crown agents that are corporations in competition with others, and this includes the courier services

provided by Canada Post. However, the *Act* does not call on the Director to consider whether Crown corporations from a public policy perspective should compete with private sector firms.

CRIMINAL MATTERS

The work of the Criminal Matters Branch continues to give priority to conspiracy, bid-rigging and price maintenance investigations, the criminal offences with the greatest potential to quell competitive rivalry. The most significant developments during the year were the first convictions for a foreign-directed conspiracy and two decisions in separate proceedings upholding the constitutionality of the price maintenance provisions of the *Act*.

As described in last year's Annual Report, Abbott Laboratories and related subsidiary companies were granted immunity from prosecution by the Attorney General of Canada when the corporation provided evidence of an illegal agreement with another company, **Chemagro Limited**, to share the biological insecticide market for forest protection in Canada. Abbott provided restitution to the Quebec and Ontario forestry authorities of \$2.1 million and agreed to a prohibition order issued by the Federal Court in November 1992. Chemagro pleaded guilty and was fined \$750,000 for the domestic conspiracy in June 1993.

As a result of Abbott's voluntary disclosure, a former employee of Chemagro was granted immunity from prosecution in return for exposing and cooperating in an unrelated conspiracy investigation of a separate insecticide market involving Chemagro and a third firm, **Sumitomo Canada Limited**. The illegal arrangement was between Bayer A.G., Germany, the ultimate parent company of Chemagro, and Sumitomo Chemical Co., Japan, to lessen competition unduly in Canada in the sale of chemical insecticides from 1982 to 1988. In June 1993, Chemagro was fined \$1.25 million for implementing the conspiracy in Canada, the first foreign-directed conspiracy conviction under the *Competition Act*. The \$2 million total fine against Chemagro is the largest fine imposed against a single firm under the *Act*. In November 1993, Sumitomo Canada Limited was fined \$1.25 million for the same offence. When all the convictions were registered, the dollar value of the resolution was more than \$5 million, comprising over \$2 million in restitution payments and \$3.25 million in fines.

The effectiveness of our policy of recommending immunity to the Attorney General in certain circumstances, commonly referred to as the "Immunity Program,"⁵ has been amply demonstrated in the two **insecticides** cases.

In September 1993, the Court of Queen's Bench of Alberta and the Quebec Court of Appeal upheld the constitutional validity of the price maintenance provisions of the *Act* in the **Calgary Real Estate** and the **E. E. Lemieux** cases. The courts found that the price maintenance provisions do not unreasonably infringe upon the right to life, liberty and security of persons guaranteed under section 7 of the Charter of Rights and Freedoms. These decisions affirm the importance of the price maintenance provisions in fostering price competition in the economy.

In February 1994, the first trial decision in the **Calgary Real Estate** case was handed down when **Roberts Real Estate Ltd.** was convicted of price maintenance. The Court of Queen's Bench of Alberta found that Roberts refused to co-operate with a competing real estate broker, Elite Real Estate, on selling commissions and refused to show Elite's listings to potential customers on at least two occasions because of the low commission policy of Elite. In March 1994, the company was fined \$25,000.⁶ The important message coming out of this decision for the real estate industry is that brokers must not discriminate against so called discount brokers, either by refusing to co-broker with them or by offering smaller selling commissions. Ultimately this decision, together with the 1988 Prohibition Order which establishes rules of conduct for the real estate industry vis-à-vis the *Competition Act*, should enhance price and other aspects of competition in the real estate industry.

In August 1993, two former executives with Canadian Oxygen Ltd. and the Linde Division of Union Carbide Canada Limited pleaded guilty to conspiracy and were fined \$75,000 each. Thus far, six individuals have pleaded guilty and have been fined a total of \$425,000 in the **compressed gas** case in addition to total corporate fines of \$6 million. In December 1993, John Tindale, the former President of Canadian Oxygen Ltd., was charged with one count of conspiracy, and a date for a preliminary hearing has been set for the new year. The deterrence value of larger fines in criminal matters, as exemplified by the fines in the **compressed gas** and **insecticides** cases, enhances compliance with the *Competition Act*.

We also experienced a significant increase in our enforcement activities in Quebec. In part, this stems from cases remanded from trial because of constitutional challenges from prior years moving forward. As well, the deregulation of various professional groups has also increased the Bureau's work demands in Quebec. Three of the four searches conducted by the Criminal Matters Branch during the fiscal year were executed in Quebec, and two applications to compel the production of documents and/or testimony under section 11 of the *Act* were also made to the courts in relation to cases in Quebec. In the **Notaries** inquiry, the section 11 order was quashed by the Federal Court of Canada on the grounds that the order violated the respondents' right to silence and residual right against self incrimination under section 7 of the *Charter*, and therefore the order itself was an abuse of process. Notice of appeal of this decision has been filed. A constitutional challenge of section 11 itself was not addressed in the court's decision.

Oral examinations under section 11 relating to **Eastern Ontario retail gasoline** markets were concluded during the year, and in January 1994, charges under the price maintenance provisions of the *Act* were filed by the Attorney General. Charges were also laid by the Attorney General in March 1994 under the conspiracy and bid-rigging provisions against four companies and four individuals involved in the waste disposal business in the Mauricie region of Quebec. Other proceedings in relation to the criminal provisions of the *Act* are reported in Appendix VI.

MARKETING PRACTICES

During the year, prosecutions were commenced in 29 new cases while 11 cases ended in convictions. The largest total fine registered during the fiscal year was \$45,000 for the misleading advertising conviction of **Great Universal Stores of Canada Ltd.**, carrying on business as Légaré Woodhouse in Montreal and elsewhere in Quebec. A conviction of particular significance is **Goodman's China and Gift Store Ltd. and Samuel Goodman** where the accused were convicted of fourteen counts of misleading advertising concerning the regular selling prices of china and dinnerware. The company was fined a total of \$11,200, and Mr. Goodman was given a suspended sentence, and placed on six months probation during which he was to perform 60 hours of community service. Tougher sentencing of individuals by the

⁵ During the fiscal year, greater leniency was adopted in the Bureau's "whistle-blower" criteria for recommending grants of immunity in prosecution. See: "Getting Down to Business: The Strategic Direction of Criminal Competition Law Enforcement in Canada" Remarks of Harry Chandler, Deputy Director of Investigation and Research (Criminal Matters) at the Insight and the Globe and Mail Conference "Emerging Issues in Competition Law" Toronto March 10, 1994. S-1141/94-02. The discussion of immunity in prosecution starts at page 9.

⁶ Roberts have filed notice of appeal on the conviction and sentence. Gerald Roberts, the proprietor of Roberts Real Estate Ltd., has elected trial by jury which is scheduled to begin in October 1994. The trial of the other accused, Royal LePage Real Estate Services Ltd. and two Calgary based executives of the company, Ted Zaharko and John Roche, was adjourned from April 1994 to September 1994.

courts will unquestionably enhance deterrence and promote compliance with the misleading advertising and deceptive marketing practices provisions of the *Act*.

In December 1993, the first charges under the new multi-level marketing provisions of the *Act*, section 55, were laid by the Attorney General against **Lifestyles Canada Limited** and three individuals. The matter will proceed to trial in the 1994-95 fiscal year.

A significant development coming out of the appeal courts was the decision of the Manitoba Court of Queen's Bench in *R. v. Multitech Warehouse (Manitoba) Direct Inc. and Michael J. McKenna*.⁷ The Court overturned the company's acquittal and entered a conviction on 39 counts of bait and switch selling under section 57(2) of the *Act*. The Crown's appeal of the acquittal of the individual was dismissed. The decision provides significant new jurisprudence on the bait and switch provision and should assist businesses seeking to avoid committing the offence.⁸

Total fines in misleading advertising and deceptive marketing practices proceedings during the year were considerably lower than in the recent past. In part, this is a result of the Marketing Practices Branch Business Plan which has reoriented activities toward cases of higher economic importance and reiterated our commitment to public education initiatives. These measures are designed to ensure that our limited resources are devoted to activities that will maximize compliance with the law. Consequently, these higher impact, more complex cases take longer to prepare and litigate, but should result in higher fines in the near future.

During the year, I initiated a number of new inquiries under the misleading advertising provisions which should result in significant enforcement action in the new year. An important area on which we are focusing is deceptive telemarketing. While most telemarketing companies conduct their business within the law, there are also a number of unscrupulous firms and individuals actively breaking the law. Deceptive telemarketing is widespread across North America, with thousands of victims each year in Canada. The Bureau is among the law enforcement organizations which receive thousands of complaints annually from victims of deceptive and fraudulent telemarketers. Our participation in **Project Phonebuster** with the Ontario Provincial Police, the Royal Canadian Mounted Police and other agencies is starting to yield results. Search warrants were executed during the year against

several key companies and individuals to obtain evidence pertaining to deceptive and fraudulent telemarketing during the year.

In addition to law enforcement activities, we are actively promoting public awareness of these practices. Unfortunately, senior citizens are often the target of deceptive and fraudulent telemarketing. In March 1994, a warning on telemarketing fraud was inserted with Old Age Security cheques to follow up on earlier public education work we conducted with various senior citizens groups and associations, as well as local police forces across the country. On a somewhat different subject, we also collaborated with Quebec government agencies, police forces, the Solicitor General and other members of the Provincial Committee on Economic Crime Prevention (Quebec) on the development and distribution of a pamphlet on pyramid selling and other get-rich-quick schemes.

Another innovative step we took during the year was the production of a short video aimed at small and medium size businesses which, in many cases, do not obtain expert advice on advertising campaigns. Through mock television commercials, the video, entitled "It's In Your Hands," deals with the many pitfalls which exist when designing and implementing promotional plans in the absence of knowledge of the misleading advertising and deceptive marketing practices provisions of the *Competition Act*. I expect businesses will find it useful in devising their advertising plans. It can be borrowed by contacting any of the Bureau's field offices or Industry Canada Information Services. We also produced a misleading advertising and deceptive marketing practices pamphlet which complements the video. Both information products should increase compliance with the *Act*.

During the year, the Branch provided 690 oral advisory opinions, largely to small and medium size businesses, and 372 written advisory opinions. The new multi-level marketing and pyramid selling provisions, which came into effect on January 1, 1993, continue to generate a significant number of enquiries from the public.

Enhancing greater inter-agency cooperation is also very important for effective enforcement of the misleading advertising and deceptive marketing practices provisions of the *Act*. Canada is a member of the International Marketing Supervision Network along with representatives from approximately 20 other OECD countries. The purpose of the Network is to determine means of addressing problems associated with cross-border marketing, and to exchange informa-

⁷ Unreported Court File No. CR 91-01-10357. Leave to appeal to the Manitoba Court of Appeal granted June 8, 1994.

⁸ Please consult *Misleading Advertising Bulletin*, issue 3,4/1993, for a detailed review of the decision of the Court of Queen's Bench.

tion among members to assist in mutual law enforcement and education. The Deputy Director of Investigation and Research (Marketing Practices) is the Canadian representative on the Network. Our participation in the Network greatly facilitates our law enforcement efforts concerning misleading advertising and deceptive marketing practices originating in other countries that are targeted against Canadians. At the same time, we assist our Network partners in dealing with offences committed in foreign jurisdictions by Canada-based companies and individuals.

INFORMATION AND COMPLIANCE PROGRAMS

For many years, public information programs and the use of compliance instruments, such as information visits and undertakings, have played an important role in promoting compliance with the *Competition Act*. Non-litigated resolutions are becoming increasingly common in the administration and enforcement of law generally.

The Compliance and Coordination Branch administers the Bureau's public education and information programs, Bureau training, including computer search training often in association with other law enforcement agencies, and related compliance policy, research and inter-departmental work. The Branch manages the Bureau's Resource Centre which provides information services on legal matters for enforcement officers and legal counsel to the Bureau. Bureau responses to requests under the *Access to Information Act* and *Privacy Act*, are also administered by the Compliance and Coordination Branch.

The Compliance and Coordination Branch undertakes a variety of projects that affect overall Bureau operations, but do not fall strictly within the activities of the various enforcement and policy branches. In June 1993, a consultation paper on a user fee proposal to recover a portion of the costs associated with providing a number of Bureau services was widely distributed.⁹ The Bureau received a number of responses to the user fee proposal, largely from the legal community, which are being considered in the Bureau's and Industry Canada's deliberations on cost recovery. Other areas of consideration include the ongoing review of investigative and evidentiary procedures as well as improving practices in respect of complaint handling, information requests and providing advisory opinions.

During the 1993-94 fiscal year, the Bureau provided over 400 written advisory opinions and numerous informal oral opinions on the application of the

Competition Act.¹⁰ These ranged from the straightforward to the very complex. An advisory opinion of particular note dealt with the application of the advertising and promotion defence in the conspiracy provisions using the analysis articulated by the Supreme Court of Canada in its 1992 decision *R. v. Nova Scotia Pharmaceutical Society et. al.* The Bureau concluded that where advertising and promotion is a significant aspect of competition in an industry, an agreement among major competitors therein to restrict advertising and promotion expenditures would not be permissible under the conspiracy provisions when such an agreement is likely to have an undue effect on markets and customers.

In February 1994, I hosted a consultative forum with members of the business and legal communities on the confidentiality provisions of the *Competition Act*. A total of 137 speeches, seminars and papers were delivered before a number of different business, legal, international and academic audiences by senior members of the Bureau. Bureau staff gave 25 seminars on the bidding provisions alone to more than 1,100 purchasing officials during the past year. I also released six press releases and senior officials responded to media enquiries on a multitude of case and policy related developments during the year as reported in Appendix II.

THE YEAR AHEAD

My goal, like that of past Directors, is to promote the benefits of competition by ensuring compliance with the law and by participating in regulatory proceedings and policy forums. With the Courts upholding the constitutionality of the Competition Tribunal as well as the conspiracy and price maintenance provisions of the *Competition Act*, we will be able to bring more cases before the courts. I also intend to make greater use of the consent order process before the Competition Tribunal, particularly in merger matters, where parties are prepared to resolve matters in lieu of contested proceedings. Experience has shown that informal undertakings, while arguably providing greater flexibility procedurally, often result in uncertainty in the marketplace. Greater use of the consent order process will also increase transparency of such resolutions and provide a means to the Director and affected parties to seek modifications and instruction in the event of changing circumstances or disagreement.

The Bureau is committed to enforcing all sections of the *Competition Act*, but in an era of resource constraint we are focusing our enforcement priorities on anti-competitive agreements among competitors, mergers

⁹ "Implementation of User Fees," Bureau of Competition Policy, Consultation Paper, June 1993 is available from the Bureau's Resource Centre. For information on how to contact the Resource Centre, refer to Appendix IX.

¹⁰ More detailed information on number of advisory opinions given and related data is presented in Appendix II.

and abuse of dominant position, areas which present the greatest potential for broad harm to competitive rivalry in markets. Our representations before regulatory boards and other competition advocacy work will concentrate on "network" industries under transition from regulated to increasingly competitive industries. Enforcement of misleading advertising and deceptive marketing practices will continue to focus on cases of significant economic impact and major telemarketing scams.

The Bureau will continue work with the Attorney General in advocating larger fines and, in egregious cases, imprisonment for serious criminal offences, such as price fixing and bid-rigging, not only to deter repeat offenders, but to deter others from offences as well. In my opinion, targeting individuals, not just corporations, is an important aspect of deterring criminal anticompetitive conduct. The vast majority of competition matters currently pending or before the courts involve charges against individual as well as corporate accused. A new feature that I will pursue in the enforcement of the criminal provisions of the *Act* in the coming year is the application of the interim injunction powers in section 33 of the *Act*.¹¹ In a related initiative, work on developing internal principles for recommending sentences to the Attorney General was completed during the year, and will be put into practice in future criminal cases. Our objective is to ensure consistency in sentencing recommendations to the Attorney General, which meaningfully reflect the substance and impact of individual cases.

Also in the enforcement arena, I expect to file a number of applications before the Competition Tribunal in 1994-95 that should bring several of the large inquiries underway in the Civil Matters Branch into the public domain. Enforcement action will also likely be taken in a number of files dealing with activity in the telecommunications industry. I regard the jurisprudence under the civil reviewable provisions of the *Act* to be underdeveloped generally; and particularly lacking on the issue of shared control or "joint dominance" under the abuse of dominant position provisions. Whether the regulated conduct defence that has developed in the criminal law jurisprudence also applies to civil reviewable matters under the *Competition Act* is another area where Competition Tribunal and judicial review is required. It is important both for the public and for the Bureau as a law enforcement agency to have these issues clarified. As well, I intend to expand the use of formal investigatory powers in the enforcement of civil reviewable matters under the *Act*.

Anticompetitive behaviour is increasingly crossing international boundaries. Foreign competition in the Canadian economy does not guarantee that the domestic market is immune from anti-competitive business practices. Securing greater cooperation with foreign agencies enforcing legislation similar to *Competition Act* is one of my top priorities. Greater cooperation with foreign agencies is necessary to preserve and protect the benefits of competition for Canadian consumers and businesses. For example, we are becoming increasingly aware of the difficulties associated with obtaining sufficient information to review cross-border merger transactions. While the increasingly integrated nature of the North American economy naturally indicates that advancing cooperation with the United States antitrust authorities should be our first objective, this should also be extended to Canada's other major trading partners.

At the end of the fiscal year, work was well underway on a consultation paper on the confidentiality provisions of the *Act*. The ensuing commentary will be reflected in a forthcoming bulletin on confidentiality. The bulletin will describe the policy of the Bureau with respect to the treatment of information obtained pursuant to the *Competition Act*; and, in particular, policies relating to the disclosure of information to third parties including foreign competition agencies. The appropriate treatment under the *Competition Act* of strategic alliances and other forms of cooperative arrangements between actual and close competitors will also be the subject of an information bulletin in 1994-95.

Increasing our public education efforts is also a priority. Most businesses and individuals, when properly informed, will comply with the *Act*. Moreover, awareness of the *Act* assists businesses and consumers in identifying when they have been victimized by anticompetitive, misleading or deceptive commercial practices. While the Bureau has done a good job in recent years in communicating with the legal and big business communities, we have found that awareness of the *Act* and the work of the Bureau is less evident among small and medium-sized businesses. With this in mind, I have decided to devote more resources to public education targeting the small and medium-sized business communities.

This new program, the *Public Education Initiative*, will enable more Bureau staff to become directly involved in educating and informing the public about the *Competition Act* and the benefits of a competitive marketplace. The program will include explanatory pamphlets on the *Act* including a general overview of

¹¹ Section 33 provides that a court may issue an order prohibiting the continuation of conduct directed toward the commission of an offence under the criminal provisions of the *Act* pending the outcome of any prosecution or final prohibition order proceeding. The section directs the court to consider the usual factors weighed by the courts in granting injunctive relief.

the law and investigative procedures as well as pamphlets on conspiracy and refusal to supply that explain the law in clear straightforward terms. A newsletter, *Competition Communiqué*, dealing with significant case and policy developments, with practical application for the business community, will also be launched.

1993-94 IN PERSPECTIVE

The past fiscal year was characterized by change. Government is rethinking its activities, deregulation continues and agreements to lower trade and investment barriers are having a profound effect on economic activity. All of these changes are reflected in the private sector which is undergoing dynamic change in its methods of doing business. These changes bring about new and exciting challenges for Bureau staff.

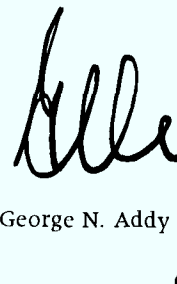
The Bureau is more than just a collection of bureaucrats administrating rather technical economic legislation. The Bureau is proud to be serving the goals of competition and efficiency in the economy; it is dedicated to serving the public; it is an organization that is not afraid to make tough decisions. All of this relies on the skill and dedication of the Bureau's employees.

Overall, 1993-94 was a good year with a number of significant challenges along the way. The Crown prevailed in the **Gemini** and **Insecticides** cases and the appeal courts continue to uphold the constitutionality of the substantive provisions of the *Act* as well as

its investigatory powers. Several important cases will proceed to the courts and Competition Tribunal in the coming fiscal year. I am also pleased with the progress made in the international arena on securing greater interagency cooperation and assistance. These are significant achievements.

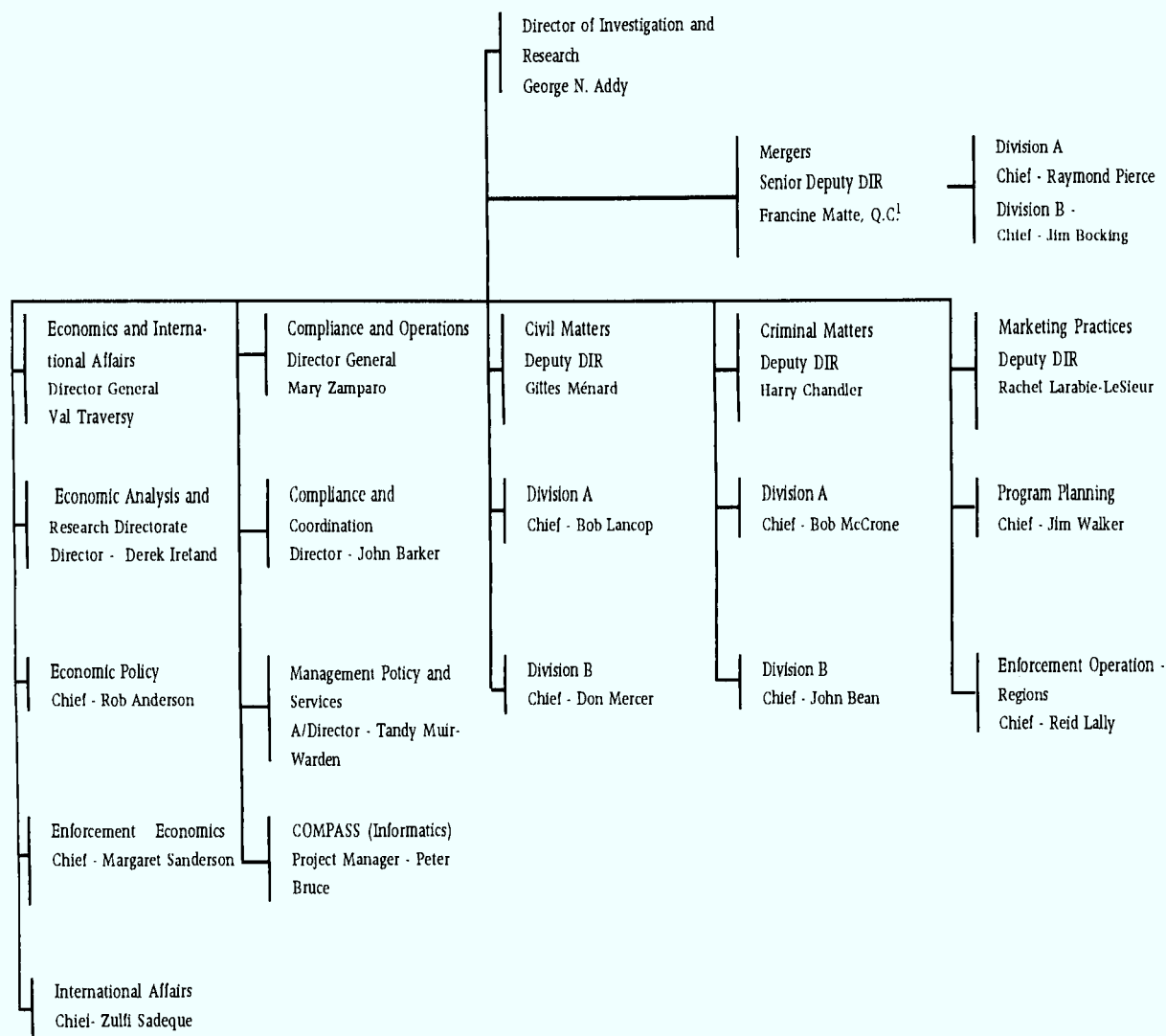
The innovative public education products developed by the Marketing Practices Branch should also prove to be of important practical value to the business community. I also expect that total fines for marketing practices offences will increase in the new year as several important new cases come to trial. The Bureau also experienced somewhat mixed acceptance of our representations in regulatory proceedings; I am hopeful that regulatory boards will give greater credence to competition considerations in their future decisions. A year from now, however, with hard work and perseverance, I expect to report that we have made significant progress on the regulatory front as well as in the other areas of the Bureau's mandate.

In closing, I want to say that the work of the Bureau does not artificially begin and end with each fiscal year. Competition policy, like most other economic policies, is not a "quick fix"; its benefits materialize with consistent and sound application over many years. I am confident that our enforcement, policy work and new initiatives dealing with public education initiated in the 1993-94 fiscal year, will make an important contribution to the Canadian economy, not only in the next year, but for many years to come.



George N. Addy

APPENDIX I BUREAU ORGANIZATION



BUREAU OPERATIONS

In 1993-94, the operating budget for the Bureau was \$19,326,000. The Bureau's major expenditure was \$14,049,757 for staff salaries for 244 authorized full time staff ("Full Time Equivalents - FTEs"). As of March 31, 1994, the Bureau had 241 FTE employees consisting of 15 managers at the executive designation, 10 policy and research economists, 145 commerce officers and program managers and 71 employees carrying out informatics, administrative services and support functions. The Bureau also provides financial support, including salary funding for three lawyers employed by the Department of Justice, to the Departmental Legal Services Unit.

The Bureau is now authorized to carry forward up to five per cent of each current year's operating budget.

The Bureau also has administrative responsibility for collecting fines imposed by the courts. During 1993-94, 24 fines were collected², totaling \$2,879,100, which was credited to the government's Consolidated Revenue Fund.

¹ As of August 2, 1994.

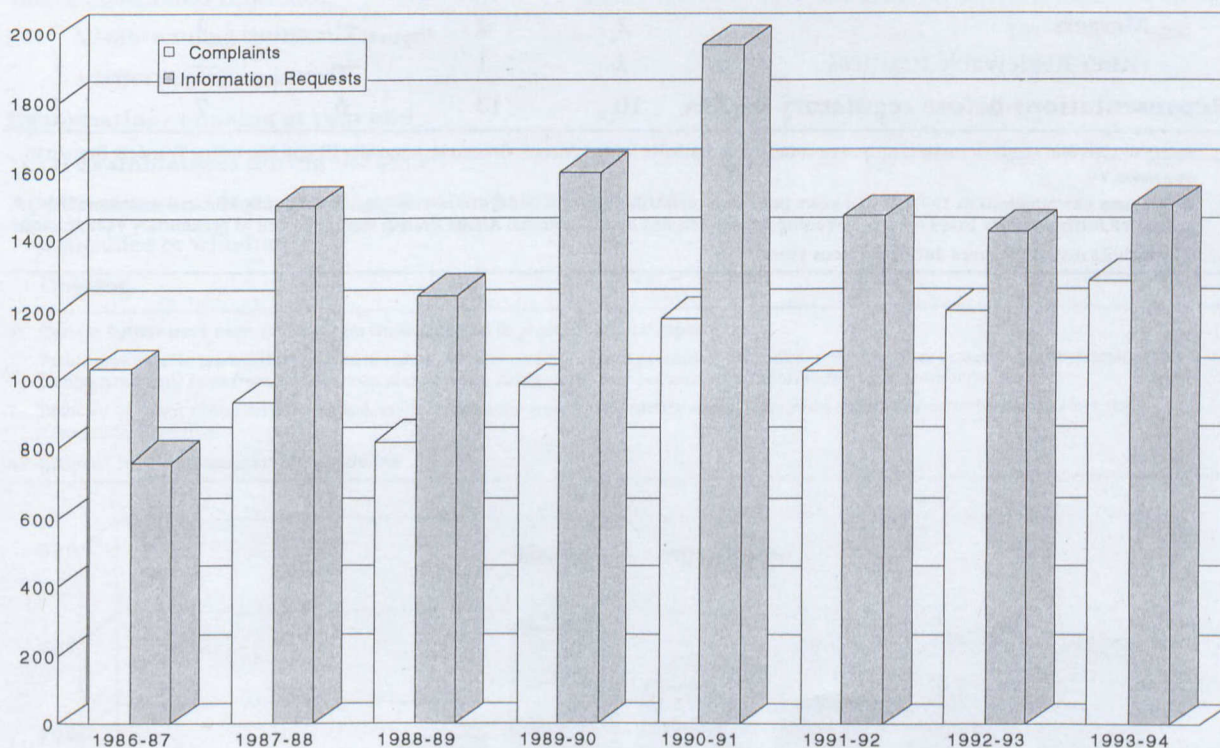
² fines levied in a particular year do not necessarily equal fines collected that year.

APPENDIX II

INFORMATION AND COMPLIANCE DATA

	Misleading Advertising and Deceptive Marketing		Remaining Sections of the Act		Total	
	1992-93	1993-94	1992-93	1993-94	1992-93	1993-94
Information Requests (public)	34,141	28,212	1,423	1,499	35,564	29,711
Oral Advisory Opinions	901	690	65	98	966	788
Written Advisory Opinions	472	372	46	32	518	404
Media Contacts	204	110	325	218	529	328
Speeches, Seminars and Consultative Meetings	105	68	51	69	156	137

Restraints to Competition
Complaints and Information Requests



SELECTED ACTIVITIES OF THE BUREAU OF COMPETITION POLICY

(Excluding Misleading Advertising and Deceptive Marketing Practices)

	1989-90	1990-91	1991-92	1992-93	1993-94
Number of Complaints, Examinations and Inquiries					
Total complaints	988	1,177	1,023	1,197	1,282
Preliminary examinations (two or more days of review) ¹	184	152	114	168	77 ²
Applications for inquiries under s. 9 ¹	4	5	6	6	11
Inquiries in progress at year end ¹	46	47	54	47	50
Disposition of Matters					
Inquiries formally discontinued	4	9	—	8	28
Matters referred to the Attorney General of Canada	7	5	7	5	6
Matters referred where further action is not warranted ³	2	—	—	2	2
Prosecutions or other proceedings commenced	7	6	5	6	7
Applications to the Competition Tribunal	4	3	—	1	1
- Mergers	2	2	—	1	—
- Other Reviewable Practices	2	1	—	—	1
Representations before regulatory bodies	10	13	6	7	7

1. Refers to civil and criminal matters only. See comparable statistics for the Merger Branch in Appendix III and Marketing Practices Branch in Appendix VII.

2. Preliminary examinations in 1992-93 and years prior were defined by 2 or more days of review. In 1993-94, only criminal matters which warranted further review based on case screening criteria adopted by the Criminal Affairs Branch were recorded as preliminary examinations.

3. May include matters referred during previous years.

APPENDIX III

MERGER EXAMINATIONS¹

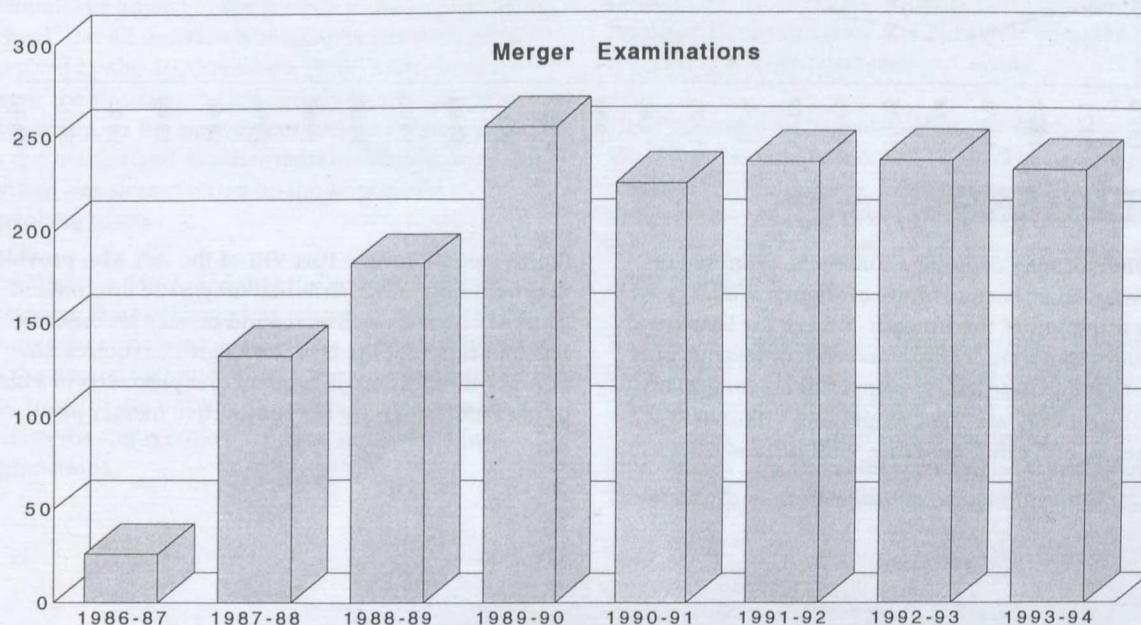
	1989-90	1990-91	1991-92	1992-93	1993-94
Examinations commenced² (2 or more days of review)	219	193	195	204	192
Notifiable transactions	109	75	76	62	65
Advance ruling certificate requests	87	87	98	125	124
Examinations Concluded					
As posing no issue under the <i>Act</i>	204	170	196	198	185
With monitoring only	13	10	5	4	1
With pre-closing restructuring	—	—	—	—	—
With post-closing restructuring/undertakings	1	2	—	—	—
With consent orders	3	—	—	—	—
Through contested proceedings	—	—	1	2	—
Parties abandoned proposed mergers in whole or in part as a result of Director's position	2	1	1	3	2
Total examinations concluded³	223	183	203	207	188
Advance ruling certificates issued ⁴	72	70	72	101	114
Advisory opinions issued ⁴	17	17	9	27	10
Examinations ongoing at year end	32	42	34	31	35
Total examinations during the year	255	225	237	238	223
Applications and Notices of Application before Tribunal					
Concluded or withdrawn	3	—	1	2	—
Ongoing	1	3	2	1	2

1. Certain figures have been revised from those reported in previous annual reports.

2. Includes notifiable transactions, advance ruling certificate requests and examinations commenced for other reasons. Some examinations commenced may arise from notifications and advance ruling certificate requests in relation to the same transactions.

3. Includes advance ruling certificates and advisory opinions issued and matters which have been concluded or withdrawn before the Competition Tribunal.

4. Included in "Total examinations concluded".

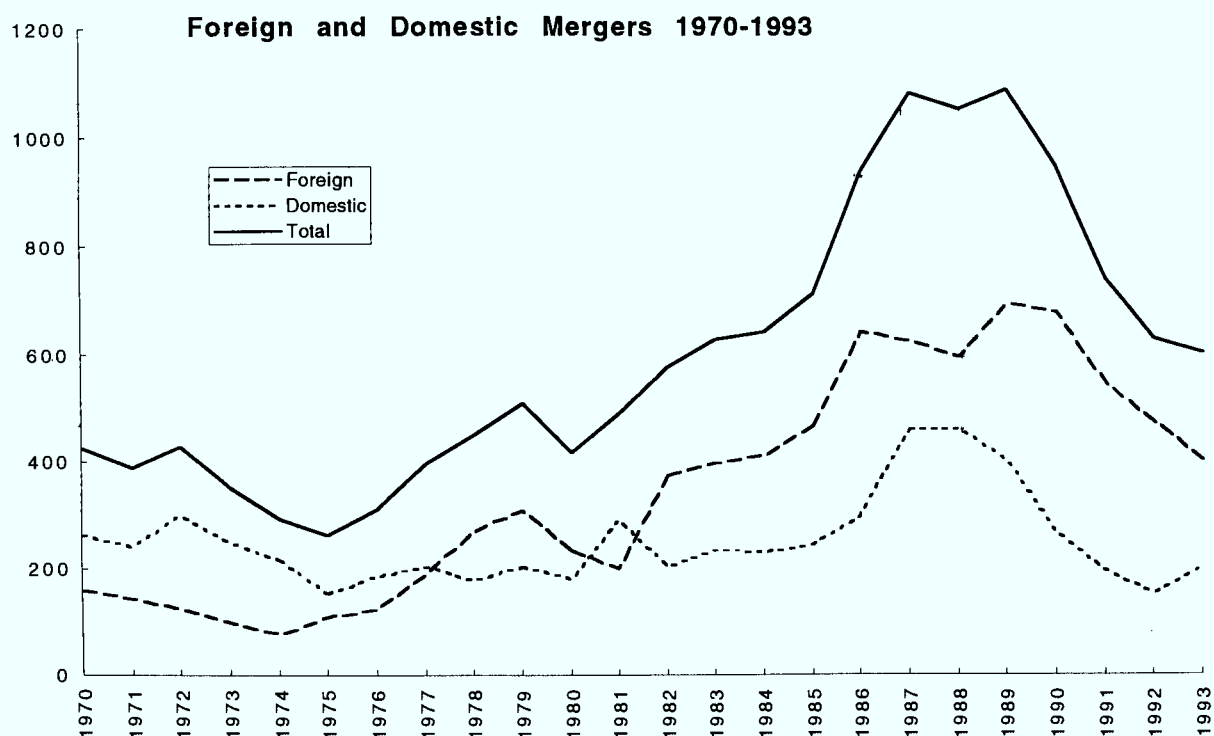


PUBLICLY REPORTED MERGERS¹

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 ²	Domestic ³	Total
1989	691	400	1,091
1990	676	268	944
1991	544	195	739
1992	474	153	627
1993	399	201	600

1. While it appears that the number of publicly reported mergers has decreased significantly since 1989, it is important to note that the number of mergers requiring significant examination has not decreased in the same proportion, as can be seen in the first table in this Appendix.
2. 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).
3. 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).

**MERGERS**

The Director may consider all mergers, proposed or otherwise, in all sectors of the economy, which come to the attention of the Bureau. Where the Director concludes that a transaction prevents or lessens, or is likely to prevent or lessen, competition substantially, the Director may ask the Competition Tribunal to issue a remedial order in accordance with the provisions of

the Competition Act. Part VIII of the Act also provides that the Competition Tribunal may issue interim and consent orders as well as rescind or vary an order on the application of the Director. Part IX requires the advance notification of large merger proposals to assist in the enforcement of the substantive merger provisions of the Act.

MATTERS CONCLUDED

ZELLERS INC. / WOODWARD'S LIMITED

As reported in last year's Annual Report, in March 1993, the Hudson Bay Company and its subsidiary, Zellers Inc., proposed to acquire Woodward's Limited. Woodward's operated several retail department store chains primarily in Western Canada.

The examination of the transaction under the merger provisions was completed in May 1993. The Director concluded that the transaction would not likely result in a substantial lessening or prevention of competition. Analysis of the available information indicated that the combined market share of the parties was relatively low. In addition, there was significant remaining competition from other department stores and from specialty retailers in the markets examined.

The transaction was completed on June 9, 1993.

PROVIGO INC. (NOW UNIVA INC.) / MÉTRO-RICHELIEU INC. /

HUDON ET DEAUDELIN LTÉE /STEINBERG INC.

As described in last year's Annual Report, the majority of the Quebec assets of Steinberg Inc. (Steinberg) were the object of a joint offer by Métro-Richelieu Inc. (Métro) and Provigo Inc. (Provigo), now Univa Inc.. Prior to the transactions closing on June 4, 1992, Provigo negotiated terms with Hudon et Deaudelin Ltée (Hudon) whereby 25 of the 58 stores acquired by Provigo would be immediately surrendered to Hudon upon closing.

The Director's examination of this matter was concluded on June 4, 1993. The assessment of the competitive impact of the proposed transaction determined that 82 individual geographic markets were serviced by the 107 Steinberg stores sold. In some cases, the transaction lead merely to a change of ownership, as the new owner had no existing presence in the market and in other markets the weaker competitor was strengthened by the acquisition of Steinberg assets.

The Director concluded that the redistribution of Steinberg stores amongst its former competitors would not prevent or lessen competition substantially in any of the markets identified. The parties were advised that the Director did not have grounds to make an application to the Competition Tribunal in respect of the transactions.

PAXPORT INC. AND T3LPCO INVESTMENT INC. / TRANSPORT CANADA

At the end of the 1992-93 fiscal year, the Director was still examining the proposed joint venture between Paxport Inc. and T3LPCO Investment Inc. for the redevelopment and operation of all three terminals at Lester B. Pearson International Airport in Metropolitan Toronto.

On October 1, 1993, following the completion of the examination, the Director issued an Advanced Ruling Certificate indicating that, as proposed, the joint venture's plans for redeveloping and operating the terminals would not provide him with sufficient grounds to challenge the transaction. The Director arrived at this conclusion after obtaining the views of the airlines which use Pearson, and after carefully assessing the joint venture's proposal for redevelopment and operation. Of particular significance were the many safeguards contained in the proposal which, when combined with the continuing authority of Transport Canada over many critical areas, were felt to be sufficient to ensure equitable airline access to terminal facilities and preserve the existing level of competition between terminals.

On December 3, 1993, the Prime Minister announced that the Government intended to cancel the proposed transaction and, at fiscal year end, legislation for this purpose was being drafted.

CANADA POST CORPORATION / PUROLATOR COURIER INC.

In June 1993, Canada Post Corporation announced that it had agreed to acquire 75 percent of PCL Holdings Inc., the parent company of Purolator Courier Inc. (Purolator). At that time, Canada Post (through its Priority Courier division) and Purolator operated competing courier businesses in Canada.

The examination concentrated on the likely competitive impact of the transaction on the small parcel express market (SPX) in Canada. Distinguishing features of SPX include: door-to-door pick-up and delivery; track and trace capability; time-certain delivery and signature proof of delivery.

While finding that the combined revenues of Priority Courier and Purolator represented approximately 40 percent of revenues generated in the Canadian market, the Director was satisfied that the acquisition would not give Canada Post the ability to exercise market power. The strength of the remaining competitors and the

nature and extent of both entry and expansion in the market were key factors taken into consideration during the examination.

A considerable part of the examination concentrated on the issue of the potential for the subsidization of Purolator with revenues from Canada Post's exclusive privilege in letter mail. Industry competitors did not object to the transaction provided that Canada Post would not cross-subsidize Purolator in this fashion. The competitors argued that cross-subsidization could result in Purolator's prices being lowered to a level that they could not match, driving them from the marketplace and resulting in a substantial lessening of competition. After a thorough review, the Director concluded that there were no grounds at the time to believe that cross-subsidization has occurred or would occur post-merger, which would be likely to result in a substantial lessening or prevention of competition in the SPX market in Canada.

Canada Post confirmed to the Director that Purolator would operate as a separate corporation and that all transactions between Canada Post and Purolator would be on an arm's length, commercial basis. The corporation also agreed that, should the Director require information on costing and pricing by Canada Post and Purolator, it would assist in making the necessary information available.

The transaction closed on November 26, 1993.

WAL-MART STORES, INC. / WOOLWORTH CANADA INC.

On January 18, 1994, the Director received an application for an advance ruling certificate under section 102 of the Act in respect of the proposed acquisition by a wholly-owned subsidiary of Wal-Mart Stores, Inc. ("Wal-mart") of over 100 Woolco department stores across Canada from Woolworth Canada Inc. Woolworth Canada Inc.'s other operations in Canada consisting of specialty retailers of footwear, women's casual clothing and drugstores were not part of the transaction. The advance ruling certificate was issued on January 28, 1994.

Wal-Mart is the largest retail enterprise in the United States and, prior to the Woolco transaction, did not have any operations in Canada. The Director concluded that the proposed acquisition would not increase the already low degree of industry concentration in the sale of department store merchandise in

Canada. Moreover, Wal-Mart's reputation for competing aggressively on price, service and innovation in technology, distribution and inventory management as well as product development indicated that the proposed transaction would likely increase competition.

The transaction closed on March 17, 1994.

MATTERS BEFORE THE COMPETITION TRIBUNAL

THE GEMINI AUTOMATED DISTRIBUTION SYSTEMS INC.

On November 5, 1992, the Director filed an application pursuant to section 106 of the *Competition Act* seeking to modify a consent order issued by the Competition Tribunal in July 1989. This consent order enabled Air Canada and Canadian Airlines International Ltd. (Canadian) to merge their respective computer reservation systems (CRS), subject to certain terms and conditions, to form a single system operated by The Gemini Automated Distribution Systems Inc. (Gemini). The modification was sought in order to permit Canadian to transfer its internal reservation system to Sabre, the CRS operated by AMR Corporation. This transfer was a vital pre-condition for Canadian to conclude a transaction with AMR. The Director argued that without this transaction, PWA Corporation (the parent company of Canadian) would likely fail and there would likely result a substantial lessening of competition in domestic airline markets.

The Director's application was opposed by Air Canada and Covia, partners in Gemini, as well as by Gemini. The application was supported by PWA, the third partner in Gemini. A variety of intervenors participated. Following five weeks of hearings held during February and March 1993, the Competition Tribunal rendered its decision on April 22, 1993. A majority of the Competition Tribunal held that it had no jurisdiction under section 106 to grant the requested relief. However, the Competition Tribunal unanimously held that if it had jurisdiction, it would have granted the relief requested. This was based on the Competition Tribunal's conclusion that, without the modification, there would likely be a substantial lessening of competition in domestic airline markets and that, with the modification, there would not likely be a substantial lessening of competition in CRS markets.

The Director and PWA Corporation appealed the Competition Tribunal's ruling with respect to jurisdiction. Air Canada, Covia and Gemini cross-appealed the Competition Tribunal's conclusion that, without the modification sought, there would likely be a substantial lessening of competition in domestic airline markets. A week of hearings were held before the Federal Court of Appeal in July 1993. On July 30, 1993, the Federal Court of Appeal allowed the appeal and returned the matter to the Competition Tribunal on the basis that the Competition Tribunal did have jurisdiction under section 106. However, two of the three judges held that the section 106 power to vary could only be exercised in accordance with the terms of section 92, the substantive merger provision. The third judge would have granted the relief sought by the Director without sending the matter back to the Competition Tribunal. The cross appeal was dismissed.

Air Canada sought leave to appeal the Federal Court of Appeal judgment to the Supreme Court of Canada. The Supreme Court dismissed the leave application, thereby affirming the judgment of the Federal Court of Appeal.

The Competition Tribunal reheard the matter in November 1993. It addressed two issues: (i) did the Gemini merger cause the likely substantial lessening of competition?; and (ii) if so, what was the appropriate remedy? New evidence was confined to the issue of remedy. On November 24, 1993, the Competition Tribunal rendered its decision. It concluded that the Gemini merger did cause the likely substantial lessening of competition and, in the result, the Competition Tribunal ordered the dissolution of Gemini by November 1994. The Competition Tribunal made its order conditional on the parties not reaching their own alternative agreement within a few weeks. No alternative agreement was reached.

Air Canada, Covia and Gemini announced that they would appeal the Competition Tribunal's order to the Federal Court of Appeal. However, these appeals were subsequently abandoned, thereby affirming the dissolution order.

The equity transaction between AMR and Canadian was completed on April 28, 1994, and Canadian transferred its internal reservation system to Sabre. Gemini has been reconstituted to form two separate companies. The first company, Advantis Canada, is wholly owned by IBM Canada Ltd. and is to provide internal reservation and other computer services to Air

Canada. The second company, Galileo, is wholly-owned by Air Canada and takes over Gemini's position in the CRS market.

DISCONTINUED INQUIRIES

PWA CORPORATION / WARDAIR INC.

In March 1989, an inquiry was commenced in respect of the proposed acquisition of Wardair Inc. by PWA Corporation when the Director received an application for an inquiry under section 9 of the Act by six Canadian residents. Wardair Inc. and PWA Corporation were competitors in the provision of scheduled domestic airline services.

The assessment of the transaction is described in the 1989-90 Annual Report. The effects of the merger on competition were monitored during the three year period under section 97 of the merger provision during which the Director has jurisdiction to make an application to the Competition Tribunal for an order. The three year period concluded in April 1992 with no evidence materializing that would warrant a change in the Director's conclusion that the acquisition would prevent or lessen competition substantially. In light of the above, the Director discontinued the inquiry.

BAXTER FOODS LIMITED / MCKAY'S DAIRY LTD.

In March 1989, an inquiry was commenced in respect of the acquisition of McKay's Dairy Ltd., a supplier of fluid milk and related dairy products in New Brunswick, by Baxter Foods Limited, a competing dairy producer. As described in the 1989-90 Annual Report, Baxter Foods Limited sold McKay's Dairy Ltd. to Perfection Foods Limited, a Prince Edward Island based dairy with operations in New Brunswick, thereby removing the Director's competition concerns.

In January 1991, Perfection Foods Limited went into receivership, and in March 1991, Northumberland Co-operative Limited of Newcastle, New Brunswick, acquired the assets of Perfection Foods Limited which included McKay's Dairy Ltd. The latter transaction was assessed under the merger provisions and it was determined that it would not likely prevent or lessen competition substantially. The three year review period under section 97 of the merger provisions, during which the Director had jurisdiction to apply to the Competition Tribunal in respect of the Northumberland-Perfection/McKay's merger, concluded in March 1994.

In light of the changed circumstances, the Director determined that it was appropriate to discontinue the inquiry into the acquisition of McKay's Dairy Ltd. by Baxter Foods Limited.

ISLAND FARMS DAIRIES CO-OPERATIVE ASSOCIATION /

VANCOUVER ISLAND OPERATIONS OF PALM DAIRIES LIMITED;

and

FRASER VALLEY MILK PRODUCERS CO-OPERATIVE ASSOCIATION /

MAINLAND BRITISH COLUMBIA OPERATIONS OF PALM DAIRIES LIMITED

In March 1989, two related inquiries were commenced in respect of the then proposed sale of the British Columbia operations of Palm Dairies Limited to its two major competing suppliers of dairy products in the province. The assessment of these transactions is described in the 1988-89 Annual Report.

The two transactions closed in July 1989, subject to monitoring requirements. In 1990, an industry expert was retained to report on the impact on competition resulting from the sale of Palm Dairies Limited's British Columbia operations to the two dairy co-operatives. This report, which was completed in 1991, indicated that a significant increase in the extent of competition faced by the two dairy co-operatives had materialized during the monitoring period which expired in April 1992. The inquiry, however, was not closed at this juncture in light of a 1992 proposal by four western Canada co-operatives to merge their dairy operations. The assessment of the latter transaction concluded that the merger would not likely prevent or lessen competition substantially.

As the sale of Palm Dairies Limited's British Columbia operations no longer raised any competition concerns and the three year monitoring period under section 97 of the merger provisions had concluded, the Director discontinued these inquiries.

NORTHERN ALBERTA DAIRY POOL LIMITED / PALM DAIRIES LIMITED

In February 1990, the Director commenced an inquiry in respect of the then proposed acquisition of Palm Dairies Limited, a supplier of dairy products in Alberta, Saskatchewan and parts of Northern Ontario, by Northern Alberta Dairy Pool Limited ("NADP") as described in the 1990-91 Annual Report. After being advised that the proposed transaction was likely to

prevent or lessen competition substantially in the supply of dairy products in the province of Alberta, the transaction was abandoned by the parties.

A revised merger proposal was put forward whereby Beatrice Foods Inc., a new entrant to the dairy markets in Western Canada, would acquire Palm's operations in Ontario, Saskatchewan and southern Alberta while the northern Alberta operations of Palm would be acquired by NADP. An assessment of the revised merger proposal indicated that it was not likely to prevent or lessen competition substantially in the Alberta market for dairy products.

The effects of the revised merger were monitored during the three year period under section 97 of the merger provisions where the Director had jurisdiction to apply to the Competition Tribunal for an order in respect of the merger. The three year review period concluded in August 1993, with no application being made to the Competition Tribunal. In light of the above, the Director discontinued the inquiry.

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

In April 1991, an inquiry was commenced in respect of the then proposed acquisition of Square D Canada Electrical Equipment Inc. by Merlin Gerin (Canada) Inc., a company controlled by Schneider S.A. Both supply electrical distribution equipment. The assessment of the merger is described in the 1991-92 Annual Report.

In the three year period following the completion of the transaction, no evidence materialized to warrant a change in the Director's conclusion that the merger was not likely to prevent or lessen competition substantially. In light of the above, the Director discontinued the inquiry.

FAILURE TO NOTIFY AS REQUIRED BY PART IX OF THE ACT

In July 1992, the Director commenced an inquiry in respect of the failure to notify an acquisition by a trust, specifically created for the transaction, of a plant under construction. The 1992-93 Annual Report describes the reasons for the Director exercising his discretion not to refer the matter to the Attorney General of Canada for prosecution or such other action deemed appropriate by the Attorney General. Counsel for the acquirer was notified of the Director's decision. Accordingly, the inquiry was discontinued.

APPENDIX IV

CIVIL MATTERS - SELECTED ACTIVITIES

	1992-93	1993-94
Number of Complaints, Examinations and Inquiries		
Total complaints/information contacts	508	507
Preliminary examinations commenced (two or more days of review)	43	21
Application for inquiries under section 9 ¹	6	2
Inquiries in progress at year end	19	8
Written Advisory Opinions	—	2
Disposition of Inquiries		
Inquiries formally discontinued	7	9
Inquiries resolved by Alternative Case Resolution	1	2
Applications to the Competition Tribunal	—	1

1. Refers to six-resident application to the Director for inquiry.

REVIEWABLE MATTERS

Part VIII of the *Act* identifies a number of civil matters reviewable by the Competition Tribunal including abuse of dominant position, refusal to deal, tied selling, exclusive dealing, market restriction and specialization agreements. Only the Director is authorized to apply to the Competition Tribunal for remedial, consent and injunctive/interlocutory orders in respect of the civil reviewable matters under the *Act*. In most cases, the relief sought by the Director will take the form of a prohibition order issued by the Competition Tribunal. Remedial orders issued by the Competition Tribunal under the abuse of dominant position provisions, however, may include such further actions, including divestiture of assets or shares, that are reasonable and necessary to overcome the effects of the anticompetitive practice. Private parties can apply on their own initiative to register a specialization agreement before the Competition Tribunal.

APPLICATIONS TO THE COMPETITION TRIBUNAL AND APPEALS OF TRIBUNAL DECISIONS

CHRYSLER CANADA LTD.

Upon application by the Director pursuant to section 106 of the *Competition Act*, the Competition Tribunal rescinded the October 13, 1989 supply order against Chrysler Canada Ltd. (Chrysler) on December 17, 1993. The Competition Tribunal was of the view that paragraph 106 (b) of the *Act* had been met by the consent of the parties including the complainant.

The 1989 supply order related to the supply of Chrysler automotive parts for export purposes to R. Brunet of Montreal. Subsequently, a number of significant decisions ensued: in April 1992, the Supreme Court of

Canada denied Chrysler leave to appeal the Competition Tribunal's issuance of the 1989 supply order. The denial of the appeal by the Supreme Court reaffirmed the earlier 1991 decision of the Federal Court of Appeal on this matter. With respect to separate contempt proceedings, in June 1992, the Supreme Court of Canada reversed a 1990 Federal Court of Appeal decision and found that the Competition Tribunal has the power to find parties in contempt of its orders. The decision follows the 1990 contempt proceedings initiated by the Director against Chrysler and its parent, Chrysler Motors Corporation (Chrysler U.S.), for alleged violations of the Competition Tribunal's order. In September 1992, the Competition Tribunal dismissed the Director's motion for a show cause order requiring Chrysler and Chrysler U.S., to show cause why they should not be held in contempt of the Tribunal's 1989 supply order.

XEROX CANADA INC.

Notice of appeal of the judgment and order of the Competition Tribunal against Xerox Canada Inc. under the refusal to deal provisions was filed in 1990. At the end of the 1993-94 fiscal year, Xerox Canada Inc. had yet to identify its grounds for appeal.

OTHER MATTERS

Wherever feasible, matters have been resolved through alternative case resolution procedures. The following are some examples where matters have been resolved during the course of a preliminary examination or formal inquiry.

TELECOMMUNICATIONS EQUIPMENT

In a case resolved this fiscal year, a formal inquiry had been previously initiated following the receipt of a complaint that a telecommunications firm refused to supply a business with parts and related services for repairing and refurbishing terminal equipment manufactured by the telecommunications firm. The evidence indicated that the elements of the refusal to supply provisions of the *Act* had been met. The telecommunications firm was subsequently informed of the Director's intention to file an application with the Competition Tribunal for an order requiring that the telecommunications firm accept the business as a customer. Subsequent negotiations between the two companies resulted in a supply arrangement being reached in this fiscal year.

ELECTRONIC PUBLISHING

A complaint was received alleging that, as a result of a contractual relationship with an electronic publisher, a competing party was restricting a publisher of law reports from including its information on the electronic data base. During the preliminary investigation the competing party rescinded its contractual restriction over the electronic publisher's system.

RETAIL PHARMACIES

In a national television report, in May 1993, it was alleged that retail pharmacies in Ontario had pressured drug wholesalers and manufacturers to not supply mail order pharmacies in Ontario. Following this report, the Bureau conducted an examination into these allegations. The evidence obtained from the examination did not provide the necessary grounds for an inquiry under the *Act*. During the course of the examination, contact was made with the Ontario Pharmacists' Association and the Canadian Pharmaceutical Association. Upon learning of the Director's concerns regarding the allegations surrounding mail order pharmacy, these organizations included articles concerning the provisions of the *Competition Act* in their respective association trade publications. The objective of these initiatives was to encourage voluntary compliance with the *Act*.

TRADE PUBLICATIONS

A complaint was received alleging that an advertising trade publication was engaged in exclusive dealing by offering a financial incentive to stores to cease carrying a competing publication. After the competition concerns were brought to its attention, the advertising trade publication agreed to terminate this practice.

DISCONTINUED INQUIRIES:

ABUSE OF DOMINANT POSITION

SEAMLESS COPPER TUBE

The Director received a six-resident application for an inquiry in 1991, alleging that the actions of a manufacturer of seamless copper tube with manufacturing facilities in Canada refused to sell a plant in British Columbia to the local union, coupled with the plant's eventual closure and dismantling, constituted contravention of sections 45, 79 and 92 of the *Competition Act*. The plant had been purchased several years earlier which allowed the company to become the only manufacturer of seamless copper tube with production facilities in Canada. The 1988 merger was not challenged under the merger provisions of the *Act* since

one of the parties was preparing to liquidate its copper tube operations in Canada, and there were no other realistic alternative purchasers.

In response to the six-resident application, the complainant was informed that the evidence did not provide legal grounds for seeking an order from the Competition Tribunal under the merger provisions since competition from U.S. suppliers prevented the Canadian manufacturer from exercising market power. The applicants withdrew their allegations under section 45 of the *Act*. The third allegation that the Canadian manufacturer was pre-empting a scarce facility or resource required by a competitor for the operation of a business was considered under the abuse of dominant position provisions of the *Act*. However, the Director determined that the increase in imports during the period from the merger until the closure of the plant continued to play a role in preventing the manufacturer from exercising market power. Accordingly, the inquiry was discontinued.

TAX PUBLICATIONS

The Director received a six-resident application for an inquiry under section 9 of the *Act* in 1991, alleging that a major publisher of tax publications was engaged in a number of anticompetitive activities to prevent a small competitor in Quebec from entering the tax reporter market. The application included allegations of conspiracy, predatory pricing and abuse of dominant position. The matter did not raise an issue under the conspiracy provision of the *Act* since there was no agreement between the parties. With respect to the abuse of dominant position provisions, it was determined that while the major tax publisher had substantial control over a class or species of business, there was insufficient evidence of a practice of anti-competitive acts. Nor was it found that the alleged conduct prevented or lessened competition substantially in a market. Accordingly, the inquiry was discontinued.

STAND-UP COMEDY ENTERTAINMENT

The Director commenced an inquiry in 1988 following the receipt of complaints alleging restrictive activities by several companies controlled by Mark Breslin doing business under the name of Yuk Yuk's, a major supplier of stand-up comedy entertainment in Ontario. As a result of evidence obtained during the inquiry, the Director concluded that Yuk Yuk's substantially controlled the business of supplying stand-up comedy entertainment in Ontario and was 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 a press release dated October 2, 1991, it was announced that the Director had accepted undertakings from Mark Breslin and his group of 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 (Further details are also reported in the Director's annual report for the year ended March 31, 1992). The undertakings were monitored and it was concluded that the undertakings were being complied with by Mark Breslin and his group of companies. Moreover, there had been entry into the market by independent competing clubs. It was concluded that grounds no longer existed to make an application to the Competition Tribunal for an order against Mark Breslin and his group of companies. Accordingly, the inquiry was discontinued.

PERFORMING RIGHTS SOCIETIES

The Director received a six-resident application for an inquiry under section 9 of the *Act* in 1986 alleging that the exclusive assignment of performing rights by composers to two societies substantially lessened competition in the Canadian performing rights markets by preventing the formation of new performing rights societies and by impeding competition between composers and the societies in the issuance of performing rights licenses to end-users, such as broadcasting companies. The matter was examined in relation to the abuse of dominant position provisions of the *Act*. Subsequent to the commencement of the inquiry, the two societies merged. The merged entity reduced the term of the exclusive license and gave the members the right to terminate the relationship after two years. The reduction of the term of the exclusive license virtually eliminated the barrier to entry previously created by the exclusivity aspect of the two pre-merger societies' licenses.

The inquiry also disclosed that there was a composer and end-user preference for one performing rights society. In regard to the applicant's allegation that the society's exclusive license has prevented competition between composers and the society, information obtained from the composers and publishers revealed that they strongly preferred to associate with a performing rights licensing society rather than to negotiate performing rights licenses directly with end-users. Also, evidence presented during the Copyright Appeal Board hearings suggested that the reduced profitability of Canadian television broadcasters arose not from the licensing society's blank license fee, but from increased competition for advertising revenue by cable television. The applicants further alleged that the society's blanket

license fee has discouraged the use of alternate licensing methods which could inject price competition into the Canadian performing rights licensing market. However, the inquiry established that the demand for alternate licensing methods by Canadian broadcasters would be negligible. Accordingly, the inquiry was discontinued.

REFUSAL TO DEAL

INDUSTRIAL MILK

The Director received a six-resident application for an inquiry under section 9 of the *Act* in 1991, requesting that an inquiry be commenced into a milk producers co-operative association's refusal to supply industrial milk to a specialty cheese processor in British Columbia. The matter was examined under the refusal to deal, exclusive dealing and abuse of dominant position provisions of the *Competition Act*. However, the Director concluded that sufficient grounds did not exist to apply to the Competition Tribunal for an order under the abuse of dominant position provisions as the evidence did not support the applicants' allegation that the practice was likely to prevent or lessen competition substantially in the market. With respect to refusal to deal, it was not possible to establish that the specialty cheese processor was substantially affected or precluded from carrying on business due to its inability to obtain adequate supplies of industrial milk from the milk producers co-operative association. Accordingly, the inquiry was discontinued.

FINE PAPERS

The Director received a six-resident application for an inquiry under section 9 of the *Act* in 1989, alleging that two major suppliers of fine papers refused to supply a fine paper merchant in the Toronto area. An extensive examination of the fine paper market followed. It was concluded that it would be difficult to establish that there was insufficient competition among fine paper suppliers in the market because suppliers located in the United States were increasingly supplying and providing price quotes to customers in the Toronto area. CUSTA resulted in the phasing out of the tariff on fine paper imports from the United States, in five equal annual stages, from 6.5% in 1988 to 0.0% effective on January 1, 1993. Fine paper imports from the United States increased substantially since CUSTA came into effect providing economically practical alternate sources of supply to Toronto area users of fine papers. According to section 75(1) of the *Competition Act*, the Competition Tribunal shall not make an order if "any customs duties on the article are removed, reduced or remitted and the effect ... is to place the

person on equal footing with other persons who are able to obtain adequate supplies of the article in Canada". Further, it was questionable whether the fine paper merchant was substantially affected or precluded from carrying on business as a result of his inability to acquire fine papers from the two suppliers in question. Accordingly, the inquiry was discontinued.

MARKET RESTRICTION

WHOLESALE GROCERY SUPPLIES

The Director received a six-resident application for an inquiry under section 9 of the *Act* in 1992, alleging that a wholesale grocery supplier in British Columbia was engaged in market restriction and abuse of dominant position with respect to a distributor operating in a specific market in British Columbia. However, the information obtained with respect to this matter did not indicate that the supplier was limiting its offering of grocery products to the market or attempting to exact a penalty to prevent the distributor from selling outside the market. With respect to the abuse of dominant position allegations, the evidence obtained from the inquiry did not indicate that the supplier, by opening a supermarket in the same market, would be in a dominant position in the retail grocery market. Accordingly, the inquiry was discontinued.

PHOTOGRAPHIC MATERIALS

The Director received a six-resident application for an inquiry under section 9 of the *Act* in 1987, in respect of the alleged export-restricting policies of a supplier of instant developing films. The matter was examined under the market restriction provisions of the *Act*. The information obtained during the course of the inquiry indicated that there were a number of competing distributors in Canada, and that the supplier's practices of restricting the export of its instant film by its distributors would not substantially lessening competition. Accordingly, the inquiry was discontinued.

TIED SELLING

COMPUTERS SYSTEM MAINTENANCE AND SERVICING

The Director received a six-resident application for an inquiry under section 9 of the *Act* in March 1993, alleging that a computer manufacturer was engaging in a practice of tied selling in the sale and licensing of its computer systems with respect to the purchase of maintenance and servicing. The computer manufacturer was also alleged to have engaged in a number of

anti-competitive acts, particularly in relation to its proprietary diagnostic maintenance aids necessary for the proper servicing of its computer systems. During the course of the inquiry, company officials and legal representatives of the computer manufacturer were contacted to discuss their position on the issues raised by the matter.

In September 1993, a spokesperson for the applicants forwarded correspondence confirming that all matters of dispute involving the computer manufacturer had been resolved to their satisfaction. In November 1994, a formal notification was forwarded by the applicants requesting that the inquiry be discontinued. Accordingly, the inquiry was discontinued.

APPENDIX V REGULATORY REPRESENTATIONS

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. Interventions before federal boards can be initiated at the discretion of the Director, at the request of the board, or at the direction of the Minister of Industry Canada. Interventions before provincial regulatory bodies require their consent. As an advocate of competition, the Director, on occasion, makes non-statutory representations to bodies such as government committees or task forces dealing with significant competition issues.

TELECOMMUNICATIONS

DIRECTORY DATABASE INFORMATION/ (CRTC 94-3)

In January 1994, the CRTC issued a public notice (CRTC 94-3) with respect to the provision of directory database information. The Director intervened in the matter and will be making a submission in June 1994. At issue is whether the telephone companies under CRTC jurisdiction should be required to make available non-confidential residential and non-residential information in an unbundled form and the appropriate level and structure of rates for the provision of the database access services in general.

TERMINAL EQUIPMENT/ (CRTC 93-57)

In October 1993, the Director intervened before the CRTC in a proceeding relating to the exercise of the Commission's regulatory forbearance powers in respect to the sale of terminal equipment by the telephone companies (CRTC 93-57). In his intervention, the Director supported the preliminary position taken by the Commission in the Public Notice giving rise to the proceeding that the objectives of relying on market forces for the provision of telecommunications services contained in the *Telecommunications Act* would be served by a decision of the Commission to forbear from regulation.

TELECOMMUNICATIONS REGULATORY FRAMEWORK/ (CRTC 92-78)

In November 1993, the Director intervened before the CRTC in the Commission's Telecommunications Regulatory Framework proceeding (CRTC 92-78). During the course of the public hearing, the Director

called Dr. Robert Crandall, a leading U.S. telecommunications economist, as an expert witness. In addition, a panel of three Bureau members testified in regard to the interface between competition law and regulation and the potential application of the *Competition Act* to the telecommunications industry. In Final Argument, which was presented in January 1994, the Director urged the CRTC to undertake sweeping changes to telecommunications regulation by replacing rate base rate of return regulation with a price cap regime. The Director also made extensive representations with respect to the desirability of the Commission applying competition policy principles in the exercise of its regulatory forbearance powers under the new *Telecommunications Act*.

TRANSPORT

CANADIAN AIRLINES INTERNATIONAL LIMITED

On December 29, 1992, PWA announced the signing of an alliance with AMR Corporation ("AMR") whereby Aurora Investments, Inc., a wholly-owned subsidiary of AMR, was to pay \$246 million to purchase 25 per cent of the voting shares and an additional number of non-voting shares in Canadian Airlines International Limited ("Canadian"). AMR is the parent company of American Airlines, Inc. This transaction also contemplated the provision of certain services to Canadian by AMR and, most notably, by Sabre, the computer reservation system ("CRS") operated by American Airlines, Inc. At that time, Canadian's CRS services were provided by Gemini, the merged CRS operations of Canadian and Air Canada.

The National Transportation Agency (NTA) held public hearings from March 22 to April 21, 1993, to determine whether the proposed investment would be in the public interest, including whether Canadian would still be "controlled in fact" by Canadians. The Director, in his capacity as competition policy expert, made representations as to the effect of the proposed transaction on competition. The Director submitted that if the proposed transaction did not proceed, Canadian would likely fail and there would likely be a substantial lessening of competition in most domestic airline markets. These submissions reflected those made by the Director before the Competition Tribunal in the Gemini case.

On May 27, 1993, the NTA concluded that the proposed transaction was not against the public interest, including the fact that domestic control of Canadian would remain intact. The NTA's conclusions with respect to competition are consistent with those of the Competition Tribunal in the Gemini matter.

On June 23, 1993, following an application from Air Canada, the Federal Cabinet upheld the NTA decision. AMR's equity investment in Canadian was completed in April 1994.

TRADE

FIBREGLASS PIPE INSULATION IMPORTS

From August 1993 to February 1994, the Director participated in both the material injury and public interest phases of an anti-dumping proceeding of the Canadian International Trade Tribunal (CITT) regarding preformed fibreglass pipe insulation with a vapour barrier. At the beginning of this proceeding, the Director challenged the CITT's refusal to provide him access to the CITT's confidential record. It was the position of the Director that the confidential information was required to allow for the preparation of an expert report at the material injury hearing. On November 17, 1993, the Federal Court of Appeal, while noting that it was unfortunate given his mandate, ultimately held that the *Special Import Measures Act* does not provide him the Director with any better access to information during CITT proceedings than other parties.

During the material injury hearing in October 1993, the Director opposed a finding of injury submitting that the decreases in prices for the subject product were not related to dumping; but, rather a result of a competitive marketplace. In the November 19, 1993 finding of material injury, the CITT did not share this view with the Director. At the public interest hearing in December 1993, the Director submitted that the imposition of anti-dumping duties on imports of fibreglass pipe insulation would interfere with effective price competition in the domestic market and would likely reduce economic welfare in Canada. The Director requested that the CITT, in the alternative, impose only anti-dumping duties at a level which would protect the domestic producer from injury

caused by the dumped imports and which would not burden users and consumers with needlessly higher prices.

In its consideration of the public interest question on January 28, 1994, the CITT agreed with the Director's view that the imposition of the full-amount of the anti-dumping duties would likely cause prices for fibreglass pipe insulation to increase, but believed that imports from the United States would continue to compete in Canada albeit at the higher price level. The CITT also held that the Director's economic welfare mandate of protecting competition was in conflict with the provision of antidumping legislation which in effect is designed to protect individual competitors. As a result, the CITT was not convinced that public interest considerations warranted further investigation.

ENERGY

INTER-UTILITY TRADE IN ELECTRICITY

As discussed in last year's Annual Report, in March 1993 the Director made a submission to the National Energy Board's Review of Inter-utility Trade in Electricity. The submission highlighted the potential economic benefits of freer trade in electricity, the conditions necessary to achieve these benefits and the role that competition law and policy can play in fostering efficient inter-utility arrangements in this area. The Board's report on this matter, which was completed in January 1994¹, is generally consistent with the position taken in the Bureau's submission in that it emphasizes the benefits that can be achieved through freer trade among utilities in electrical power.

REORGANIZATION OF ONTARIO HYDRO

During the review period, the Branch commissioned a study by a consultant, Dr. Edward Kahn of the University of California at Berkeley, on the potential for greater reliance on competition in promoting efficiency in the electrical energy sector and relevant experience in foreign jurisdictions. In addition, late in the year, the Bureau sought and obtained intervenor status at an Ontario Energy Board hearing (H.R. 22) on the ongoing structural reorganization at Ontario Hydro and proposed changes to the utility's rate structure for 1995. The hearings were scheduled to begin in May 1994.

¹ The Report was released by the Minister of Natural Resources in June 1994.

APPENDIX VI

CRIMINAL MATTERS - SELECTED ACTIVITIES

	1992-93	1993-94
Number of Complaints, Examinations and Inquiries		
Total complaints/information requests	739	775
Preliminary examinations commenced ¹	125	56
Application for inquiries under section 9 ²	—	9
Inquiries in progress at year end	28	42
Disposition of Inquiries		
Inquiries formally discontinued	1	12
Inquiries resolved by Alternative Case Resolution ³	—	1
Matters referred to the Attorney General of Canada	4	6
Matters where charges were laid	6	8
Matters where Attorney General declined to proceed or withdrew charges ⁴	1	2
Matters before the courts ⁴	10	12
Disposition of prosecutions (findings of guilt, guilty pleas, acquittals, stay of proceedings, orders of prohibition) ⁴	7	7
Other Activities		
Preliminary examinations resolved by information contacts	24	14
Written Advisory Opinions	18	30
Mutual Legal Assistance Treaty (MLAT) Requests	4	2
Searches	5	4

1. Preliminary examinations in 1992-93 and years prior were defined by 2 or more days of review. In 1993-94, only matters which warranted further review based on case screening criteria adopted by the Branch were recorded as preliminary examinations.

2. Refers to six-resident application to the Director for inquiry.

3. Alternative Case Resolutions include; investigative visits, orders on consent and written undertakings.

4. May include matters referred during previous years.

CRIMINAL MATTERS

Part VI of the *Act* prohibits criminal competition offences which include conspiracy to lessen competition unduly, bid-rigging, foreign directives, price discrimination, predatory pricing, discriminatory promotional allowances and price maintenance. These provisions apply to all sectors of the economy except for selected activities specifically exempted such as collective bargaining, amateur sport or conduct regulated by other legislation. The commercial activities of Crown corporations in competition with others are also subject to the *Act*.

Part IV of the *Act* contains provisions for the issuance of interim injunctions and prohibition orders by the courts in respect of criminal matters as well as the civil recovery of damages for conduct contrary to Part VI of the *Act* by private parties. Criminal matters are referred to the Attorney General of Canada who determines whether charges should be laid and conducts prosecutions before the courts.

COURT PROCEEDINGS CONCLUDED

ULTRAMAR CANADA

On June 1, 1992, Ultramar Canada Inc. (Ultramar) and Michel Nadeau were charged with two counts of price maintenance under section 61(1)(a) of the *Act* in relation to the sale of gasoline in Chipman, New Brunswick. The charges were subsequently withdrawn by the Crown at a trial on April 26, 1993 in the Court of Queen's Bench of the Province of New Brunswick.

WAINWRIGHT TRANSPORTATION

On May 14, 1993, two counts of bid-rigging under section 47(2) of the *Act* were laid in Edmonton against Bison Bus (1985) Ltd. and Sun Valley Tours Ltd. relating to two charter bus contracts tendered by Supply and Services Canada. On July 20, 1993, Sun Valley Tours Ltd. pleaded guilty on both counts and the company was fined \$1,500 per count and was subject to an Order of Prohibition. At the conclusion of the preliminary hearing on January 20, 1994, Bison Bus (1985) Ltd. was committed to stand trial. The trial is scheduled to commence in October 1994.

ABBOTT/CHEMAGRO/SUMITOMO

In 1991, Abbott Laboratories, of North Chicago, Illinois, and subsidiary companies were granted immunity from prosecution by the Attorney General after voluntarily providing evidence, then unknown to the Bureau, of an illegal agreement with another company, Chemagro Limited, to share the biological insecticide market for forest protection in Canada. The insecticide is used by provincial agencies for the control of spruce budworm and gypsy moth. The Federal Court of Canada issued an Order of Prohibition under section 34(2) against Abbott on November 3, 1992. In addition, Abbott paid \$2.1 million in restitution to the Provinces of Quebec and Ontario.

On June 11, 1993, the Quebec Court accepted a plea of guilty from Chemagro Limited with respect to one charge of conspiracy under section 45 of the *Act* and one charge of foreign directives to implement a conspiracy in Canada under section 46 of the *Act*. Fines of \$750,000 and of \$1.25 million were imposed by the court for the section 45 and section 46 charges respectively. The total fine of \$2 million was the largest imposed, to date, under the *Act* against a single firm.

The charge under section 46 was with respect to the implementation of a foreign-directed conspiracy by Chemagro and Sumitomo Canada Limited. The

arrangement was between Sumitomo Chemical Co. Ltd., of Osaka, Japan and Bayer AG, of Leverkusen, Germany, the ultimate parent company of Chemagro, to lessen competition unduly in Canada in the sale and supply of chemical insecticides for forest protection to various provincial and private purchasers. The arrangement affected sales over the years 1982 to 1988.

On November 19, 1993, in the Federal Court of Canada, Sumitomo Canada Limited pleaded guilty to one charge under section 46 of the *Act* in relation to the above. The court imposed a fine of \$1.25 million against Sumitomo.

COMPRESSED GAS

In August 1993, David Watson and Neil Weaver, former executives with Canadian Oxygen Ltd. and the Linde Division of Union Carbide Canada Limited respectively, both pleaded guilty to one count under section 45(1)(c) of the *Act* for their involvement in a conspiracy relating to the supply of bulk compressed gasses in Canada. Both individuals were fined \$75,000 by the Ontario Court (General Division).

ALBERTA AMBULANCE

On November 15, 1993, following a preliminary hearing, the Alberta Ambulance Operators' Association and six individuals, William J. Coghill, Andrew C. Moffat, Roy Onslow, Daniel J. Osborne, Mary-Ann Tishauser and Carol Stewart, were ordered to stand trial on one count of conspiracy to lessen competition unduly under section 45(1)(c) of the *Act*. At the request of the Crown, the charge against another individual, Lyle McKellar, was dismissed. The charges relate to an alleged illegal agreement in the supply of ambulance services in the Province of Alberta. The trial is scheduled for January 1995 in the Court of Queen's Bench of Alberta.

ROBERTS REAL ESTATE

On March 4, 1994, Roberts Real Estate Ltd. (now 41813 Alberta Ltd.), a real estate broker in Calgary, was found guilty by the Court of Queen's Bench of Alberta on one count of price maintenance under section 61(1)(b) of the *Act*. On March 24, 1994, the Court imposed a fine of \$25,000.

The Court found that Roberts discriminated against Elite Real Estate Ltd., a discount real estate broker also located in Calgary, by offering Elite a smaller selling commission than it offered to other real estate brokers. The Court also found that, on at least two occasions,

Roberts refused to allow Elite to show Roberts' listings. It concluded that Roberts had engaged in such conduct because of Elite's low commission-rate policy.

JO-AD INDUSTRIES AND WESTERN AIR CONDITIONING

On March 30, 1994, Jo-Ad Industries and Western Air Conditioning were each acquitted of one count of bid-rigging under section 47(2) of the Act in the Ontario Court (General Division). The Court concluded that there was insufficient evidence of an agreement between the accused to rig a bid tendered by Supply and Services Canada in 1991 for a power supply unit for the Department of National Defence installation in Chatham, New Brunswick.

DISCONTINUED INQUIRIES

AUTO GLASS

In 1982, the Director received a six resident application under section 7 of the Combines Investigation Act alleging that various auto glass firms and general insurance companies were engaged in the practice of exclusive dealing and that certain discounts given by the auto glass firms constituted price discrimination.¹

The information obtained during the course of the inquiry did not reveal that competition was or was likely to be lessened substantially by the arrangements in question. In 1985, searches of premises were conducted under section 443 of the Criminal Code in relation to the alleged discriminatory price discounts. Subsequently, it was determined that the discount program which resulted in the price discrimination allegations had been terminated. After review of the evidence and in light of surrounding circumstances, the Director concluded that the inquiry should be discontinued.

LIABILITY INSURANCE INQUIRY

In January 1986, the Director commenced an inquiry after receiving an application by ten members of Parliament under section 7 of the Combines Investigation Act for an inquiry into the substantial increases in liability insurance premiums which occurred in Canada from 1985-86. Specifically, the applicants alleged that there was an agreement to lessen competition among the insurance companies in Canada that insured potential high risk liabilities.

The Director conducted an extensive examination of the insurance industry in 1986-87. Information was obtained from consumers, insurance industry associa-

tions, regulatory authorities, industry experts as well as from other sources. The Director concluded that there was no basis to apply to the courts for the use of formal investigative powers under the Act as there was no evidence of an illegal agreement to increase premiums or refuse to insure certain potential high risk liabilities. The Director, however, continued to monitor developments in the industry until 1993 when the inquiry was discontinued.

AUTOMOBILE PAINT PRESERVER

In February 1987, the Director commenced an inquiry after receiving a complaint from a company that provides automobile rust proofing and other automotive ancillary services that the distributor of a branded rustproofing product engaged in conduct contrary to the price maintenance provisions of the Act. Search warrants were subsequently executed and records were seized at the premises of the distributor and its Canadian parent company. After a review of the information obtained during the inquiry, it was determined that there was not sufficient evidence that a price maintenance or other offence had occurred and that further investigation was not warranted. Accordingly, the inquiry was discontinued.

PAPER MERCHANTS

In October 1987, the Director commenced an inquiry after receiving several complaints from customers alleging that various paper suppliers in western Canada entered into an agreement to eliminate price discounts in contravention of the conspiracy provisions of the Act. After commencing the inquiry, the Director received a six resident application to commence an inquiry in respect of the same matter.

Searches were executed and records seized from the premises of the paper suppliers in November 1987. After an examination of the records seized and oral evidence obtained from other sources, it was determined that there was insufficient evidence to refer the matter to the Attorney General for prosecution.

In May 1989, the Director sought and obtained orders under section 11 of the Act from the Supreme Court of British Columbia requiring the attendance of various officials and former officials of the paper suppliers to be examined under oath or affirmation. Following a challenge of the constitutionality of these orders, the Supreme Court of British Columbia granted a stay of proceedings pending the outcome of a similar constitutional challenge by Thomson Newspapers Limited before the Supreme Court of Canada. In March 1990, the Supreme Court rendered a split decision in *Thomson*

¹ The price discrimination and exclusive dealing provisions of the *Combines Investigation Act* were not amended with the passage of the *Competition Act* in 1986. Adjudication of exclusive dealing, however, was transferred from the Restrictive Trade Practices Commission to the Competition Tribunal with the concurrent passage of the *Competition Tribunal Act* in 1986.

Newspapers Limited et. al. v. Director of Investigation and Research et. al., which dismissed the appeal by Thomson Newspapers Limited, and upheld the constitutionality of section 17 of the *Combines Investigation Act*, the predecessor of section 11.

After a further review of all the evidence obtained during the inquiry as well as consideration of the likelihood of obtaining additional evidence, it was determined that further investigation was not justified. Accordingly, the inquiry was discontinued.

NURSING SERVICES

In September 1988, the Director commenced an inquiry after receiving a six resident application for an inquiry under section 9 of the *Act* relating to certain activities of the Hospital Council of Metropolitan Toronto (HCMT) in respect of the conspiracy, predatory pricing and abuse of dominant position provisions of the *Act*. The applicants alleged that most of the hospitals and other medical care providers in Metropolitan Toronto that were members of the HCMT had entered into an illegal agreement to prevent or lessen competition unduly, contrary to section 45 of the *Act*, in the purchase of temporary nursing services from nursing agencies by establishing a common rate schedule. The latter was enforced by the HCMT through an alleged boycott of nursing employment agencies that did not adhere to the common rate schedule thereby raising an issue under the abuse of dominant position provisions at sections 78 and 79 of the *Act*. Allegations of predatory pricing, an offence under section 50(1)(c), were also made by the applicants in respect of the pricing policies of HCMT's own nursing agency, Hospital Nursing Services.

Information was obtained during the inquiry through interviews with the applicants, nursing agency owners, hospital administrators, nurses and nursing groups, unions and labour economists as well as meetings with officials in the Ontario Health and Labour Ministries.

The information obtained during the inquiry established that the hospitals agreed in principle to endorse a proposal for joint action in the form of a rate schedule lower than the rates that the hospitals had been paying to nursing agencies and to adopt a policy of using nurses supplied through the hospitals' own nursing agency, before using nurses supplied through independent agencies. However, the hospitals had difficulties with the proposal and, after the receiving legal advice, they accepted the impermissibility of this action by disavowing their previous discussions. Several hospitals boycotted the nursing agencies by

implementing virtually identical maximum hourly rates for nurses supplied by agencies. The information obtained during the inquiry did not establish that these actions were the result of an agreement, rather the lower rates were independent responses by individual hospitals to shrinking real budgets.

In respect of the allegations of predatory pricing, the information obtained during the inquiry established that the price of nursing services supplied through the hospitals' own agency covered the agency's costs, i.e. payment of nurses and administration. As a consequence it could not be established that such prices were unreasonably low, and thus predatory.

A remedial order may be issued by the Competition Tribunal under the abuse of dominant position provisions when the Tribunal finds that one or more persons substantially or completely control a class or species of business and engage in a practice of anticompetitive acts that are likely to prevent or lessen competition substantially. The information obtained during the inquiry established that about 75 percent of Metropolitan Toronto nurses work in HCMT member hospitals, but only a minority of those hospitals boycotted the nursing agencies by implementing maximum hourly rates for nurses supplied by agencies. Thus, it was not established that the boycotting hospitals had substantial or complete control of a class or species of business in a market.

Representatives of the Director met with executives of the HCMT and the hospitals identified as being the leaders in the alleged boycott to discuss the allegations and the current situation. They stated that there has not been any communication among them since 1988 about the use of private nursing agencies. Information provided indicates that at present there is a significant decline in demand for nursing agency nurses because of a general collapse in demand for nurses in Ontario as a result of hospital cutbacks.

In light of the foregoing, the Director discontinued the inquiry.

FISHING TACKLE ADVERTISING

In June 1989, the Director received a complaint from a United States catalogue and mail order company alleging that a group of Canadian fishing tackle manufacturers had engaged in conduct contrary to the price maintenance provisions under section 61(6) of the *Act* which limited the complainant's ability to compete in Canada. Specifically, it was alleged that the Canadian fishing tackle manufacturers had threatened not to

place advertisements with publications that accepted advertisements from the complainant because of the complainant's ability to offer competing products at lower prices.

An examination of the information available provided reasonable grounds for the Director to commence an inquiry, and search warrants were executed and records were seized at the premises of a Canadian fishing tackle manufacturer as well as at the premises of publishers that complied with the boycott. While the evidence obtained during the inquiry supported the allegations made by the complainant, the Director exercised his discretion and decided not to refer the matter to the Attorney General. Subsequently, the publishers in question accepted advertisements from the complainant and changes in the personnel, corporate status and advertising policies of the Canadian fishing tackle manufacturer in the marketplace ameliorated the Director's competition concerns. Accordingly, the inquiry was discontinued.

PARA-PROFESSIONALS-ONTARIO

The Director commenced an inquiry in February 1990, following the receipt of an application for an inquiry submitted by six residents under section 9 of the *Act*. The applicants alleged that a governing body of a professional organization empowered by the legislature of Ontario to regulate the activities of that profession had attempted to restrict certain activities of para-professionals through actions that contravened sections 45(1)(d) (conspiracy), 52(1) (a) and (b) (misleading advertising), and 79 (abuse of dominant position) of the *Act*.

During the course of the inquiry, the Director determined that the allegation that the governing body had engaged in misleading advertising with respect to describing the activities of the para-professionals could not be demonstrated. The Director also concluded that the furthering of private prosecutions by the governing body against certain para-professionals was permitted by Ontario legislation, and did not violate either section 45 or 79. Finally, with regard to the overall allegation that the actions of the governing body toward the applicants violated sections 45 and 79, the Director found that there were no grounds to substantiate such a conclusion.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued.

EXPANDED METAL

In July 1990, the Director commenced an inquiry after receiving a six resident application for an inquiry under section 9 in respect of the predatory pricing provisions of the *Act*. The applicants, six principals of one of the major suppliers of expanded metal products in the Canadian market, alleged that a competing supplier had contravened the predatory pricing provisions in paragraph 50(1)(c) of the *Act*. Specifically, they alleged that this competitor had adopted a policy of selling expanded metal products at unreasonably low prices for the purpose of eliminating their firm, its major competitor, from both the Canadian and United States markets.

In addition to information provided by the complainants, information was obtained through interviews with other industry participants, including officials of the company alleged to be predating. This information was assessed in accordance with the Director's enforcement policy which considers predatory pricing to present a serious threat to the competitive process only in those instances where the alleged predator has a reasonable expectation of recouping any foregone profits or incurred losses resulting from its policy of selling at unreasonably low prices. The Director concluded that grounds did not exist to believe that the provisions of paragraph 50(1)(c) had been violated as the presence of substitute products and low barriers to entry as well as a reasonably low market share on the part of the alleged predator limited its ability to exercise market power. Accordingly, the matter did not warrant further investigation, and the inquiry was discontinued.

BRITISH COLUMBIA LOWER MAINLAND TOWING

In June 1991, the Director commenced an inquiry after receiving a six resident application for an inquiry under section 9 of the *Act* from a supplier of vehicle towing services located in the Vancouver area. The applicants alleged that a local municipal authority and two or more competing towing companies entered into an agreement, contrary to the conspiracy provisions of the *Act*, to prevent the applicants' company from being included in municipal towing work. A review of the information provided by the applicants as well as information obtained from other sources did not support the allegation of an agreement to exclude the applicants' company from municipal towing work. The municipal authority was under no legal obligation to conduct business with the applicants' towing company or offer a tendered contract for services. As well, an

examination of local market conditions indicated that the exclusion of the applicants' towing company was not likely to have an injurious effect on competition.

As there was no evidence of an offence and the circumstances did not warrant further investigation, the Director discontinued the inquiry.

DIESEL FUEL

In May 1991, the Director commenced an inquiry after receiving a six resident application for an inquiry under section 9 of the *Act* alleging that suppliers of diesel fuel in the province of Quebec agreed to fix prices contrary to the conspiracy provisions of the *Act*. In support of the applicants' allegations, they cited that the price of diesel fuel in Quebec had not decreased after the Persian Gulf War unlike gasoline prices.

An examination of the information obtained during the inquiry revealed that diesel fuel and gasoline are subject to different market forces thereby resulting in different retail prices as well as different price differentials. No evidence of an illegal agreement among diesel fuel suppliers was obtained during the inquiry. As well, information obtained from the Ministry of Natural Resources of Quebec indicated that the price of diesel fuel in Quebec increased with the installation of new pumping technology for commercial customers which reduced the volumes of diesel sold at regular gasoline retailers. The latter caused an increase in average operating costs which in turn increased the price of diesel fuel. The Director decided that further inquiry was not justified, and the inquiry was discontinued.

ELECTRONIC APPLIANCES

In October 1991, the Director commenced an inquiry after receiving a complaint from a furniture and electronic appliance retailer in the Saguenay-Lac St-Jean region of Quebec that alleged that a manufac-

turer of electronic appliances engaged in conduct contrary to the price maintenance provisions of the *Act*. Specifically, it was alleged that the manufacturer refused to supply the retailer at the insistence of a competing retailer because of the complainant's low pricing policy. Price maintenance convictions and prohibition orders have been registered by the courts against several manufacturers of electronic appliances in the past.

During the inquiry, information was obtained from a number of sources including the main witness to the alleged price maintenance offences. The information of the main witness did not corroborate the allegations of the complainant. As well, information was obtained that other retailers in the Saguenay-Lac St-Jean region with low pricing policies carrying the electronic products supplied by the manufacturer in question were not pressured to increase retail prices. Accordingly, the Director decided that further inquiry was not warranted, and the inquiry was discontinued.

REGINA SEWER SERVICES

In 1992, the Director commenced an inquiry under the conspiracy provisions of the *Act* following receipt of information that the major suppliers of sewer cleaning services in Regina, Saskatchewan had met and agreed on prices and related advertising. The information obtained during the inquiry established that not all of the suppliers in the market agreed on prices. Moreover, the agreement was in effect for a short period of time, the amount of commerce affected was *de minimus*, and only applied to new customers. These factors were considered by the Director in determining whether formal investigative measures were warranted in respect of the allegations. Bureau staff undertook information visits with the parties to discuss the allegations and inform them of the application of the conspiracy provisions of the *Act*. Subsequently, the inquiry was discontinued.

APPENDIX VII

MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES OFFENCES: SELECTED ACTIVITIES¹

	1989-90	1990-91	1991-92	1992-93	1993-94
Number of complaints, examinations and inquiries					
Total complaints received	14,610	14,517	15,130	13,657 ²	11,000 ²
Number of files opened	13,448	13,745	14,557	11,095 ²	10,500 ²
Applications for inquiries under section 9	2	—	4	—	5
Inquiries commenced	76	90	82	41	46
Disposition of Inquiries					
Completed examinations/inquiries	493	496	407	196	399 ³
Information contacts	1,310	1,324	1,511	1,174	654 ⁴
Inquiries formally discontinued					
Cases involving undertakings ⁵	3	11	2	3	38
Other cases	4	4	1	10	3
Undertakings received	8	14	24	20	5
Matters referred to the Attorney General of Canada	56	90	55	16	36
Matters where further action is not warranted ⁶	6	—	9	19	2
Prosecutions commenced ⁶	52	53	44	18	29
Prohibition orders without conviction ⁵	5	1	1	2	—
Prosecutions concluded ^{6,7}					
Convictions	—	47	43	29	11
Non-convictions ⁸	—	29	44	22	15
Total Fines	\$907,850	\$1,020 850	\$1,353 400	\$692,700	\$200,700

1. See also activities noted in Appendix II related to Information and Compliance Programs.

2. Due to technical difficulties, full year statistics were unavailable. These were estimates based on historical trends.

3. 355 completed to the examination level; 44 completed as formal inquiries.

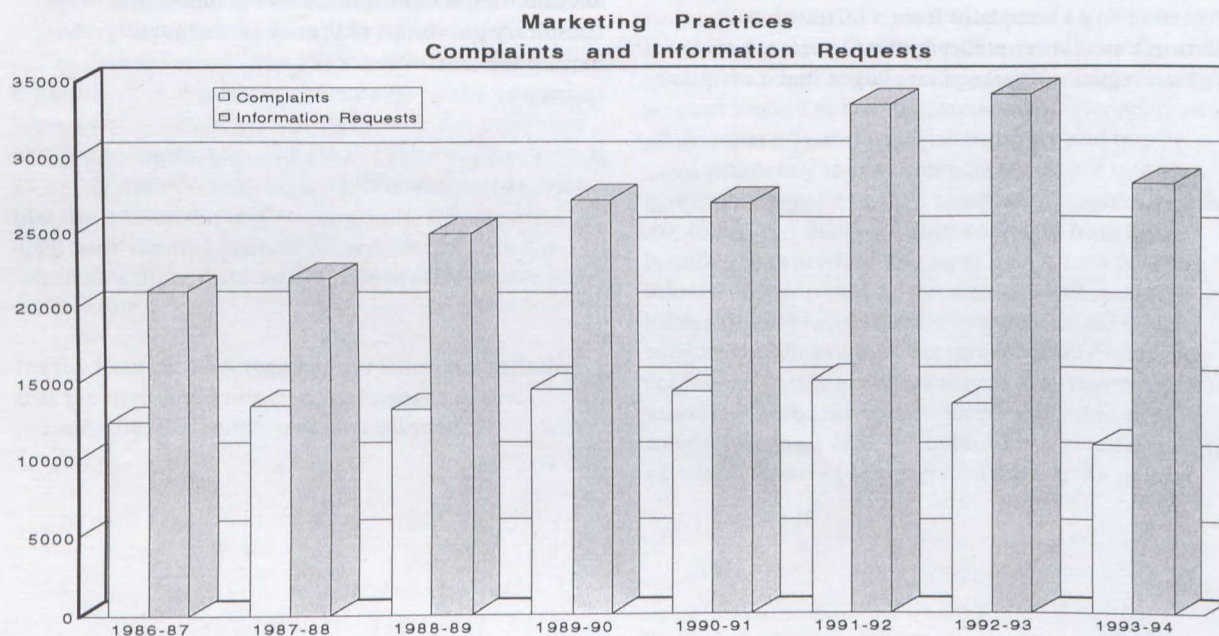
4. Prior year statistics included written, oral and in-person information contacts. This year's statistic includes only written contacts.

5. Discontinued inquiries involving undertakings are reported for the fiscal year in which they were discontinued. Accordingly, these may not coincide with the actual number of undertakings received in any given fiscal year.

6. May include matters referred during previous years.

7. These statistics were not reported prior to fiscal 1990-91 on a "prosecution" basis.

8. This includes conditional and absolute discharges, withdrawals, stays of proceedings, etc. It should be noted that charges against some of the accused are often withdrawn after other accused in the same case have pled guilty. Accordingly, there is some overlap.



MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES: PROCEEDINGS

ACCUSED CONVICTED

2220300 Manitoba Ltd., c.o.b. as AAA Battery Specialists

Allan and Marion Super Discount Marts Limited, c.o.b. as A&M Super Food Store

Apple Fitness Stores Inc., c.o.b. as Fitnessland

Brass Villa Limited and Sam Jaggi

Danbury Sales Inc.

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

George Lawrence Dobrowolski

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

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

Multitech Warehouse (Manitoba) Direct Inc.

Officeland Inc., c.o.b. as Lamron Sales

ACCUSED NOT CONVICTED¹

401801 Ontario Limited, c.o.b. as Williams Fur Group, and Jim Williams (under appeal)

Allan Zaba

Boots and Boards Ltd.

Hallstone Promotions Ltd., c.o.b. as Premium Distribution Centre and Premium Appliance Warehouse

Liquidation Couronne Inc.

Marc Dubois

Marvyn Budd

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

Michael J. McKenna

Multitech Warehouse Direct (Ontario) Inc., formerly Krazy Krazy's

Nicholas Mourant

Roger Issa (a.k.a. Roger Jacobs), c.o.b. as Health Experts, and Cassandra Ashley Williams

Shirley Thérour

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

Walter Wilfred Erhart

PROSECUTIONS COMMENCED

857780 Ontario Limited, 891249 Ontario Limited, 585968 Ontario Limited, 895837 Ontario Limited, 854696 Ontario Limited, 992434 Ontario Limited, Premier Health Clubs (Mississauga) Ltd., 918961 Ontario Limited and 907610 Ontario Limited, all c.o.b. as Premier Health Clubs, Premier Health & Racquet Clubs, Mademoiselle Spa Figure & Fitness and Mademoiselle Spa

962876 Ontario Ltd., c.o.b. as World Gym, 658889 Ontario Ltd., Ralph G. Darling and Ralph Darling

Aban Persian Rugs Inc. and Hossein Farjami

Allan and Marion Super Discount Marts Limited, c.o.b. as A & M Super Food Store, and Allan Zaba

Centre de Couture de la Capitale Inc. and La Compagnie de machines à coudre Singer du Canada Limitée (Beauport)

Centre de Couture Parent (1986) Inc.

Centre de Couture Place Laurier Inc. and La compagnie de machines à coudre Singer du Canada Limitée (Quebec)

Classified Directory Publishers Inc.

Color your World Corporation

Colorcarpet Inc., c.o.b. as Factorerie de Tapis (Laval)

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

Colorcarpet Inc., c.o.b. as Factorerie de Tapis (Quebec)

Crown Liquidation Inc./Liquidation Couronne Inc.,
Chia Chia Communications Inc., Morris Chia and
Laurie Ann Cleven Chia

Envirosoft Water Inc. and Brian Ward

Hallstone Promotions Ltd., c.o.b. as Premium
Distribution Centre and Premium Appliance Ware-
house, and Hallstone Products Ltd., c.o.b. as Barkley &
Sons and Barclays of London

Handi Foods Ltd.

Harvey Klerer Office Furniture & Systems Inc., c.o.b. as
Discount Office Furniture Depot, Harvey Klerer and
David Schulman

La Compagnie de Machines à coudre Singer du Canada
Limitée (Montreal)

La Compagnie de Machines à coudre Singer du Canada
Limitée (Quebec)

Lando Lighting Inc. and Brian Whitelaw

Les Entreprises Francyne et Roger Tremblay Inc. and La
Compagnie de machines à coudre Singer du Canada
Limitée (Montreal)

Lifestyles Canada Limited, Patrick Ashby, Tom Thomas
and James Fitzpatrick

Lighting Originals Inc. and David Szydlow

Michel Robert

Monique Trépanier and 2848-3154 Québec Inc.

Oriental Rug Center Ltd., c.o.b. as Kings Oriental Rug
Galleries, and Aslan Mirkalami

Renaud & Cie Ltée

Saskatoon T.V. Centre Ltd., National Marine Ltd. and
Vern Paproski

The Young Manufacturer Inc., c.o.b. as Stitches

Thomas Liquidation Inc., c.o.b. as Pascal Stores Ltd.,
and David Thomas

MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES: DISCONTINUED INQUIRIES

Industry	Section of the Act	Nature of Inquiry and Conclusion Reached
UNDERTAKINGS¹		
Advertising Space	52(1)(a)	CAA Auto Club & Travel Agency Inc., Issue 2/1993
Answering Machines	52(1)(a)	Bargain Harold's Discount Limited, Issue 1/1991
Automobiles	52(1)(a)	Hyundai Auto Canada Inc., Issue 4/1991
Automobiles	52(1)(a) & 57	George Bradbury's Monteith Hyundai, Issue 4/1991
Automobiles	52(1)(a) & (d)	DFP Investments Inc., c.o.b. as Grand Touring Cars, Issue 1/1991
Automobiles	52(1)(a)	Honda Canada Inc., Issue 2, 3/1991
Automobiles	52(1)(a)	Wolfe Chevrolet Oldsmobile Limited and Port Chevrolet Oldsmobile Limited, Issue 2, 3/1991
Automobiles	59	South Trail Plymouth Chrysler Ltd., Don Wheaton Chevrolet Oldsmobile Ltd. and Waterloo Mercury Sales (1981) Ltd., Issue 4/1990
Automobiles	52(1)(a) & (d)	Beaver Lincoln Mercury Sales Limited, Issue 3/1992
Automobiles	52(1)(a) & (d)	Orleans Dodge Chrysler Inc., Issue 1/1992
Automobiles	52(1)(a)	Ottawa Motor Sales 1987 Limited, Issue 1/1992
Automobiles	52(1)(a)	Toronto Ford Dealers Association, Issue 4/1991
Automobiles	52(1)(a) & 59	Don Valley North Toyota Limited, Issue 4/1992
Automobiles	52(1)(a) & 57	Alex Irvine Motors Ltd., Issue 2/1992
Automobiles	52(1)(a) & 57	Courtesy Chevrolet Geo Oldsmobile Ltd., Issue 2/1992
Automobiles	52(1)(a) & 57	Airport Chevrolet Oldsmobile Inc., Issue 2/1992
Carpets	52(1)(a) & (d)	Tifco Décor Inc., c.o.b. as Chez Ti-Frère, Issue 2, 3/1991
Dealcoholized Beer	52(1)(a) & (b)	Distributions A.G.P. Inc., Issue 4/1991
Disposable Diapers	52(1)(a)	Proctor & Gamble Inc., Issue 4/1991
Fitness Memberships	52(1)(a) & 58	California Fitness (Saskatoon) Ltd., Issue 4/1990
Fitness Memberships	52(1)(a) & 59	H. & C. Management Consultants Ltd., c.o.b as Fitness World, Issue 2, 3/1991
Frequent Flyer Plan	52(1)(a)	Air Canada, Issue 2, 3/1991

¹ 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.

Hog Feed	52(1)(a) & (b)	DACO Laboratories Limited, Issue 4/1991
Leather Furniture	52(1)(d)	Jonor Holding Limited, c.o.b. as Leather Source, and Yelovich & Cook Advertising Inc., Issue 1/1991
Lighting Fixtures	52(1)(d)	Universal China Lamp & Glass Co. Limited, Issue 1/1993
Lighting Fixtures	52(1)(a) & (d)	Main Electrical Supply Limited, Issue 3/1992
Lighting Fixtures	52(1)(a)	Jamark Holdings Ltd., c.o.b. as World of Lights, Issue 3/1992
Lighting Fixtures	52(1)(a)	Caneurop Manufacturing Limited, Issue 3/1992
Lighting Fixtures	52(1)(a) & (d)	Lando Lighting Inc., Issue 2/1992
Magazines	52(1)(a) & (d)	Maclean Hunter Limited, Issue 2, 3/1991
Men's Clothing	52(1)(d)	Harry Rosen Inc., Issue 4/1991
Real Estate	52(1)(a)	The Mastercraft Group, Inc., Issue 2, 3/1991
Security Systems	52(1)(a)	Via Security Systems Inc., Issue 3/1992
Ski equipment	52(1)(a) & (d)	Lyle Carter's Sportshop Limited, Issue 2, 3/1991
Snowmobiles	52(1)(a)	Polaris Industries Inc. - Canada, Issue 2, 3/1991
Sporting Goods	52(1)(a)	Sporting Life Inc. and Grey Advertising Ltd., Issue 2/1992
Stereo Equipment	57	K.D. Enterprises Limited, c.o.b. as Krazy Krazy, David Cormier and Chris Butler, Issue 2, 3/1991
Stereo Equipment	52(1)(a) & (d)	Edith Manthier, c.o.b. as Ottawa Stereo, Issue 3/1992
Toothpaste	52(1)(a)	Proctor & Gamble Inc., Issue 4/1991
Windows	52(1)(a) & (d)	Robert Hunt Corporation, Issue 1/1991

OTHER REASONS

Automobiles	52(1)(a) & 57	Complaints were received that a model advertised for sale at a bargain price was not available. The advertiser requested an alternative case resolution but the business dissolved before it could be negotiated.
Computer Equipment	52(1)(a) & (d)	Complaints were received that savings claim by the advertiser were not based on ordinary selling prices. The advertiser requested an alternative case resolution but the business dissolved before it could be negotiated.
Lighting Fixtures	52(1)(a) & (d)	Complaints were received that the advertiser misrepresented "value" prices. An undertaking was negotiated (see Lighting Originals Inc., Issue 3/1992) but the business dissolved before it could be fulfilled.

APPENDIX VIII ECONOMICS AND INTERNATIONAL AFFAIRS

The Economics and International Affairs (EIA) Branch of the Bureau of Competition Policy provides economic support for the enforcement and policy functions of the Bureau and the Director, and carries out the Bureau's responsibilities in the area of international antitrust relations and policy liaison. The following provides highlights of the Branch's principal activities in the areas of: (i) enforcement case analysis; (ii) economic policy initiatives; and (iii) international initiatives relating to competition policy.

ENFORCEMENT CASE ANALYSIS

Enforcement case analysis is a key function of the EIA Branch. Staff economists in the Enforcement Economics Division and elsewhere in the Branch provide input to the assessment of cases in all the enforcement Branches of the Bureau. In 1993-94, staff provided input to the assessment of 18 Civil Matters cases, 17 Criminal Matters cases, 11 Merger cases and 1 Marketing Practices case.

In addition to staff economists in the EIA Branch, expert economic advice on competition policy and industrial organization is also provided by visiting academics in the T.D. MacDonald Chair in Industrial Economics. Donald G. McFetridge, Professor of Economics at Carleton University, held the position until August 31, 1993; following which Roger Ware, Associate Professor of Economics at Queen's University assumed the duties of the position.

The Branch hosts an Academic Seminar Series which features presentations by leading academic specialists in industrial organization on an ongoing basis. In 1993-94, participants in the Series included Margaret Slade (University of British Columbia), Dennis Carlton (University of Chicago), Robert Willig (Princeton University), Frank Mathewson (University of Toronto), Tom Ross (University of British Columbia), Gérard Gaudet (Université du Québec à Montréal), Marius Schwartz (Georgetown University) and Jeffrey Church (University of Calgary).

ECONOMIC AND ENFORCEMENT POLICY INITIATIVES

COMPETITION POLICY AS A DIMENSION OF ECONOMIC POLICY

There is growing interest in the role of competition policy and its implications for the restructuring and globalization of Canadian industries. During 1993-94, the Branch completed a major comparative analysis of the role of competition policy and its relationship to other economic policies that seek to promote efficient industrial structures. In addition to Canadian experience, the analysis considers the role of competition policy in key foreign jurisdictions, including the U.S., the European Union, Germany, France and Japan. The study, entitled *Competition Policy As A Dimension Of Economic Policy: A Comparative Perspective*, is to be published shortly as an Industry Canada Occasional Paper.

COMPARATIVE ANALYSIS OF COMPETITION POLICY INSTITUTIONS

Globalization and related developments have potentially far-reaching implications for the institutional structure of competition policy. During the year, the Branch sponsored a study on the Internationalization of Competition Policy Institutions by Professor Bruce Doern of the School of Public Administration at Carleton University. The study was to be presented at an international conference on comparative competition policy institutions held in Ottawa early in the 1994-95 fiscal year.

STRATEGIC ALLIANCES

The Branch continued its previously initiated work on strategic alliances in 1993-94. The Branch's analysis in this area has provided the basis for the pending release of an information bulletin on this topic in 1994-95.

TELECOMMUNICATIONS POLICY AND THE INFORMATION HIGHWAY

The telecommunications sector is a key infrastructure industry which impacts directly on the competitiveness of other Canadian industries. During the year, the EIA Branch along with other parts of the Bureau participated extensively in the ongoing efforts at the Canadian Radio-Television and Telecommunications Commission (CRTC) and elsewhere in the government

to review the regulatory framework in this sector, and to foster an efficient telecommunications industry generally.

Apart from ongoing interdepartmental policy consultation and coordination, major initiatives included the Bureau's participation in the CRTC's Review of the Regulatory Framework in Telecommunications (**CRTC 92-78**), speeches by the Director of Investigation and Research in Toronto and Montreal in March, and preparation for a presentation by the Director to the Information Highway Advisory Council in the 1994-95 fiscal year. A key thrust of this work was to emphasize the importance of providing maximum scope for competitive market forces to achieve greater efficiency and foster the development of the "electronic marketplace."

TRANSPORTATION POLICY

The Branch continued to represent the Bureau in Departmental and interdepartmental policy deliberations regarding transportation policy. As well, a senior member of EIA staff was assigned to assist the work of the Minister and Deputy Minister of Transport in developing a strategy for enhancing the efficiency and competitiveness of Canada's transportation sector.

COMPETITION POLICY AND INDUSTRIAL AID

During the year, Branch staff prepared an in depth analysis of the interface between competition policy and government subsidy programs in Canada. The analysis also included an examination of the framework for management of industrial aid in the European Union, which is based on competition policy standards. The Branch's analysis was presented at an Industry Canada seminar in August 1993.

INDUSTRY CANADA DEPARTMENTAL POLICY LIAISON

The Branch also provided ongoing liaison and represented the Bureau in the work of the Policy Sector of Industry Canada throughout the year. It contributed to aspects of the background analysis for the Internal Trade Agreement which was recently signed by federal and provincial representatives, particularly relating to the treatment of subsidies and industrial aids. Branch staff also contributed to broader work on issues relating to regulation and competition, science, technology and innovation, and the microeconomic policy agenda.

INTERNATIONAL INITIATIVES RELATING TO COMPETITION LAW AND POLICY

BILATERAL ANTITRUST RELATIONS

The EIA Branch carries out the Bureau's responsibilities in regard to bilateral and multilateral institutional arrangements relating to cooperation in competition law enforcement. These arrangements enable Canada and other members to notify, consult and seek the assistance of other countries when possible violations of one country's competition law may affect the interests of another country.

During the year under review, Canada received 20 notifications from the United States antitrust authorities and 5 notifications from the European Union. It sent 5 notifications to the United States. In addition, Canada received two requests for assistance in criminal competition matters from the Antitrust Division of the United States Department of Justice under the *Mutual Legal Assistance Treaty* while it made one such request to the United States.

As part of a program of regular bilateral consultations, the Director and other officials of the Bureau met with the Assistant Attorney General, United States Department of Justice, Antitrust Division, and the Chairman of the Federal Trade Commission in Washington, D.C., in September, 1993. The discussions focused on matters of mutual cooperation and assistance, including case-specific enforcement assistance and information exchanges between the two countries that are permissible under the confidentiality provisions of the two countries' respective legislation. Follow-up meetings took place between U.S. and Canadian competition officials in Washington in March, 1994. As well, several meetings were held between Bureau and U.S. antitrust officials in respect of specific case matters.

In May 1993, the Director and various officials of the Bureau met with the head of Directorate-General IV of the Commission of the European Union, which is responsible for competition policy. As well, in August, a meeting was held with the Chairman of the Australian Trade Practices Commission. Both meetings focused on bilateral cooperation in enforcement and the potential for international convergence in competition policy principles and enforcement practices.

Implementation of a proposed Canada-European Union accord on cooperation in the administration of competition law has been held in abeyance since early 1993 as a result of proceedings before the European Court of

Justice regarding a similar agreement between the E.U. and the U.S. A recent ruling by the Court in that matter has clarified the ratification process that must be followed to implement the proposed Canada-E.U. accord.

During the year, meetings were also held with the heads of competition agencies from Mexico and Taiwan, focusing on bilateral cooperation and possible technical assistance in the development and enforcement of competition laws in their respective jurisdictions.

REGIONAL INITIATIVES RELATING TO COMPETITION POLICY

The Branch represented the Bureau in various aspects of the government's follow-up work under the North American Free Trade Agreement. A key initiative in this regard was the initial preparatory analysis for a Working Group on Trade and Competition which has been set up pursuant to Article 1504 of the NAFTA agreement. The mandate of this Group is to undertake an on-going study of the relationship between trade and competition policy within the framework established by the provisions of the NAFTA. A senior official of the EIA Branch is the head of the Canadian negotiating team for the Group. The Working Group held its first meeting in Washington on March 29, 1994.

During 1993-94, the Bureau also monitored and contributed to the discussions on the potential adoptions of common principles relating to competition policy within the emerging Asia Pacific Economic Cooperation (APEC) area. This is an important venue in which Canada can promote market-oriented approaches to economic development that are consistent with Canadian practices and institutions.

PARTICIPATION IN MULTILATERAL ANTITRUST FORA

The Branch has the lead responsibility in the Bureau for supporting the Bureau's participation in the work of the OECD Committee on Competition Law and Policy (CLP) and its various working groups. In this regard, a key responsibility during the year was the Director's participation in the work of the Convergence Steering Group (CSG) of the CLP Committee. The Director was the Chairman of this Group, which examined the scope for and potential benefits of international convergence in competition policy principles and enforcement practices.

The work of the CSG resulted in a report to the OECD Council of Ministers which outlined the substantial progress made in the convergence of approaches to competition policy and cooperation over the past decade, while stipulating that uniformity of national approaches was not necessarily feasible or desirable. The Report put forward a work program to further advance the convergence process over the next five years. The Council of Ministers subsequently accepted the Convergence report and instructed the Committee to pursue the convergence of competition laws and policies.

The Bureau also contributed actively to the ongoing work of Working Party 3 of the CLP Committee on international cooperation and coordination of enforcement efforts, as well as the pursuit of enhanced understanding of trade and competition issues by Working Party 1 of the Committee.

The Branch also continued to participate on behalf of the Bureau in the work of the Intergovernmental Group of Experts (IGE) on Restrictive Business Practices of the United Nations Conference on Trade and Development (UNCTAD). A staff member of the Bureau was elected to serve as Chair of the IGE's annual conference in the coming year.

TECHNICAL ASSISTANCE REGARDING COMPETITION LAW AND POLICY

The Branch coordinates and participates in the Bureau's involvement in the provision of technical assistance regarding antitrust matters particularly for the emerging market economies. During the year, assistance in the form of advice and relevant material was provided to Venezuela, Peru, Columbia, Jamaica, China and Malaysia under the auspices of UNCTAD. In addition, two members of the Bureau's professional staff provided training to competition officials of Russia and the Ukraine, as a contribution to the OECD's program of assistance for Partners in Transition countries.

As well, training was provided for two interns from Mexico's Federal Competition Commission over a six week period at the Bureau's offices in Hull. An officer from Norway's Price Directorate which is responsible for competition matters also visited the Bureau for training purposes.

APPENDIX IX

INFORMATION AND COMPLIANCE PROGRAMS

In addition to investigation and prosecution in the enforcement of competition law, the Bureau undertakes a variety of compliance and public information initiatives to foster voluntary compliance with the *Act*.

THE SPEECH PROGRAM

The Director and senior members of the Bureau regularly address a variety of trade associations and other business and professional groups interested in competition policy. Information on how to obtain copies of speeches is provided below. The Director also conducts a number of smaller scale consultation meetings with representatives of various business sectors, the legal profession, the academic community, and associations representing business and consumer interests. Bureau officers also undertake speaking engagements, largely in connection with the bid-rigging and misleading advertising and deceptive marketing practices provisions of the *Act*. As part of the *Public Education Initiative*, the Bureau will be making more officer resources available for public speaking engagements in the future.

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 to an opinion.

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.

PUBLIC INFORMATION

A number of bulletins and guidelines which describe the enforcement policies of the Director are available from the Bureau's Resource Centre. These include *Merger Enforcement Guidelines*, *Misleading Advertising Guidelines*, *Predatory Pricing and Price Discrimination Enforcement Guidelines*. *An Overview of Canada's Competition Act* provides a lay person's guide to the major provisions of the *Act*. The Marketing Practices Branch of the Bureau publishes a *Misleading Advertising Bulletin* each quarter which describes new case and enforcement developments in respect of the misleading advertising and deceptive marketing practices provisions. The Bureau also distributes a pamphlet for purchasing managers on how to detect and deter bid-rigging offences. Additional pamphlets on various sections of the *Act* are in the process of being developed as part of the Director's *Public Education Initiative*. A list of the publications available from the Bureau is contained in this Appendix.

MEDIA CONTACTS

The Bureau regularly informs the public about competition matters through the media, generally through press releases and backgrounders on significant cases and media interviews with senior officials of the Bureau.

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)

Program of Compliance (1993 update of June/89 Information Bulletin No. 3)

An Overview of Canada's Competition Act (1993 update of November/90 Information Bulletin No. 4)

Misleading Advertising Guidelines (Special Edition)

Multi-Level Marketing and Pyramid Selling Provisions of the Competition Act

Misleading Advertising Bulletin (issued quarterly)

Bid-Rigging Pamphlet

Robert D. Anderson and S. Dev Khosla, *Competition Policy As a Dimension of Economic Policy: A comparative Perspective* (to be issued shortly as an Industry Canada Occasional Paper)

Derek J. Ireland, *Interactions Between Competition and Trade Policies: Challenges and Opportunities*

Joseph Monteiro, *Europe 1992: The Regulated Sectors; the Scope for Expansion of Competition Policy; and the Implications for Canadian Businesses*

Competition Policy in Canada: Its Interface With Other Economic and Social Policies

Competition Policy in Canada: The First Hundred Years

News releases (issued periodically)

In addition to the above-noted official publications, staff members of the Economics and International Affairs Branch of the Bureau occasionally prepare informal working papers and articles for submission to academic or professional journals. An Annotated Bibliography describing such documents is available from the Resource Centre in both official languages.

Copies of selected speeches made by the Director, former Directors and other senior members of the Bureau are available to the public. Bureau publications and speeches will soon be available on Internet at the address bcpresct@achilles.net. Those wishing to obtain copies should contact:

Resource Centre
Bureau of Competition Policy
Industry Canada
50 Victoria Street, 21st Floor
Hull, Quebec
K1A 0C9

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

HOW TO CONTACT THE BUREAU OF COMPETITION POLICY

GENERAL INFORMATION

Anyone wishing to reach 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. The Resource Centre of the Bureau can also be reached on Internet at the address baznet@ic.gc.ca.

Resource Centre
Bureau of Competition Policy
Industry Canada
50 Victoria Street, 21st Floor
Hull, Quebec
K1A 0C9

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

Restraints to Competition Office
Bureau of Competition Policy
Industry Canada
1400-800 Burrard Street
Vancouver, British Columbia
V6Z 2H8

Telephone: (604) 666-3072
Fax: (604) 666-5031

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
Bureau of Competition Policy
Industry 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.

Marketing Practices Branch
Bureau of Competition Policy
Industry 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

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

Telephone: (403) 495-2489
Fax: (403) 495-4708

711 - 330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4

Telephone: (204) 983-5567
Fax: (204) 983-5971

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

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

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

Telephone: (905) 572-2873
Fax: (905) 572-4216

Sillery, Quebec
(Telephone service only)
Telephone: (418) 648-3939

5 Place Ville Marie
8th Floor
Montreal, Quebec
H3B 2G2

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

5670 Spring Garden Road
7th Floor
Halifax, Nova Scotia
B3J 1H6

Telephone: (902) 426-6002
Fax: (902) 426-2221

DATE DUE - DATE DE RETOUR

~~AUG 05 1997~~

INDUSTRY CANADA/INDUSTRIE CANADA

