INTERVENTIONS BY THE BUREAU OF COMPETITION POLICY

JOSEPH MONTEIRO

INTERVENTIONS BY THE BUREAU OF COMPETITION POLICY

JOSEPH MONTEIRO

ACKNOWLEDGEMENTS

This project developed from my initial papers on Representation to Regulatory Boards and the encouragement of a colleague, **Bruce Russell.** The summary of each intervention has to a large extent been adapted from the Annual Reports, **Director of Investigation and Research, Competition Act** and other sources.

I express my appreciation to members of the **Regulatory Affairs Branch** especially **Mr. C. Stevenson** who provided a few summaries that were not published and **Mr. D. Quevillon** for patiently typing this report.

The views expressed in this report, however, are those of the author and not necessarily those of the **Regulatory Affairs Branch** or the **Department of Consumer and Corporate Affairs, Canada.**

January 1989 **Joseph Monteiro**

FOREWORD

This report provides a summary of interventions by the Bureau of Competition Policy since the Combines Investigation Act was amended in 1976 enabling the Director of Investigation and Research to make representations to federal boards.

Chapter 1 briefly describes the situation that led to the development of activities by the Bureau of Competition Policy in the regulated sector of the Canadian economy.

Chapter 2 reviews the history of the section dealing with interventions, and the reasons for the amendments and additions to the provisions on interventions.

Chapter 3 presents a summary of each formal intervention. Basically each summary describes the issue, the nature of the intervention by the Director and the decision of the regulatory board.

Chapter 4 presents a summary of each informal representation. Basically each summary describes the issue the nature of the representation by the Director and the decision of the regulatory board.

Chapter 5 provides an analyses of the interventions and representations of the Bureau of Competition Policy. First it classifies the intervention by major issue, second it classifies each representation by major issue, third it analyses the major issues in the interventions and representations and finally it attempts to assess the effectiveness of the interventions and representations by the Bureau of Competition Policy.

Appendix 1 provides a list of formal interventions and other representations chronologically, by sector. **Appendix 2** provides a list of ongoing formal interventions and other representations. **Appendix 3** contains a paper prepared for the OECD on Communications by **Mr. F. Ian Scott** .

It is hoped that this report provides useful background information and acts as a reference to those interested in the past activities and the nature of issues likely to be addressed by the **Regulatory Affairs Branch, Bureau of Competition Policy, Consumer and Corporate Affairs,Canada.**

TABLE OF CONTENTS

1. INTRODUCTION

INTERVENTIONS BY THE BUREAU OF COMPETITION POLICY

1. INTRODUCTION

Government influence of economic behaviour is as old as government itself. The only consensus on its appropriateness, since the earliest times, is that some forms of government influence are good and others are bad. In conjunction with the growth of the national economy and trade in Canada there was a rapid escalation of government influence, particularly in the last decade. The extent of government influence became so widespread that one was constantly reminded of its presence from the time one arose with the clock radio in the morning informing one that the price of eggs eaten at breakfast is set by government marketing boards, till the time one puts on their sleepwear which is required to be unimpregnated by hazardous substances. The pervasiveness of governmental influence, however, was achieved at a cost, which became clearly visible, and those before cried back! In some situations, laws frequently continued to be in force long after the circumstances which first gave occasion to them, and which could alone render them reasonable, were no longer prevalent. These developments warranted and paved the way for greater intervention into the regulated sector and will hereafter be briefly reviewed.

Government influence of economic behaviour has been achieved through a wide variety of instruments, notable among them are: exhortation; direct-expenditures (capital and current expenditures for public services, grants, subsidies, transfer payments, etc.); tax exemptions; taxation (direct and indirect, fees or prices for public services); public ownership; and, regulations (statutes and all subordinate legislation). It is this last instrument, particularly economic regulation, that recently received the greatest attention, examples of which are government regulation of price (i.e. tariffs, rents, wages, rates, etc.), supply (entry and output), rates of return, disclosure of information, attributes of a product or service, methods of production, conditions of service, discrimination, etc. The imposition of economic regulation was justified on the following grounds: to improve economic efficiency by remedying market failures, such as natural monopoly, destructive competition, externalities or spillovers, inadequate provision of information and improper utilization of natural resources; to alter the distribution of income, by constraining monopoly profits and unjust price discrimination, reducing the impact of economic change and redistribution of income to specific groups; and, to effect one or more social or cultural goals.

With this justification serving as a background, the number of regulations grew rapidly in Canada. For example, federal regulatory statutes increased from 25 in 1870 to 140 in 1978 and provincial regulatory statutes increased from 125 to 1,608, for the same period. Alternative measures, such as number of pages of regulatory statutes, also suggest its growth. The growth of regulations escalated rapidly in the last decade, federal statutes increased to 25 from 7 for the preceeding decade and provincial statues increased to 282 from 218 for the earlier decade.

Even though the extent of government regulations in Canada, as measured by gross domestic product subject to some form of direct regulation, was estimated to be as high as twenty-nine percent in the mid-seventies, the pervasiveness of government regulation was somewhat downplayed by this numerical magnitude. In several very important industry sectors, affecting one profoundly, such as communications and public utilities, government regulation was hundred percent, in finance, insurance and real estate it was over seventy-five percent, in community service it was approximately fifty percent and in transport (rail, water, air, pipeline, local and interurban passenger) it was one hundred percent.

The pervasiveness and oppressiveness of government regulation stifled growth and development, and business strenuously objected to the cost and burdens imposed on its efficiency. These cost of regulation can be divided into two broad categories: 1) Direct cost (i.e. i. public sector costs: administration, and ii. private sector costs: compliance). 2) Indirect cost (i.e. i. inefficiency at the level of the firm, ii. inhibition of technological change, and iii. allocative inefficiency).

Though these costs of regulation add up to a fairly significant level, only two aspects of the cost of regulation will be stressed here: first, inefficiency at the level of the firm and second, inhibition of technological change. A number of operating inefficiencies are imposed on the level of the firm as a result of regulation in Canada resulting in increases in cost. For example, in trucking, licences contain restrictions on routes that can be served, back-hauling, commodities that can be carried, volumes and frequencies of services, and types of equipment that can be used. Such bizarre restrictions lead to the carrier's inability to utilize its equipment and capacity optimally and to choose the lowest attainable cost.

Further inefficiencies at the level of the firm

may be induced by regulation as managers may not be motivated to ensure that production takes place by the least cost method and as a result, the cost of production rises. If the firm's rate of return is regulated so that it is less than what would otherwise prevail, the firm will increase the capital it employs and the same quantity of output is produced at a less efficient level with excess capacity. The firm may substitute capital for other inputs and the consequences of strictly regulating the rate of return on entrepreneurial accomplishment and technological change could be even more disquieting. Payments to labour may also be above the competitive level, as labour unions may increase its demands and the firm may not be under pressure to resist the demand of labour unions.

Perhaps the most disquieting feature of regulation is its inhibition of technological change (i.e. over time). While it is difficult to generalize about the effects of regulation on technological change in all industries, there is a belief by the economic profession that regulation has slowed the pace of technological change in commercial transportation, and slowed the pace or had a neutral effect on telephonic communications. Consequently, it is expected that freeing industries from unnecessary regulation is likely to have a beneficial effect on technological progress.

Aware of these costs, the Economic Council, in its 1969 Interim Report on Competition Policy made the following remarks:

> "The hidden costs to the economy of poor regulatory performance provide, in our view, a strong justification for applying the underlying principles of competition policy, in suitably modified form to the regulated sector of the economy, the more so since some parts of this sector, such as regulated communications activities, are likely to grow rapidly in relative economic importance over the next few years."[1]

While the regulatory reform move had not achieved any momentum in Canada at that time, some form of action was in order. Consequently, a new section 27.1 was added to the 1976 amendments of the Combines Investigation Act, now section 97 of the Competition Act. This amendment empowered the Director of Investigation and Research (Director) to

make interventions to federal boards, thus enabling the Director to influence the regulated sector of the economy. To facilitate the task of intervening, the Regulated Sector Branch, now the Regulatory Affairs Branch, was formed on October 1, 1980 by the then Minister of Consumer and Corporate Affairs, Canada at that time who stated:

> "The main reason for the formation of the Branch is to ensure that effective competitive forces are allowed to work to the greatest extent in the increasing proportion of the Canadian economy that is now subject to regulation. We are not particularly interested in the process of creating regulations, but rather in the performance of those sectors of the economy subject to regulation...[2]

Thereafter, several associations and organizations were contacted, informing them of the Director's new mandate. Since 1976, the number of Director's interventions, shown in Table 1, have increased markedly. These interventions took on greater significance and had a tremendous impact on the Canadian economy, with the introduction of regulatory reforms.

Perceiving the importance of representations, section 98* was added in 1986 to the Competition Act which enabled the Director to make representation in respect of competition to provincial boards with their consent.

---

* Sections 98 and 97 are in the process of being re-numbered in the revised consolidated version of the Competition Act.

TABLE I

FORMAL INTERVENTIONS AND OTHER REPRESENTATIONS 1976-1986

	1976-1977	1977-1978	1978-1979	1979-1980	1980-1981	1981-1982	1982-1983	1983-1984	1984-1985	1985-1986	TOTAL
Formal Interventions [27.1]*	3	4	0	3	4	6	4	15	17	15	71
Appendix	3	5	0	3	5	4	3	16	21	10	70
Other Representations*	1	1	2	1	0	9	7	8	6	7	42
Appendix	1	1	2	1	1	10	7	10	5	10	48

* SOURCE: Annual Report, Director of Investigation and Research, Combines Investigation Act, March 31, 1984, p. 13.

2. HISTORY OF SECTION 97

II HISTORY OF SECTION 97

This chapter reviews the history of section 97 of the Competition Act, provides the underlying reasons for the amendments and additions to section 27.1, and examines other related issues.

a. HISTORY OF SECTION 97

The original version of section 97 of the Competition Act formerly section 27.1 of the Combines Investigation Act appeared in Bill C-256 as section 93. This Bill was introduced in the House of Commons on June 29, 1971.[3] Section 93 of Bill C-256 proposed that the "Commissioner" (i.e. who was to take the place of the Director) may make representations to and call evidence before any federal board, commission or other tribunal, at the request of it, in respect of the maintenance of competition, whenever such representations or evidence is relevant to a matter before it and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining such matter. Subsection 93(2) defined a federal Board in a similar manner to subsection 27.1(2) (See Footnote 6). It contained the words "Parliament of Canada" instead of "Parliament", "commodities or services" instead of "product" and "for any such purpose" instead of "charged with any such responsibility". Bill C-256 died on the Order Paper at the conclusion of the twenty-eight Parliament.

Bill C-227 was introduced in the House of Commons on November 5, 1973,[4] as the First Stage Proposals[5] (the original bill being a single complex bill) for a new competition policy. Section 93 was amended and appeared as section 27.1,[6] with the addition that the Director "upon his own initiative, may, and upon direction from the Minister shall" make representation. Further, the word "acquisition" was added to "production, supply or distribution" in subsection 27.1(2). Bill C-227 did not proceed any further than the first reading and died on the Order Paper. Bill C-227 was reintroduced as Bill C-7 in the House of Commons on March 11, 1974[7], given approval in principle and was sent to the House of Commons Committee on Finance Trade and Economic Affairs. The Committee briefly[8] reviewed section 27.1, and after several meetings of the Committee, Parliament was dissolved. Bill C-7 was reintroduced in exactly the same form as Bill C-2 in the House of Commons on October 2, 1974[9] and given first reading. It received second reading in December 1974 and was referred to the Committee. Section 27.1 was briefly reviewed by the Committee in 1975[10]. No amendments were made to section 27.1 from its form in Bill C-227. Bill C-2 finally became law and section 27.1 was added as an additional civil power to the Combines Investigation Act in 1976.

The Second Stage Proposals[11] proposed amendments to this section which were introduced into the House of Commons in Bill C-42.[12] The proposed[13] subsection 27.1(1) replaced the words "Competition Policy Advocate" (who was to replace the Director) for "Director", and "agency" for "tribunal". "Make representations to and call evidence before any such board, commission or other tribunal" was replaced by "intervene in any public hearing or like proceeding before such a board, commission or other agency". The scope of representations were expanded with the addition of the words "for the purpose of making representations in respect of any aspect of the central purpose of Canadian public policy expressed in the preamble of this Act including the maintenance of competition and the efficient allocation and utilization of resources". The words "whenever such representations or evidence are or is relevant" were changed to "whenever such representations are in the opinion of the Competition Policy Advocate or the Minister relevant".

Sub-section 27.1(2) became sub-section 27.1(4) and the list of bodies excluded from the definition of "federal board, commission or other agency" were expanded with the replacement of a "court" for "a person or persons appointed under section 96 of the British North America Act 1867, under section 4 of the Supreme Court Act or under section 5 of the Federal Court Act while acting in the capacity in which they were so appointed, the Governor in Council or the Treasury Board".

Sub-sections 27.1(2) and (3) were entirely new (with the exception that "call witnesses" was formerly included in sub-section 27.1(1) as "call evidence"). The Competition Policy Advocate's name was to be entered on the record, he was to have access to all evidence or material, he may call witnesses and cross-examine witnesses called by others, and he was to have all the rights of any party to the matter, including the right of appeal. In respect of evidence or material to which he gains access, the Competition Policy Advocate must maintain the same degree of confidentiality as is required or afforded by the regulatory agency.

After a lengthy discussion[14] on the subject matter of Bill C-42, the Standing Committee on Finance, Trade, and Economic Affairs recommended "That section 27.1 of the Competition Act be amended to provide that the Competition Policy Advocate may only intervene in any matter before a federal board, commission or other agency when such board, commission or other agency is, in fact, conducting proceedings in respect to any matter before it."[15] The recommendation was made...to obviate the concern expressed by many that such powers could be abused in that the Advocate may be empowered to intervene in the day to day

activities of the board...[16] To accomplish this result, Bill C-13 incorporated an amendment to section 27.1 and was introduced into the House of Commons on November 18, 1977.[17] Sub-section 27.1(1) was amended by replacing "intervene in any matter" for "intervene in any public hearing or like proceeding". Sub-section 27.1(4) was also amended by adding to the definition of federal board the words "under section 4 of the Supreme Court Act or under section 5 of the Federal Court Act". The proposed amendments to Bill C-42 and Bill C-13 were deleted of Bill C-29.[18] Bill C-13 met with organized opposition from the business community and died on the Order Paper. Extensive consultation with the private sector and provincial governments preceeded the introduction of Bill C-29. This Bill was introduced in the House of Commons on April 2, 198419 but died on the Order Paper.

After extensive consultation with the provinces, consumers, business and other private-sector interests,[20] Bill C-91 was tabled in the House of Commons on December 17, 1985.[21] Amendments to section 27.1 and a new section pertaining to representations to provincial boards were contained in Bill C-91 under Part 1X as sections 97 and 98 respectively.

Subsection 97(1) amendments proposed the substitution of the words "on" for "upon" and "the board..." for "any such board..." The purpose of representations are clarified by replacing the words "in respect of the maintenance of competition" with "in respect of competition". The words "whenever such representations or evidence are or is relevant" are replaced by "whenever such representations are, or evidence is, relevant". The words "in determining such matter" are replaced by "in determining the matter".

The definition of federal board is amended in subsection 97(2) by adding to the meaning of the board, commission, tribunal or person, the stipulation "that carries on regulatory activities and" is expressly charged by or pursuant to an enactment of Parliament. The scope of representations to bodies is changed by deleting from the definition "and includes an ad hoc commission of inquiry charged with any such responsibility but does not include a court".

Section 98 pertains to representations to Provincial boards. The english wording of subsections 98(1) and (2) are very similar to subsections 97(1) and (2). According to subsection 98(1), the Director, at the request of any provincial board, commission or other tribunal, or on his own initiative with the consent of the board, commission or other tribunal, may make representations to like bodies on the same basis as subsection 97(1). Unlike subsection

97(1), subsection 98(1) does not include the making of representations upon direction from the Minister, further the director needs the consent of the provincial board commission on other tribunal to make representations. The definition of Provincial boards in subsection 98(2) is the same as in subsection 97(2) with the replacement by the word "provincial" for "federal" and the words "of the legislature of a province" for "of Parliament".

Thirty interest groups and individuals appeared before the Legislative Committee on Bill C-91 where it was discussed clause by clause. [22] A technical amendment to correct a typographical error in subclause 98(2) was introduced and agreed upon [23].

On May 27, 1986, Bill C-91 was tabled in the House of Commons with amendments.[24] Subsection 98(2) was changed to "carries on regulatory activities" from "carries or regulatory activities."[25] On June 5, 1986, a motion was made and agreed upon in the House of Commons to read Bill C-91 the third time and pass it.[26] Bill C-91 finally received Royal Assent [27] on June 17, 1986 and became law.

b. Reasons for the Amendments and Additions to the Provisions dealing with Representations

The major amendments and additions to the provisions dealing with representations to regulatory boards in the Competition Act can be considered under three headings: i) Clarification of the intent and purpose of representations. ii) The scope of representations to federal boards. iii) Representation to provincial boards.

i) Clarification of the intent and purpose of representations.

Subsection 97(1) no longer contains the word "of the maintenance" in the clause "in respect of the maintenance of competition". The main reason for the deletion can be traced to 1. The McCargar Proceedings 2. Introduction of the Purpose to the Competition Act.

1. The McCargar Proceedings: In an application to the Manitoba Motor Transport Board for an operating authority by R. McCargar Trucking Ltd., Counsel for the applicant at the hearings indicated that "Maintain or maintenance", is a word developed from two latin words: manu-and-tenere, the verb, "to hold".

...If we were dealing with the maintenance of membership which is another definition in the Act, I would say the maintenance of membership is "to hold", and to hold the status quo. We can either withdraw, or restrict, we can

maintain or we can increase...[28] therefore it was argued that since the matter concerned a new operating authority application it was not dealing with maintaining competition but rather increasing it. The Director's counsel argued that implicit in the section was that competition be maintained at an acceptable level. The Manitoba Motor Transport Board decided to hear the representations on behalf of the Director's favour.

Dictionaries may provide several meanings which at times may be inconclusive, in such circumstances the intent and context of this section may be revealing. In a discussion by the House of Commons on the proposed section it was indicated that ...I think that the basic idea was to give the director under proposed section 27.1 the authority to be heard by the said government agencies...he will surely be able to inform these agencies of the possible danger which their decisions might cause in some fields, and which might decrease competition in Canada...[29] Further, given the civil nature of section 27.1, constraining the meaning of "maintenance" as, "to freeze" the state of competition is too restrictive. If there is too little competition in an industry or if there is a monopoly, interpreting "maintenance" to mean that this state seems okay is unacceptable from the dynamic standpoint. For example, if an industry is operating at an inefficient level, preventing new low cost entrants and increased competition will lead to inefficiency. Consequently, to give greater clarity to the purpose of subsection 97(1) the amendments deleted the words "of the maintenance" from the clause "in respect of the maintenance of competition".

2. Introduction of the Purpose to the Competition Act: The purpose of this Act as described in section 1.1 is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

ii) The scope of representations to federal boards

The definition of "Federal board, commission, or tribunal" in sub-section 97(2) differs in two respects from the former definition in subsection 27.1(2) of the Combines Investigation Act: First, it specifies that the Federal board, commission or tribunal "...carries on regulatory activities." Second, it no longer "...includes an ad hoc commission of inquiry charged with any such responsibility but does not include a court."

The major reasons for these amendments were to restrict the scope of representations to true regulatory bodies concerned with reform of the fundamental conditions that determine the state of competition in the Canadian economy on an ongoing basis. Accordingly, the Director would also not have the statutory right to make representations to "an ad hoc commission of inquiry," as these ad hoc commissions are arranged for the purpose of expressing independent opinions and providing independent recommendations. Court as in the former definition in sub-section 27.1(2) of the Combines Investigation Act is also excluded, this does not apply to a "court of record" that carries on regulatory activities and is defined as a "board, commission, tribunal or person." If this were not so, this section would be largely meaningless as the majority of representations in the past are to commissions which are also defined as "courts of record." Further, as counsel for the Director in the Matter of the National Transportation Act, CN Europe and Cast Container S.A.., indicated that ... a court of record-- my understanding of what a court-- the designation of a court of record that is given to your Committee, and is given to as --as I'm sure you are well aware, any other tribunals and commissions of all levels of government is to give you the power to issue sub-poenas and to enforce them--to enforce contempt of court--contempt before you, whether within or without of the actual Hearing room. But that is the meaning I submit of that term. It does not automatically render you a court in the sense that we commonly understand a court to be...[30]

iii) Representation to provincial boards

Section 98 in the Competition Act is new enabling the Director to make representations to provincial boards. However, the Director may only make representations in respect of competition at the "request" of these provincial boards or on his own initiative "with the consent" of these boards whenever the representations or evidence is relevant to a matter before these boards and to the factors that they are entitled to take into consideration in determining the matter.

Sub-section 98(2) defines a provincial board in the same way as sub-section 97(2) with the appropriate replacement of "provincial" for "federal" and "the legislature of a province" for "Parliament".

Section 98 explicitly provides the Director with legislative capacity to appear before provincial boards. The main reason for the addition of section 98 can be traced to 1. Proceedings before the Maritime Provincial Boards, 2. The Importance of Representations to Provincial Boards and Representations to Provincial Motor Transport Boards.

1. Proceedings before the Maritime Provincial Boards:

Though the Director has been permitted to appear before provincial boards in the majority of cases in the past, questions have been raised about the Director's capacity to appear these boards. The Maritime Telegraph and Telephone Company Limited v. Board of Commissioners of Public Utilities and Air-Page Communications Ltd.'s judgement was of the view that ...there are no similar powers bestowed upon the Director to intervene before provincial bodies and, even if there were, I would have grave doubts whether such legislation would be in the competence of the Parliament of Canada...

...It is a trite law that where a statute confers powers to carry out certain objects that power must be strictly adhered to. It is of little importance what view the Director may have in regard to his duties as he can only lawfully do what the statute permits...[31] However, in the Director under the Combines Investigation Act v. Board of Public Utilities for the Province of New Brunswick and the New Brunswick Telephone Company Limited, it was indicated...I do not believe that Pace, J.A. intended to give s. 27.1 the restrictive interpretation that counsel for N.B. Tel and the Board seek to place upon it... Further the court indicated...where the director seeks to intervene before a provincial board, he does not intervene as of right but rather must request the board to permit an intervention in the same way the board would consider interventions from any interested party. In deciding whether to permit the director to intervene, the board need look no further than its own rules of practice and procedure to resolve the issue...[32] In Tas Communications Systems Limited v. Newfoundland Telephone Company Limited, the Supreme Court of Newfoundland Court of Appeal held that ...In my view the Board has a discretion to permit parties to intervene...[33] though it did not permit the Director to intervene in this case. The above issue was appealed to the Supreme Court of Canada and on November 19, 1983 it rendered its judgement.

The Supreme Court[34] considered three issues of the appeal. The first issue in the appeal is whether a public officer requires statutory authority, express or implied, to intervene in his official capacity in proceedings before an administrative tribunal, with the permission of the tribunal, to make representations and adduce evidence with respect to the public policy for which he is responsible... In my opinion, the answer to that question must be in the affirmative...[35] In this context no meaningful distinction was to be drawn between authority and capacity. They can be treated as synomymous. The second issue of the appeal is whether the Board could validly permit the Director to intervene if he did not have the required statutory authority to do so. ... Whatever scope may be reasonably

assigned to the implied power or discretion of the Board to permit intervention, it cannot have been intended that the Board should have authority to permit intervention by a public officer in his official capacity if the officer has been denied the necessary authority to intervene by his governing statute... To permit intervention where a public officer is shown to lack the necessary authority to intervene would be to permit him to exceed his authority and thus would be contrary to a fundamental principle of public law...[36] The third issue of the appeal was whether the Director had statutory authority to intervene in proceedings before a provincial board with the permission of the board... It is therefore a clear implication, in my opinion, that the Act, as it stand at the relevant time, denied the Director the necessary authority to intervene before a provincial board with the permission of the board. In effect, I am of the view that this is a clear case for application of the maxim expressio unius est exclusio alterius... because of the emphasis it is given by the definition of such boards, commissions and other tribunals...[37]

2. Importance of Representations to Provincial Boards and Representations to Provincial Motor Transport Boards:

First, representations to provincial boards over the period 1976 to 1986 have grown in number. Second, two major regulated sectors of the economy, transportation and communications have a subtantial number of provincial regulatory statutes and statutory instruments, and if the director is unable to inform these bodies of the consequences of their decisions on competition, it would have a serious impact on the performance of these sectors and would defeat the objective that was contemplated when this section was introduced into the Competition Act. Third, the Director's contribution to proceedings before Provincial boards have been significant and arguments on appearing have been won, further the initial experience with representations suggests that they have been effective.

Provincial boards act as federal boards in dealing with extra-provincial undertakings in motor transportation when acting under the authority of the Motor Vehicle Transport Act. Consequently, the Director has the authority to appear before those boards, this is illustrated in the following jurisprudence.

According to H & M Express Ltd. and Highway Traffic and Motor Transport Board it was maintained that ... A provincial Highway Traffic and Motor Transport Board was acting within its jurisdiction when, sitting as a federal board to deal with extra-provincial undertakings, it refused a licence...[38] In National Freight Consultants

Inc. v. Motor Transport Board the ... Motor Transport Board of Alberta, acting as a federal board under authority of this section, had authority to impose conditions relating to operations outside of Alberta as a term or condition of a licence to operate through Alberta and into British Columbia...[39] This matter has been further resolved by specifically giving the Director capacity to appear before Provincial boards in s. 98, however the superiority of proceeding under s.97 when these provincial boards deals only with extra-provincial undertakings, is evident as the Director does not need the consent of these boards.
On the above bases, the Director has made representation under section 27.1 regarding the application for extra-provincial licences before the Alberta Motor Transport Board, the Ontario Highway Traffic Board, the Manitoba Motor Transport Board and the New Brunswick Motor Carrier Board.

c. Other Issues

There are several issues that have not been conclusively resolved regarding i) the calling of evidence and ii) the director's right to make representations to other federal or provincial bodies.

i) The calling of evidence

To effectively make representations and call evidence the questions of cross-examination and access to confidential information have been raised. This matter has largely been determined by the rules of each board, and their discretionary power. It can vary before different boards. In the Reservec case[40] the Director has supported a wider interpretation.

ii) The Director's right to make representations to other federal or provincial boards

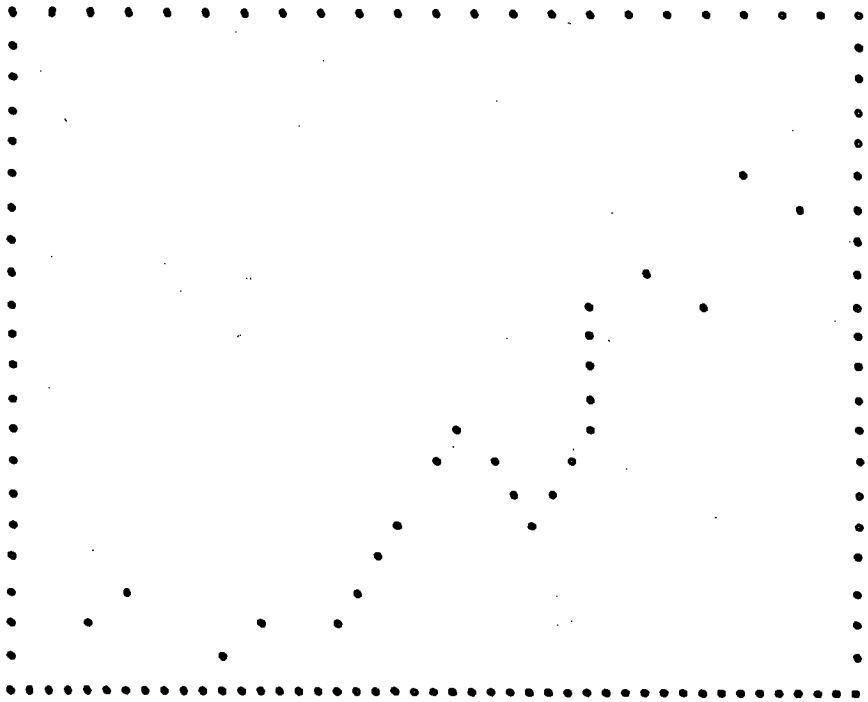
The issue is whether other bodies like marketing agencies, councils, committees etc. come within the meaning of federal or provincial "board, commission, tribunal or person".

For example, the issue whether the National Farm Products Marketing Council and other federal agencies established under the Farm Product Marketing Agencies Act comes within the meaning of federal "board, commission, tribunal or person" has never been formally raised. Nevertheless, it is considered that the National Farm Products Marketing Council and those agencies satisfy the essential characteristics of a definition of a "board" (see Black's Law Dictionary pp.157-158). If other dictionary meanings of a "board" lead to an inconclusive answer, the intent of this section may be revealing. The Director's role is simply advisory, he will surely be able to inform these agencies of the possible

danger their decisions might cause in decreasing competition and their consequences, as the marketing system substitutes administered systems, like quotas, and cost of production pricing, for competition between producers. There are about 100 marketing agencies at the federal and provincial level and it is unlikely that the exclusion of the agricultural sector was contemplated by the Competition Act, because it forms an important segment of our economy. The Director in his testimony before the House Standing Committee on Finance, Trade and Economic Affairs in 1977 was of the opinion that he... has confirmed authority to appear before those boards ... Further, the Supreme Court while not dealing with this matter specifically used the word "board" synonymously with "agency" (see first part of Footnote 39).

Specific jurisprudence does not exist as to whether provincial agencies act as federal boards when they deal with inter-provincial or export trade in a regulated product. However, based on the jurisprudence in transportation, it is our opinion that these provincial agencies can be considered to be federal boards when dealing with interprovincial or export trade authorized under the Farm Product Marketing Agencies Act.

3. SUMMARY OF FORMAL INTERVENTIONS



3. SUMMARY OF FORMAL INTERVENTIONS

The objective of this chapter is to briefly summarize each intervention, chronologically by sector for the period 1976-1986. The interventions in transportation are first presented, followed by the interventions in Communications and Others which group together interventions in various sectors for instance resources, agriculture, etc.

Summary of formal Interventions for each Sector by Year

1976-1977

A. Transport

1. Canadian Transport Commission.

Issue: Application for the acquisition of a competing air carrier.

Nature of Intervention: The Director received notice from the Canadian Transport Commission, Air Transport Committee in the matter of the proposed transfer of the commercial air service authorized under licence No. ATC 984/59(C) [a Class 4 charter commercial air service from a base at Chapleau, Ontario using aircraft in Groups A, and C] from White River Air Services Ltd. to Sports Air Ltd. Notice was given to the Director - because it involved an acquisition by a transportation company of an interest in the business of another company - as required by subsection 27(2) of the National Transportation Act.

The Canadian Transport Commission held hearings on March 8-9, 1977 at which the Director was represented. This was the first occasion in which the Director publicly intervened before the Commission. Evidence was called on the maintenance of Competition. The basic thrust of the Director's argument was that the change of control and resulting integration would result in a quasi-monopoly, and given the barriers to entry in the market it would lessen potential competition both in the air carrier market and that tourist market, thereby depriving the public of the benefits of competition. Consequently, the maintenance of competition may be adversely affected and if the transfer is not disallowed, it may be prejudicial to the public interest.

Outcome: On September 29, 1977, the Canadian Transport Commission handed down its decision, No. 5306.

After reviewing the evidence adduced at the Hearing it concluded that the proposed transfer will not unduly restrict competition or be prejudicial to the public

interest. Further, it was always open to any person to apply and prove that public convenience and necessity requires another commercial air service at Chapleau, Ontario, and the Air Transport Committee would give every consideration to such an application.

B. Communications

1. Telesat Canada, Proposed Agreement with Trans-Canada Telephone System.

Issue: Application for approval of a connecting agreement between Telesat Canada and the members of the Trans-Canada Telephone system.

Nature of Intervention: On January 21, 1977, Telesat Canada applied to the Canadian Radio-television and Telecommunications Commission (CRTC)for approval of a connecting agreement between Telesat Canada and the members of the Trans-Canada Telephone System. The proposed agreement would recognize Telesat Canada as a member of the Trans-Canada Telephone System. The CRTC announced that it would be conducting public hearings.

In his intervention the Director stated his main interest in this area related to the effect of Telesat Canada's entry into the proposed agreement on existing and potential competition between various telecommunications systems and the resulting effect on the public interest in free competition.

The Director, in his final argument, took the position that the proposed Agreement was contrary to the public interest in that it would serve to substantially lessen competition in the Canadian telecommunication industry. The Director submitted that the agreement would constrain competition between competing technologies, that the agreement contained clauses specifically restricting competition, and the Agreement was not the least restrictive form of accomplishing the stated objectives of the Agreement. The Director argued that this lessening of competition could adversely affect the development of satellite technology, and impair the regulatory process. The Director submitted that if the agreement is to be approved it should include the freedom for any purchaser to purchase services directly from Telesat, freedom for any purchaser to purchase less than a whole RF channel from Telesat and freedom for any person to own an earth station.

Outcome: In its August 24, 1977 Decision in this matter the CRTC withheld approval of Telesat's application on two broad grounds: certain regulatory issues and a number of

questions of general public policy one of which included competition policy.

The Governor in Council on November 3, 1977 varied the Decision of the CRTC and approved the agreement.

2. Bell Rate Application, 1977.

Issue: General rate application by Bell Canada.

Nature of Intervention: On April 4, 1977, the Director requested permission to make a statement before the Canadian Radio-Television and Telecommunications Commission (CRTC). The CRTC's public hearing related to a general rate application by Bell Canada. The Director's appearance in this matter was directed to informing the CRTC of the status of his inquiry into the telecommunication equipment industry which he had transmitted to the Restrictive Trade Practices Commission and to address a specific issue raised before the CRTC at the rate hearing, i.e., how to evaluate the reasonableness of Northern's prices charged to Bell Canada.

The Director stated that the issues raised in the Green Book "The Effects of Vertical Integration on the Telecommunication Equipment Market in Canada" relate directly to the effect of vertical integration on the level of competition in the telecommunication equipment industry and not to the regulatory process per se nor to subscriber rates per se.

However, in carrying out his inquiry into this matter, issues relating to the effect of vertical integration upon the regulatory process necessarily arose and the Director felt he could be of some assistance to the CRTC in considering the question of the effectiveness of tests to evaluate the reasonableness of Northern's prices to Bell Canada.

The Director, indicated that the rate of return analysis was inadequate. Furthermore the price comparison tests were seriously deficient in many ways. The difficulty of obtaining actual transaction prices, of comparing products of different quality, and particularly the difficulty of finding an adequate competitive price to use as the benchmark for such comparisons, all made such tests less than satisfactory.

For these reasons the Director suggested that the best test of the reasonableness of prices paid by Bell for its equipment would be a market test where Bell would obtain prices from a number of potential competitive suppliers bidding for Bell's business. He recommended that if the CRTC is to use price comparison tests, it should compare prices paid by Bell to prices in competitive markets, to the greatest extent possible, and that the independent telephone

markets in the United States and Canada might be the best markets for such tests at the present time.

Outcome:* On June 1, 1977, the Commission issued Telecom

Decision CRTC 77-7 in this matter. With respect to the Bell Canada - Northern Telecom relationship, the CRTC was not convinced that Bell Canada might be linking its technological decisions too closely to the availability of Northern Telecom equipment. Concerning the effect of Bell Canada's investment in Northern Telecom on the telephone companies subscribers, the Commission stated that it would make no determination on the appropriateness of the price comparison test but would review this matter further through the Cost Inquiry proceedings.

1977-1978

A. Transport

1. Air Canada proposed acquisition of Nordair Ltd.

Issue: Application for the acquisition of a competing air carrier.

Nature of Intervention: On February 17, 1978 the Director of Investigation and research wrote to the Canadian Transport Commission stating that he believed the proposed acquisition of Nordair Ltd. by Air Canada could result in a significant lessening of competition in the air carrier industry and lead to excessive concentration therein. He further stated that the matter has the potential to produce far-reaching consequences with resulting prejudice to the public interest. The proposed acquisition would extend Air Canada's operation into unregulated sectors thereby making it more difficult to effectively regulate that part of its operation that remains in the regulated sector. Therefore, he objected and advised the CTC of his intention to make representation.

In his letter the Director also expressed the view that the following were major areas of concern:

1. To what extent will the proposed acquisition increase Air Canada's control of the domestic scheduled traffic?

2. Will the proposed acquisition be likely to lead to defensive merger/acquisition proposals by competing carriers thereby producing a further reduction in

* Contributed by Mr. C. Stevenson from the Bureau of Competition Policy.

competition and/or excessive concentration in the hand of a few firms?

3. Is the proposed acquisition consistent with the Government's regional air carrier policy? To what extent will services presently provided by Nordair be curtailed, downgraded (in terms of quality of service) or eliminated after the acquisition?

4. Will the proposed acquisition result in a significant reduction in the aircraft capacity available to charterers thus producing a lessening of competition in the charter business?

5. Will the proposed acquisition create inherent conflicts of interest for Air Canada to the detriment of the travelling public and other competing enterprises? For instance will Air Canada reduce the aircraft capacity which is presently available through Nordair, for charters to Florida and the Caribbean where Air Canada currently provides scheduled air services? Also, will the domestic ABC experiment be impaired by virtue of Air Canada's competing C.C.C.F. program?

6. Will the proposed acquisition tend to increase the barriers to entry by new firms into the tour wholesaling and tour operating portions of the air industry?

7. Will the proposed acquisition result in overall diseconomies of scale, or other cost increases, such as to require higher average fares/rates or public subsidy, than would be required in the absence of said acquisition?

On March 3, 1978 the Canadian Transport Commission announced that public hearings would be held into the matter. The Director filed 29 exhibits with the Commission relating to three subjects - Market Concentration, the Need for Competition and Potential Economic Consequences. At the time of this filing the Director indicated his intention to call viva voce evidence during the course of the hearings.

Outcome: On July 28, 1978 the Canadian Transport Commission issued its majority decision (4 to 1) not to disallow the proposed acquisition. Following this decision the majority of the interveners petitioned the Governor in Council to make an order varying or rescinding the decision rendered by the Canadian Transport Commission. On November 7, 1978, Mr. Otto Lang, in his capacity as Minister of Transport while not disagreeing with the CTC decision indicated that the government intends that Nordair will be returned to the private sector within twelve months.

B. Communications

1. Bell Rate Application, 1978.

Issue: Application for Rate Increases.

Nature of Intervention: On February 1, 1978 Bell Canada filed a request for approval of increases in rates with the Canadian Radio-television and Telecommunications Commission (CRTC). The Director intervened in the hearings.

His main interest in this area relates to the development of expanded opportunities for competition as a regulatory instrument to improve the effectiveness of the regulatory process and to reduce the continuing upward pressure on prices in the telecommunications sector. Specific concerns were the question of the procurement policies of Bell Canada with respect to equipment purchases and the structure of rates as between different services offered by Bell Canada.

The Director monitored two components of this application: (1) direct sale and lease or purchase of equipment and (ii) new tariff filing for other charges.

Outcome: * On August 10, 1978, the Commission released Telecom Decision CRTC 78-7 in this matter.

With respect to the intervention by the Director, the CRTC concluded that the evidence submitted in support of a proposal to require Bell Canada to develop a competitive bidding system was insufficient to lead to any conclusion at that time. In addition, the Commission ruled that the Director presented no convincing evidence to support the contention that Bell subscribers have suffered from the Bell - Northern relationship.

However, the Commission did, in effect, accept the submissions of the Director that the price comparison tests presently being conducted by Bell Canada to demonstrate the reasonableness of equipment prices paid by Bell Canada were deficient. While the Commission was not prepared to make a statement regarding the deficiency, it indicated that it would retain an independent accounting firm to develop a formula for more comprehensive price comparisons.

---

* Contributed by Mr. C. Stevenson from the Bureau of Competition Policy.

2. CNCP Telecommunications Application for Access to Bell Canada System for Telecommunication Traffic.

Issue: Application for Interconnecting Facilities that could enhance competition.

Nature of Intervention: On June 14, 1976 CP Telecommunications (Canadian National Railways was made a party to the proceedings by a CRTC Order on October 28, 1977) filed an application with the Canadian Radio-television and Telecommunications Commission seeking orders requiring Bell Canada "to afford all reasonable and proper facilities for the receiving, forwarding and delivering of telegraphic and telephonic messages... upon and from its telegraph and telephone system or line" for the interchange of telecommunications traffic and for the interconnection of their respective telephone systems. On August 2, 1977 the CRTC announced that, due to the number and variety of interests represented in letters to the CRTC, and in view of the significant implications this application has for the telecommunications industry in Canada, a public hearing was necessary to ensure that all relevant issues would be fully investigated.

In his intervention the Director stated that the questions relating to interconnection will have a significant impact on the present and future levels of competition in the provision of telecommunication services in Canada.

The Director stated his primary concern was that the present level of competition should be preserved and where appropriate be further encouraged, and that there should be no unnecessary barriers to the future development of an efficient Canadian telecommunications industry.

At the hearings the Director called expert witness and filed written argument with replies. The Director indicated that the burden of proof rests with the monopolist to show that competition is not in the public interest. In such cases strict standards of conduct are required and such business is not entitled to preserve or protect the monopolistic situation by unfair means. Competition and interconnection are not incompatible, and the evidence indicates that interconnection would enhance competition.

Outcome: On May 17, 1979 in Telecom Decision CRTC 79-11 the Commission granted CNCP's application and ordered Bell to provide access to its public switched network telephone subject to certain terms and conditions. These terms and conditions related to restrictions on services which CNCP may offer, establishment of technical safeguards, compensation for access and monitoring procedures. The

appeal to rescind the decision by members of the Trans Canada Telephone System was denied by Governor-in-Council and Bell filed tariffs for interconnection.

3. Challenge Communications Ltd. vs. Bell Canada.

Issue: Application for Tariff Review considered to be unjustly discriminatory.

Nature of Intervention: On September 26, 1977 the Canadian Radio-television and Telecommunications Commission received an application from Challenge Communications Ltd. requesting interim and permanent relief from certain provisions of Bell Canada's general tariff relating to automatic mobile telephone service (AMTS). Challenge alleged that the AMTS provisions were unjustly discriminatory against them and gave an undue or unreasonable preference to Bell Canada regarding the supply of mobile telephone equipment. Bell Canada has for a number of years provided a mobile telephone service (MTS) which provided for customer owned and maintained mobile telephone equipment. As a result customers had a choice of buying or leasing equipment from suppliers other than Bell or of leasing such equipment from Bell Canada. In April of 1977 Bell introduced AMTS which differed from the existing MTS in that the user in the former service could dial directly into Bell network from his mobile telephone and secondly the customer was not permitted to purchase his telephone equipment but rather must lease it from Bell.

The Director gave notice of his intention to intervene and at the hearing the Director argued that Bell's tariff was contrary to section 321 of the Railway Act because it gave an undue and unreasonable preference in favour of Bell by giving Bell a monopoly with respect to the supply of automatic mobile telephone equipment. The Director argued that the elimination of competition would be contrary to the public interest because the facts in the case indicate that if the tariff was permitted research and development would be retarded, customer choice would be eliminated, and higher equipment prices would result. The Director was of the view that Bell's justification for the preference (i.e., innovation would be retarded and the network would be technically harmed if customer owned and maintained equipment was permitted) was without merit. In his second submission the Director argued that section 5 of the Bell Canada Act gave the CRTC the jurisdiction to review the tariff and make orders respecting the tariff. In conclusion the Director urged the CRTC to require Bell to submit a new tariff which would permit customer owned and maintained automatic mobile telephone equipment and that Bell make available on request the technical specifications for their automatic mobile telephone.

Outcome: The CRTC's decision (Telecom Decision CRTC 77-16) concluded that the tariffs were discriminatory contrary to section 321(2)(a) of the Railway Act, and that new tariffs be filed with specifications of their mobile telephone equipment to any party who requested it.

Appeals to the Federal Court of Appeal and later to the Supreme Court of Canada by Bell Canada were unsuccessful.

4. Colins Inc. vs. Bell Canada.*

Issue: An application by Colins Inc., Pagette Airsignals Ltd. and TAS Communication Services to have Bell Canada supply selector level numbers known as NNX codes to enable these companies to compete in direct dial paging service.

Nature of Intervention: The CRTC in December 1978 stated that Bell Canada had refused to supply its competitors in the paging service industry with pre-assigned seven digit telephone numbers known as selector level telephone numbers for each of the paging devices which these competitors sell or supply to their customers. Instead, the competitors had to utilize makeshift methods of contacting the individual carrying the paging device.

In April 1978, the Director intervened in these proceedings citing his concern that Colins et al. were unable to secure access to the Bell Canada telephone system which would place them on an equal footing with Bell Canada's "Bellboy" radio paging service. Throughout this proceeding, the Director argued that Bell Canada's Bellboy tariffs were discriminatory in nature, as defined in Section 321 of the Railway Act, and as a result, the applicant firms faced a serious competitive disadvantage.

Outcome: Following a hearing on an application for interim relief, the Commission issued Telecom Decision CRTC 79-12, on June 7, 1979, concluding that the denial of services and facilities that would permit the applicants to utilize outpulsing and offer roaming to their subscribers would in itself constitute a preference or advantage given by Bell in favour of itself within the meaning of section 321(2)(b) of the Railway Act. Subsequently, Bell Canada agreed to supply selector level telephone numbers and agreed with Colins et al. on interim rates. Following a contentious hearing on final rates, the Commission issued Telecom Decision CRTC 80-16 on August 29, 1980 which established final rates for access from Bell Canada's switching equipment to the paging terminals of licensed Radio Common Carriers (RCC's).

---

* Contributed by C. Stevenson for the Bureau of Competition Policy.

1979-1980

B. Communications

1. Bell Canada and British Columbia Telephone Company applications for Approval of Increases in Rates for Services Provided by the Members of the Trans-Canada Telephone System (TCTS).

Issue: Application for Rate Increases.

Nature of Intervention: On March 15, 1978, Bell Canada filed with the Canadian Radio-television and Telecommunications Commission (CRTC) an application for approval of increases in the rates for a number of services and facilities furnished on a Canada-wide basis by the members of the Trans-Canada Telephone System (TCTS). A similar application was filed by the British Columbia Telephone Company on June 12, 1978. On August 4, 1978, the Commission requested written comment on the proposed new TCTS rates following which it approved such rates on an interim basis effective October 15, 1978, pending the final conclusion of the Commission's general review of TCTS rates, practices and procedures.

The CRTC determined 7 issues to be considered at the hearings: the fairness and reasonableness of the TCTS settlement procedures, the resonableness of the TCTS and Telesat across Canada rates, terms and restrictions for services, the relative treatment of competitive and non-competitive services by TCTS, the reasonableness of their constructive program, their responsiveness to demand at reasonable costs and the information requirements of the regulatory agency.

The rates of Telesat Canada were also to be considered at the hearings, as to whether they were just and reasonable since they were related to TCTS services.

The Director's concern at the hearings in this matter related to Telesat Canada's proposed tariff which contained certain restrictions on service viewed as contrary to section 321 of the Railway Act. The Director's final argument was submitted on June 20, 1980, and dealt with the refusal by Telesat Canada to lease less than a whole satellite channel, the refusal to provide service directly to end users, the refusal to permit resale of its services, and the refusal to permit earth station ownership by subscribers. In addition, the Director expressed concerns with the reasonableness of Telesat's proposed bulk rate discounts and the reasonableness of including, as a regulatory expense, income taxes which were not, in fact, paid.

Outcome: The CRTC issued Telecom Decision 81-13 on July 7, 1981. With respect to the TCTS revenue settlements for long distance communications, the Commission ordered B.C. Tel and Bell Canada to seek renegotiation of the revenue settlement procedures (RSP) with other members of TCTS so as to eliminate the inequity caused by the inclusion of revenues from intra-company and adjacent member traffic in the RSP. Bell and B.C. Tel were to report back to the CRTC within six months.

With regard to the service offerings of Telesat Canada, the CRTC ruled that Telesat Canada could not offer bulk rate discounts for full period satellite channels because to do so would be unduly discriminatory. In addition, the CRTC made two specific rulings respecting the limitations derived from the TCTS/Telesat Connecting Agreement. In particular, the Commission ruled that an earlier Cabinet approval of the Connecting Agreement was not sufficient justification to allow the limitation on Telesat's customers base to recognized Telecommunications Carriers and to allow the limitations of Telesat's space service to exclusively full channel leasing. The CRTC ruled that these limitations conferred undue advantages upon large carriers in general and upon TCTS members in paritcular, contrary to section 321 of the Railway Act. Telesat Canada was consequently ordered to remove the restrictions on its customer base and to refile tariffs specifying a partial channel leasing service.

Members of TCTS petitioned the Governor-in-Council to vary or rescind the above decision. Governor-in-Council consented and varied the decision as follows.

(a) restricting Telesat Canada's base to approved common carriers and broadcasting undertakings including broadcasting networks. The CRTC had directed Telesat's customer base to be without limitations. Previously only the approved common carriers were part of the customer base;

(b) requiring Telesat Canada to file tariffs for the lease of partial satellite channels to approved common carriers only. The CRTC had directed Telesat to file similar tariff for all users;

(c) requiring Bell Canada and B.C. Tel by February 15, 1982, to file standard items in their General Tariffs for private line services provided by partial satellite channels and rate schedules which were insensitive to distance and the number of locations served. This would have been unnecessary under Decision 81-13 as customers would have obtained the partial channels directly from Telesat; and

(d) directing Telesat Canada to file with the CRTC by January 15, 1982, a revised tariff allowing whole satellite channels to be leased by broadcasting undertakings and partial channels to be leased by the approved common carriers.

The Director filed his comments on the revised tariffs regarding their description and magnitude for Partial RF Channel Services. A number of other tariff items were either modified or disallowed, and the revisions were subsequently filed.

2. Bell Canada, Connection of Customer Provided Terminal Devices.

Issue: Application for customer-owned terminals to be connected to the Bell network.

Intervention: On November 13, 1979, Bell Canada applied to the Canadian Radio-television and Telecommunications Commission (CRTC) for an order approving an amendment to rule 9 of the General Regulations of Bell Canada. This rule is one of the conditions that governs the connection of telecommunication equipment to the Bell Canada network. Basically, the Bell application would have permitted customer-owned terminals to be connected to the network if such equipment was certified under a program administered by the Department of Communications. In the same application, Bell filed proposals for interim requirements governing the attachment of customer-owned equipment. These interim proposals set out that if a piece of equipment is not provided by Bell Canada, or is not the subject of a special agreement between the subscriber and Bell Canada, such equipment could nevertheless be connected if the equipment in question was authorized by the CRTC and the subscriber entered into a special agreement with Bell Canada.

On November 30, 1979, the CRTC issued a public notice that requested comments on Bell's application. The CRTC also amended Bell's proposed interim requirements by eliminating the requirement for CRTC approval of equipment and requested comments on this amendment. Comments on the interim requirements were to be filed by January 15, 1980.

On January 9, 1980, the Director filed his comments pursuant to the CRTC's public notice. The Director stated that the requirements requested by Bell Canada and the CRTC would involve unnecessary delays. The Director further stated that there was no need for special agreements in the interim and that equipment standards presently in force could be used. The Director submitted that a subscriber should be permitted to connect equipment to Bell's facilities provided that the subscriber complied with

existing tariffs, the equipment had been certified by the U.S. Federal Communications Commission (FCC), and the subscriber had notified Bell Canada of the proposed attachment and the relevant Federal Communications Commission certification.

On February 15, 1980, the Director submitted his comments concerning the issues and procedures relating to the main hearing. The director noted that there were a number of issues relating to the technical protection of the network, the extent to which Bell Canada should be entitled to sell the equipment, the effect of terminal connection on subscribers and the question of whether the hearings should involve other telecommunication carriers in Canada. The Director also submitted that, rather than attempt to forecast the economic effect of the application, the parties should consider developing procedures that would enable any actual economic harm to be demonstrated and would allow for the development of mechanisms for relief.

On March 7, 1980, the Director filed comments on the technical standards and draft special agreements filed by Bell with the CRTC on February 15, 1980. The Director stated that the standards submitted by Bell Canada would be adequate in the interim period. He submitted there was no need for special agreements with subscribers, except with regard to sophisticated equipment with conditions.

The CRTC issued its interim decision on this matter (Telecom Decision 80-13) on August 5, 1980. In this interim decision, the Commission stated that, until there was a full hearing on the matter, terminal attachment of residential extension telephones would be allowed and that FCC standards would be acceptable.

Bell Canada, supported by the governments of the Provinces of Ontario and Québec, appealed this decision to the Cabinet, which declined to vary the decision.

The Director's argument at the main hearing supported the concept of terminal attachment and suggested its scope be extended to cover the primary telephone instrument and inside wiring. The Director also sumbitted that carriers be required to carry on competitive equipment sales through arm's length separate subsidiaries to ensure that they do not subsidize competitive services with monopoly revenue to the detriment of subscribers and competitors alike.

Outcome: On November 23, 1982, the CRTC issued Telecom Decision CRTC 82-14. With regard to telephone sets, the Commission concluded that subscriber-ownership of single line main telephones will no longer be prohibited and that, contrary to the carriers's preferred position subscribers should be able to lease terminal equipment.

The telephone companies were directed to unbundle their business and residential individual line primary exchange service rates by developing separate rates for network access (including inside wiring) and terminal equipment rental and to file these rates by March 1, 1983. Later Bell filed notes covering unbunding of services (business, residence, party line primary exchange service, etc.) The Commission considered it necessary at this time, to continue the prohibition of subscriber-ownership of single line inside wiring. However, multiline subscribers would continue to be required to purchase inside wiring associated with the purchase of new terminal equipment or, if they leased, have the associated inside wiring provided by the carrier.

The Commission accepted the Director's argument on inter-positioning and allowed inter-positioning when necessary standards are developed.

The Commission concluded that the liberalization of Terminal Attachment should allow TWX and telex subscirbers to attach their own terminal equipment to the carrier's network.

The Director had argued that the carriers should be required to conduct their terminal equipment activities through fully separate subsidiary companies. The Commission however, was of the view that this would not be appropriate, although it stated that it would review the matter following completion of Phase III of the Cost Inquiry.

The Commission also concluded that it would not be appropriate to deregulate carriers terminal equipment business which is conducted on an in-house basis (to ensure compliance with the scetions 320 and 321 of the Railway Act).

Appeals to the CRTC Federal Court of Appeal, and a telex to the Supreme Court of Canada, that the CRTC had authority to regulate the prices at which CNCP sells telecommunication terminal equipment were unsuccessful. Bell's appeal to the Commission regarding the distribution of telephone directories (levying a charge on more than one supplied per access line would reduce their advertising revenues) was successful.

3. British Columbia Telephone Company Proposed Acquisition of GTE Automatic Electric (Canada) Limited and Microtel Pacific Research Limited.

Issue: Application for the acquisition of an operating telephone company and an equipment manufacturing company resulting in vertical integration.

Nature of Intervention: On March 13, 1979, British Columbia Telephone Company (B.C. Tel) applied to the Canadian Radio-television and Telecommunications Commission (CRTC) for approval of an agreement with GTE International Incorporated (GTE) whereby B.C. Tel would acquire GTE Automatic Electric (Canada) Limited (Automatic Electric). On April 30, 1979, B.C. Tel applied to the CRTC seeking approval of the purchase of Microtel Pacific Research Limited (Microtel) from Elizabeth J. Harrison. The CRTC decided to consider the two applications together.

GTE is a wholly-owned subsidiary of General Telephone and Electronics Corporation, which is the ultimate majority and controlling shareholder in B.C. Tel through Anglo-Canadian Telephone Company, while Automatic Electric is a wholly-owned subsidiary of GTE. Automatic Electric owns all of the issued and outstanding shares of GTE Lenkurt Electric (Canada) Limited (Lenkurt).

B.C. Tel is an operating telephone company providing telephone service and Automatic Electric manufactures telephone sets and telephone switching equipment. Lenkurt manufactures telephone transmission equipment and related components. Microtel was incorporated to conduct telecommunications research and development, but was not yet conducting any business at the time of B.C. Tel's application to the CRTC.

The Director's intervention expressed concern that vertical integration between telephone operating companies and equipment manufacturers might have an adverse effect on the level of competition in the equipment market.

At the hearings the Director called evidence in support of his view that the acquisitions could result in foreclosure of the B.C. Tel equipment market to competitive suppliers, which could, in turn lead to higher than necessary equipment costs for B.C. Tel. The Director argued that the application should be denied or, if approved, B.C. Tel should be required to institute competitive bidding procedures.

Outcome: The CRTC issued Telecom Decision 79-71 approving the application but established certain safeguards. Appeals of this decision to the Federal Court of Appeal and latter to the Supreme Court of Canada, by the Consumer's Association of Canada were unsuccessful.

1980-1981

B. Communications

1. Bell Canada, General Rate Increase, 1981.

Issue: Application for General Increases in Rates.

Nature of Intervention: On February 12, 1981, Bell Canada filed with the Canadian Radio-television and Telecommunications Commission (CRTC) an application for a general increase in rates to be implemented on September 1, 1981.

In his notice to intervene, the Director refered to his long-standing interest in certain practices of Bell Canada that affect competition in Canada, mentioning particularly Bell Canada's terminal attachment policies and Bell Canada's reliance on the Northern Telecom price comparison tests to justify its telecommunications equipment purchases.

The Director in his oral argument at the hearings concentrated on the issues of the effect of liberalized terminal attachment on Bell's revenue and rate requirements and the relative increases sought by Bell for monopoly and competitive services. The Director argued that Bell had not produced conclusive evidence that the introduction of terminal attachment as a result of the CRTC's interim decision 80-13 had adversely affected Bell's revenues as claimed by Bell in support of its rate increase. The Director also argued that Bell's rates were anticompetitive in that little or no increases were sought for competitive offerings.

Outcome: In Telecom Decision 81-15 of September 28, 1981, the CRTC granted Bell some of its requested rate increases and also directed Bell to increase its rates for competitive offerings so that monopoly subscribers would not bear the brunt of the rate hikes.

The CRTC established follow-up procedures.

2. Bell Canada, General Increase in Rates, 1980: Northern Telecom Price Comparisons Tests.

Issue: Application for General Increases in Rates.

Nature of Intervention: The Canadian Radio-television and Telecommunications Commission (CRTC), in its decision on Bell Canada's 1978 application for a general increase in rates, enunciated certain principles relating to the prices paid by Bell Canada for equipment manufactured by Northern

Telecom Limited and its U.S. subsidiary, Northern Telecom Inc. On October 16, 1979, the CRTC directed Bell Canada to file a proposed methodology for price comparison tests to demonstrate compliance with these principles.

In subsequent submissions to the CRTC, Bell Canada argued that the principles enunciated by the CRTC in 1978 should be amended. On May 8, 1980, the CRTC issued a public notice, indicating that it deemed Bell Canada's submissions to be an application pursuant to section 63 of the National Transportation Act to review the principles, and that it would consider the application in the context of the central hearing on Bell Canada's 1980 application for a general increase in rates. The Director represented by Counsel participated by cross-examining Bell Canada witnesses on the principles and by making an argument on the application for review.

Outcome: In its decision on the general rate application, Telecom Decision CRTC 80-14, issued on August 12, 1980, the CRTC concluded that is should examine more closely than it did in 1978 the nature and extent of the evidence with respect to the implications of any new pricing principles. The CRTC stated that "the implications of any changes to previous practice are so important as to require a thorough investigation by the Commission and all interested parties prior to the adoption of final pricing principles".

Later the CRTC implemented follow-up procedures, which required submissions, and the Director decided to monitor a number of areas.

C. Other

1. Tariff Board Reference 159 - Modification of the Value for Duty Provisions of the Custom Act.

Issue: Valuation of Dutiable Imports.

Nature of Intervention: This issue relates to the procedures used in placing a value on dutiable imports following Canada's agreement with reservations to adopt the Brussels' system of valuation; the reservations in question relate to Canada's right to revise tariffs upward to compensate for losses due to reductions in valuations. The Director's intervention in this instance centered on:

(i) a provision in the Customs Act which allows exporting firms to impose marketing restrictions on the product or products in Canada, and the

(ii) means of taking transportation costs into account.

The director objected to the first of these aspects by pointing to the market restriction provisions of section 31.4 of the Act as well as the general prohibition of such anti-competitive acts in O.E.C.D. and U.N.C.T.A.D. Code of conduct for multinational enterprises. The Director proposed that products should be valued f.o.b. factory in the case of the second of the aspects in so far as this approach would eliminate the possiblility of tying the sale of a product to its transportation so as to preclude raising an issue under the tied sales provision of section 31.4 of the Act and arbitrarily imputing the import tariff on an item to its transportation.

Outcome: In light of certain provisions of the Customs Valuation Code, the Customs Tariff and the Tariff Board Act, "the Board is of the opinion that no changes are required in paragraph 37(1)(a) of the proposed legislation in order to protect the Canadian consumer against restrictive trade practices."*

2. Tariff Board 158 General Preferential Tariff Extensions and Reductions.

Issue: Extension and Reductions of the General Preferential Tariff.

Nature of Intervention: After carefully reviewing the evidence submitted by interested parties in this matter, the Director submitted to the Tariff Board a letter containing his reasons for concluding that Canada's interests would be best served by adopting the extensions and reductions of the General Preferential Tariff proposed by the Minister of Finance and that reliance should be placed on existing safeguard mechanisms in cases in which injury did in fact materialize. The brief from the Director consisted of two parts: one dealing with issues of GPT policy, and the second with all referred tariff items. The Board considered the latter in arriving at its conclusions and recommendations as presentation in support of the proposed extensions; the part discussing GPT policy was not given further consideration being outside the Board's mandate.

The Board, however, did not deem that an apprehension or fear of adverse impact was sufficient in itself in arriving at a recommendation to the Minister not to proceed with his proposals. The Board was of the opinion that such action required some tangible evidence of an

---

* A Report of an Inquiry by the Tariff Board respecting the Gatt Agreement on Customs Valuation Part I - Proposed amendments to the Customs Act, Reference No. 159, pp. 58-89.

existence of a real threat, such as large or rapidly rising imports from GPT countries, a concentration of such imports among two or three suppliers, and an increasing level of such evidence, the Board could not reasonably argue that an adverse impact was likely. With respect to tariff items for which no submissions opposing GPT extension were received, the Board concluded that the very absence of such opposition was strong evidence that the Minister's proposals were unlikely to affect Canadian interests adversely. The Board examined all tariff items for which no submissions were tendered they also made recommendations on the 63 tariff items which were the subject of claims of adverse impact.*

3. National Farm Products Marketing Council, consideration of a proposal to establish a Potato Marketing Agency for Eastern Canada.

Issue: Marketing Scheme for Potatoes.

Nature of Intervention: In August 1980, following a study of The Proposal for a Potato Marketing Agency for Eastern Canada prepared by the Eastern Canada Potato Producers' Council, the Director, in his role as a public interest intervener, made a submission to the National Farm Products Marketing Council (NFPMC) on the merits of establishing such a marketing agency.

The Council proposed that an Eastern Canada Potato Marketing Agency (The Agency) be granted wide-ranging powers to expand markets for potatoes and improve their operational pricing efficiency and, as well, to exercise "supply management" and to set minimum prices and conditions of sale for all types and varieties of potatoes marketed in the domestic and export markets.

The Director informed the NFPMC that he found merit in establishing a marketing scheme for potatoes, the purpose of which would be market development and improving the operational and pricing efficiency of the marketing system.

The Director advised the NFPMC that he did not favour the establishment of a Potato Marketing Agency for Eastern Canada with supply management and/or price-setting powers. The difficulty of determining the "optimum" level of output, and the appropriate cost of production formulae which would exclude the inefficient were the major considerations.

---

* Reference 158 Relating to The General Preferential Tariff Part I, A Report by the Tariff Board 1981, pp. 13-16.

Consequently, such a scheme would lower efficiency, provide excessive returns to resources, reduce the ability of farm firms to achieve economies of scale because of the attachment of value to quotas in costs, enforce rigidities within and between provinces in terms of the pattern and composition of potato production, implicitly exacerbate inequities in income distribution within the farm community at the farm level, and make more complex decision-making, as well as generate price distortions with supply problems at the marketing level.

Outcome: On February 2, 1981, the Honourable Eugene Whelan, Minister of Agriculture, made available the report of the NFPMC. The NFPMC recommended to the Minister of Agriculture that an Eastern Canada Potato Marketing Agency be established with all the powers contained in section 23 of the Farm Products Marketing Agencies Act, except those related to fixing and determining the quantity of potatoes to be marketed in interprovincial and export trade.

The refusal of the Council to grant supply management powers is in agreement with the thrust of the Director's submission.

1981-1982

A. Transport

1. Canadian Transport Commission - Shipping Conference Exemption Act.

Issue: Hearings on the Shipping Conference Exemption Act.

Nature of Intervention: In June 1982, the CTC held hearings on the Shipping Conference Exemption Act, 1979, to obtain views from the shippers, conferences and the public as to the usefulness of the existing legislation and to report on continuing the exemption and any changes that may be needed when this Act expired. Notice of the inquiry was published in the Canada Gazette on February 27, 1982.

The Director made representation pursuant to section 27.1 of the Combines Investigation Act at the hearings on June 29, 1982 and concluded that the exemption from the Combines Investigation Act provided to the conferences were unusual privileges, and there benefits should be extended to consumers. Further, this exemption should not be broadened to include other parties, or to broaden the scope of this Act to multimodal transport. In addition, the powers of the conference should be reduced, by eliminating loyalty contracts thereby increasing competition

and the bargaining position of shippers through the right of independent action and greater disclosure on a breakdown of rates to justify additional charges.

Outcome: The CTC published its findings in The Shipping Conferences Exemption Act, 1979, Report of December 1982 and recommended three major changes. First, the meaning of "patronage contract" should be modified, so that the contract would be applicable to a proportion of goods mutually agreed upon or to all the goods of the shippers by the conference. Second section 15 of the Act should be modified, to provide for negotiation of rates and other terms and conditions for the carriage of goods, when requested in writing by the shipper's designated group, and to provide information sufficient for the satisfactory conduct of such negotiations. Further, if negotiations were not successful, the matter could go to a conciliator, to be appointed by the CTC, if a mutually agreed upon conciliator could not be found. Finally, the presence of the Commission may be requested by any participant in consultations between a conference and a shipper or shipper group.

B. Communications

1. Pay Television.

Issue: Application for licences to provide pay television services.

Nature of Intervention: Radio-television and Telecommunications Commission, in Public Notice CRTC 1981-35 dated April 21, 1981, requested applications for licences to carry on broadcasting undertakings to provide pay television services in Canada.

The Director intervened providing a written submission and appeared at the hearings. He addressed three areas of concern: (a) the establishment of a competitive environment for pay television in Canada as monopoly control of Canadian pay television system is not desirable. (b) vertical integration in program production, distribution, and exhibition and distribution and its impact of foreclosure on independently produced programmes; and (c) cross media ownership and its incentive to develop an alternative form of competition.

Outcome: On March 18, 1981, the Commission awarded six pay television licences in Decision CRTC 82-240. The licences included one national general interest licence, one national special interest licence, three regional licences serving Alberta, Ontario and the Maritimes, and one regional multilingual licence serving the Province of British Columbia.

2. CRTC Telecom Cost Inquiry - Phase III - Costing of Existing Services.

Issue: Development of methodologies for determining costs for various services.

Nature of Intervention: On December 15, 1981, the CRTC issued Telecom Public Notice 1981-41 announcing its intention to hold a public hearing as part of the third phase of the Telecommunications Cost Inquiry (Cost Inquiry).

The Cost Inquiry was initiated by the Canadian Transport Commission in January 1972 and continued by the CRTC in April 1976 when it assumed jurisdiction over federally-regulated telecommunications carriers.

Phase III of the Cost Inquiry is concerned with the development of methods of determining costs for the different categories of existing carrier services. The Director's notice of intent to participants expressed concern that the costing methodologies should prevent cross subsidization of competitive and monopoly services.

The Director presented two witnesses at the hearings, Dr. Nina Cornell, a noted Washington, D.C. communications consultant and a former FCC staff member, outlined the need for carriers to operate competitive business through separate subsidiaries and the need for regulatory authorities to allow for the provision of enhanced services by more than just carriers. The Director's second witness, John Wilson, also a Washington consultant, presented the CRTC with his suggested costing methodology, which was based on fully distributed costing principles.

The Director filed lengthy written formal and reply arguments on November 15, 1982 and December 6, 1982, respectively.

On April 30, 1984, the Inquiry Officer released his report. The principal recommendations of the report were consistent with the positions taken by the Director in his Final Argument of November 22, 1982.

The Director's further comment on the report emphasized his long standing position that costing systems can, at best, provide only reasonable approximations of the cost of broad service categories, and are insufficient alone to prevent the cross-subsidization of competitive services by monopoly service revenues. Complementary regulatory policies, including eliminating carrier prohibitions on resale and sharing and requiring certain activities to be carried on through an organization that is fully separate from the regulated utility, are therefore endorsed.

Outcome: The CRTC rendered its decision in this matter on June 25, 1985. Consistent with the submissions of the Director, the CRTC rejected using the five-way split methodology proposed by Bell Canada and B.C. Tel. Instead, the CRTC elected to rely on a system similar to one currently used by the Telecom Canada companies to divide long-distance revenue among themselves. On August 8, 1986, the CRTC ordered Bell Canada and B.C. Tel to file detailed costing manuals which are required to be filed by September 30, 1987. Interested parties have until November 30, 1987 to comment.

This last phase is a very important one in that both telephone companies' methodology for allocating costs and revenues to the different classes of service will be scrutinized to ensure that the potential for cross-subsidization is minimized.

C. Other

1. Tariff Board Reference 157 - Tariff Items Covering Goods Made/Not Made in Canada, Phase I.

Issue: Tariff Protection.

Nature of Intervention: Under this Reference the Tariff Board was instructed by the Minister of State (Finance) to examine the possibilities of replacing "made/not made in Canada" tariff designations by a form or forms of tariff classification that are more precise. This Reference involves 112 tariff classifications split up into roughly equivalent groups to constitute Phases I and II of this exercise. The significance of the imports involved can be discerned from a comment by the Board's staff to the effect that "in the years of 1978-80, goods with an average value of rather more than $2.52 billion per annum entered under the not made in Canada tariff provision".

An appraisal issued by the Board's staff prior to finalization of the decision on the Phase I group of products suggested undue concern over the revenue lost as a result of such provisions and a proclivity to regard tariffs as the norm while disregarding competition policy and consumer interest implications. On February 10, 1982, the Director made a representation to the Board in which he expressed his reservations about the protectionist attitude conveyed by the Board's staff and, on February 15, 1982, the Director's representative discussed the concerns at a public hearing held by the Board. The thrust of this representation was that "the Canadian economy should be kept as open as possible" in the interests of industrial efficiency and social welfare. With this objective in view,

the Director recommended, with respect to the goods falling under Reference No, 157 first, that specific product (eo nomine) descriptions should be adopted "where it can be clearly demonstated that a product is made in Canada and is currently subject to an import duty; secondly, that n.e.s. ("not elsewhere specified") classes of goods not subject to import duty should be adopted in cases where (i) the product is not made in Canada, (ii) doubt exists that the product is made in Canada, or (iii) the "made/not made" provisions apply specifically to parts or materials; and thirdly that a system should be created to provide subsidies (to whom it is not specified) in the case of products currently not made in Canada "when it can be established that the subject goods can and will be made in Canada"*

Outcome: In developing its recommendations, the Board considered it fit to incorporate elements of the above approach in some but not all instances, depending upon the particular circumstances of the case.

1982-1983

A. Transport

1. Legan Bus Lines, Edmonton.

Issue: Application for a bus licence.

Nature of Intervention: On November 8, 1982, counsel for the Director of Investigation and Research filed notice with the Alberta Motor Transport Board, of his intention to make representation on the maintenance of competition pursuant to section 27.1 of the Combines Investigation Act, concerning the application by Legan Bus Lines Ltd. for an operating authority.

The major grounds for the Director's intervention were the need for specialized services by the elderly, pensioners and there spouses, the complementary nature of the proposed service to the existing service presently provided and the need for better service to the elderly or pensioned group through a choice of charter bus transportation in Alberta. Further, testimony on behalf of the Director was given by an expert witness, Dr. G.B. Reschenthaler at the hearings held in Alberta.

Outcome: In 1983 the Alberta Motor Transport Board rendered its decision. It found it in the public interest to decline the application. The Board also found it in the public interest to amend the applicants intra-provincial and extra-provincial licences. The age limit for passengers on charter bus lines was to be lowered to 50 years of age.

* Tariff Items Covering Goods made /not made in Canada Phase I, Reference 157, A Report by the Tariff Board, 1983, p. 46.

B. Communications

1. Radio Common Carrier Interconnection with Federally Regulated Telephone Companies.

Issue: Enchancement of Competition between cellular radio service and public switched telephone network arising from interconnection.

Nature of Intervention: On January 28, 1983, the CRTC issued Telecom Public Notice 1983-14, which invited comments from the federally regulated telephone companies and all other interested parties on the subject of radio common carrier interconnection.

In his submission, the Director argued that it was in the public interest for radio common carriers and, in particular, for providers of cellular radio service (a new method of mobile radio communication), to interconnect with the public switched telephone network. In order to ensure equal and fair competition between the radio common carriers (RCC) and the public switched telephone companies, the Director argued that the CRTC should ensure that the RCCs has the right to interconnect their switching equipment with the public network at the same level, and on the same terms and conditions, applying to the competing equipment of the telephone companies.

In addition, it was apparent that the telephone companies were in a position to implement new services in a speedier fashion than competing RCCs and that such a head start would place the latter at a competitive disadvantage. Accordingly, the Director argued that steps should be undertaken to ensure that both the telephone companies and the RCCs commence operation of their respective services at the same time. In the Director's view, it was also desirable to impose a requirement on the telephone companies that they operate the relevant services through separate subsidiaries. Such a requirement would help the regulator ensure that the telephone companies do not cross-subsidize their competitive services.

The Director also submitted that approval of interconnection by cellular and other mobile radio operators would not erode the telephone companies' revenues from long-distance (MTS) and wide area telephone services (WATS). In fact, the revenues of the telephone companies from these services might well increase given the potential for market growth as a result of the increased availability of mobile telephone service which would result from such interconnection. Lastly, in noting that only two competing cellular systems would be licensed in each market in Canada, the Director urges the CRTC to remove the telephone companies' prevailing restrictions on the resale and sharing

of mobile radio services in order to take advantage of the stimulating effect that resale and sharing can have on competition.

Outcome: On March 22, 1984, the CRTC released Telecom Decision CRTC 1984-10. The CRTC concluded that the interconnection of cellular and conventional public and private mobile radio systems to the public switched telephone network was in the public interest. Contrary to the arguments of the telephone companies, the CRTC concluded that interconnection would not lead to a significant erosion of their long-distance service revenues in the foreseeable future. On this basis, the CRTC has directed all federally regulated telephone companies to enter into negotiations with conventional public and private mobile radio operators and with Cantel, the company licensed by the Department of Communications to compete nationally with the cellular services offered by the telephone companies, in order to facilate interconnection.

Two major issues on which the negotiations were unresolved were: the costs of interconnection; and the assignment and payment for telephone numbers. The Director raised the concern that cellular and conventional radio companies should not bear through inter-connecton charges an unreasonable portion of such costs, the CRTC concurred. Tariff revisions filed by Bell were approved on an interim basis.

On August 15, 1985, the CRTC after public comment, granted final approval of Bell Canada rates for Cellular Access Service and on August 21, 1986, granted final approval of tariff revisions providing for the introduction of Switched Network Access for Conventional Radio System Operations (RCC interconnection). On August 15, 1985, the CRTC also granted final approval of tariff revisions providing for the introduction of rates and charges for an entire dedicated NXX code. With respect to B.C. Tel, the CRTC on August 15, 1985, granted interim approval of tariff revision providing for the introduction of Switched Network Access for Cellular Interconnection.

2. Bell Canada Corporate Reorganization.

Issue: Corporate Reorganization to achieve fair market value for intercompany pricing to avoid cross-subsidization.

Nature of Intervention: On June 23, 1982, Bell Canada announced a plan to reorganize the Bell Canada group of companies. An essential element of the reorganization would be a court-authorized "arrangement" as provided for by the Canada Business Corporation Act (CBCA), whereby all Bell Canada's outstanding share capital would be transformed into

share capital of Bell Canada Enterprises Inc. (BCE), a former subsidiary of Bell Canada. Through an exchange of shares, all Bell Canada's equity investments except those in Tele-Direct (Publications) Inc., Bell-Northern Research, and Telesat Canada, would then be transferred to BCE. These transferred investments consist primarily of Bell Canada's controlling interest in Northern Telecom, a number of provincial telephone companies, Bell Canada International Management Research and Consulting Ltd. (BCI), Bell Communications Systems Inc. (BCS, a supplier of customer premises telecommunication equipment), and a number of printing and publishing companies. Thus, BCE would become the new holding company for the Bell group, and Bell Canada would become a wholly-owned subsidiary of BCE. BCE would also become the focus for "strategic planning" within the Bell group.

In his comments in response to this Telecom Public Notice 1982-31 submitted on September 13, 1982, the Director supported the Restrictive Trade Practices Commission's call for public hearings into the reorganization and presented his concerns which were reiterated at the hearings where the CRTC addressed the questions set out by the federal Cabinet.

The Director's intervention at the hearings indicated that adoption of a fair market value standard for resource transfer would prevent BCE from obtaining subsidies from Bell Canada. Further, a publically held minority interest, was considered an adequate safeguard for Bell Canada's Director's to adopt the above standard. It would also have the advantage of requiring less policing and consequently less regulatory supervision. Statutory restrictions in the Bell Canada's Special Act would prevent Bell from providing competitive customer premises equipment and enhanced services provided by other BCE firms.

The Director filed three separate memoranda of evidence with the CRTC. Dr. William Melody presented an analysis of the elements of the proposed reorganization. He concluded that the reorganization plan offered "no realignment of subsidiaries to separate competitive and monopoly functions so as to foster the emergence of competition and ease the burden of the regulator" and that it "merely changes the financial flows within the company".

Mr. Purdy Crawford, Q.C., presented evidence, that a publicly traded minority interest in Bell Canada would have the effect of requiring Bell Canada's Board to adopt the fair market value resource transfer standard. Price Waterhouse and Associates, presented a number of possible methods for creating a minority public interest in Bell Canada after the reorganization.

The threefold remedy of a revitalized Bell Canada Special Act, a public minority interest in Bell Canada and the provision of terminal equipment and enhanced services by BCE firms other than Bell Canada was again advanced in the Director's Final Argument which was filed on February 21, 1983.

The CRTC published its report on April 18, 1983. It identified specific areas in which the proposed reorganization of the Bell group of companies could affect Bell's telephone subscribers and recommended legislative action to remedy these potential problems. The CRTC concluded that if the recommended legislative amendments were enacted, there would not be any negative impact on subscribers arising from the reorganization. The CRTC also expressed the view that there were potential benefits related to the reorganization.

Outcome: The legislative changes reflected the principal submissions of the Director during the CRTC's public hearings on this matter.

Subsequent to the publication of the CRTC's report, the Minister of Communications announced that the Government had accepted the CRTC's recommendations and would act quickly to introduce the necessary legislation.

Two bills awaiting Royal Assent are Bill C-19 (the Bell Canada Reorganization Act) organizing Bell's subsidiaries to compete reducing the potential for it to cross-subsidize, and Bill C-20 (The Canadian Radio-television and Telecommunications Commission Act the Broadcasting Act and the Radio Act) allowing the Cabinet to issue binding policy directives and remove CRTC regulation. The Director helped in their preparation.

Both Bills after second reading died on the order paper in September 1986. Bill C-13, identical to the amended Bill C-19 was introduced in The House on October 24, 1986, was passed by the House of Commons and received Royal Account on June 25, 1987. Bill C-20 has not been reintroduced, certain parts of this Bill are likely to be incorporated into a new Broadcasting Act.

1983-1984

A. Transport

1. Federal Express - Application to Amend its Commercial Air Services Licence.

Issue: Application for an International Air Cargo licence amendment.

Nature of Intervention: On April 14, 1982, the Director filed a letter of intervention in response to a notice from the CTC pertaining to the application by Federal Express Corporation to amend its licence No: ATC 1070.

In supporting the application the Director cited significant increase in competition in the transborder carrier industry, a reduction in concentration, more efficient service, better aircraft utilization, etc.

Hearings were held in December 1982, January and February 1983, to review Federal Express' application to extend its international specific point licence in order to facilitate its courier service operation. The Director appeared before the ATC personally to give testimony. The Director's position was that Federal Express was an innovative, efficient supplier of time-sensitive courier services that would provide an important competitive pressure on the industry if granted expanded authority.

Outcome: In Decision 7700, dated October 25, 1983, the ATC granted the Federal Express application with minor amendments. The decision reflected an important interpretation of the statutory test for operating authority, "Public convenience and Necessity". In this regard, the ATC found that while there was insufficient evidence of a public necessity, the services proposed would offer to the user-public a positive and substantial added convenience and that the additional competition resulting would be to the net benefit of the public. The matter is under appeal by Canada Post Corporation and Loomis Courier Services Ltd. On October 9, 1985, Loomis discontinued its action in the Federal Court. As of March 31, 1987, no hearing date had been set for the Canada Post appeal.

2. Air Ontario Ltd. - Application for Scheduled Passenger Service, Hartford Connecticut.

Issue: Application for a Air Scheduled Passenger Licence.

Nature of Intervention: On December 30, 1982, the Air Transport Committee (ATC) of the Canadian Transport Commission issued a public notice that Air Ontario Ltd., of London, Ontario, had applied for permission to operate a commercial unit toll service between Toronto, Ontario and Hartford, Connecticut. An application to serve this route was also received from an American carrier, Pilgrim Airlines.

In a letter of intervention to the ATC, dated February 7, 1983, the Director submitted that the service proposed by Air Ontario would provide improved convenience to the travelling public, since there existed only one air

carrier between Toronto and Hartford, with a stop-off point, using smaller aircraft than the ones contemplated in this application.

Outcome: On March 27, 1984, the ATC issued Decision 7940, which approved the applications of both carriers. Approval of each carrier's application was contingent on the other carrier obtaining the appropriate operating authorities from both the United States and Canada. This was done to prevent one of the carriers from gaining an advantage over the other by being able to commence operations first.

3. Air Ontario Ltd. - Application for Scheduled Passenger Service, Sudbury and North Bay, Ontario.

Issue: Application for a Air Scheduled Passenger Licence.

Nature of Intervention: On January 19, 1983, the Director submitted a letter of intervention to the Air Transport Committee (ATC) of the Canadian Transport Commission in support of an application by Air Ontario to provide service in Ontario between North Bay, Sudbury and Toronto.

The letter made two specific points: that it was in the best interest of North Bay and Sudbury consumers that a certain degree of choice exist in airline transport to and from Toronto, and that there would be no substantial harm to existing carriers or to the public as a result of granting the application.

Outcome: On October 5, 1983, the ATC issued Decision 7669, which denied the Air Ontario application. The ATC noted that the proposed service has the potential of diverting traffic from Air Canada and Voyageur Airways. Moreover, the ATC noted that the statistical data does not support the applicant's claim that Air Canada's load factors are excesively high and concluded that additional competition is neither necessary nor warranted.

The matter was appealed to the Minister of Transport by Air Ontario. On May 10, 1984, he allowed the appeal granting the application as part of his announcement of a new Canadian air policy.

4. Voyageur Airways - Application for Scheduled Passenger Service between Toronto Island Airport and Windsor, Ontario.

Issue: Application for a Air Scheduled Passenger Licence.

Nature of Intervention: On Janaury 21, 1983, the Air Transport Committee (ATC) of the Canadian Transport Commission issued notice that Voyageur Airways Limited had applied to operate a commercial air service between Toronto Island Airport and Windsor, Ontario.

In a letter of intervention dated March 2, 1983, the Director stated that the proposed service would provide improved convenience to the travelling public, since there was no scheduled airline service between Toronto Island Airport and Windsor, Ontario. In addition, the Director wrote that the granting of this application would result in a greater choice of through services between Windsor and Sudbury and North Bay.

Outcome: On August 11, 1983, the ATC issued Decision 7529 permitting Voyageur Airways to fly from Windsor, Ontario, to Toronto Island Airport, with aircraft restrictions. The ATC in its decision noted that the proposed service would provide an alternative means of transportation to the travelling public and that the service would be directed at a different market from that presently offered.

5. Kelowna Flightcraft Air Charter Limited - Application for Scheduled Passenger Service.

Issue: Application for a Air Scheduled Passenger Licence.

Nature of Intervention: On February 15, 1983, the Air Transport Committee (ATC) of the Canadian Transport Commission issued a notice of hearing concerning a proposed air service by Kelowna Flightcraft Air Charter Limited linking the cities of Kelowna, Penticton, Vancouver and Spokane, Washington.

Evidence on behalf of the Director was given by an expert witness, Dr. G.B. Reschenthaler, at hearings held at Kelowna, British Columbia, in April 1983. His presentation in support of the applicant included a critique of the rationale of airline regulation in Canada and a discussion of general evidence of workability of competition in the airline industry.

In his final argument before the ATC, counsel for the Director stated that the ATC should consider the recent public policy shift to greater emphasis on competition as a regulatory instrument. Examples of this shift in public policy were cited, such as the expansion of the competitive role of CP Air on domestic routes, as well as the introduction of domestic Advance Booking Charters. Counsel for the Director added that there should be no artificial limit placed on competitive behaviour within potentially competitive markets. The ATC's attention was drawn to the

fact that increased competition can be expected to result in increased efficiency and improvements in service and passenger convenience, and that, therefore, the ATC should place an increasing emphasis on competition in determining public convenience and necessity.

Outcome: On October 11, 1983, the ATC released Decision 7673, approving the application by Kelowna Flightcraft, with frequency, traffic and equipment restrictions. The ATC concluded that the entry into this market by Kelowna Flighcraft, bringing with it a measure of competition, would have little effect on the operations of Pacific Western Airlines, the incumbent carrier, but may result in considerable benefits for the public.

6. Review of proposed Canadian National Acquisition of an Interest in Cast Container Group.

Issue: Multimodal Integration through Acquisition.

Nature of Intervention: The Cast Container Group has been engaged in the shipping container liner business in the North Atlantic trade for the past several years. In late October 1982, the Director took notice of what was projected to be a substantial integration of Cast's transatlantic shipping interests into the already extensive multi-modal transportation system of Canadian National Railway Company (CN). This further transaction would have given CN a majority interest and effective control over the shipping business of Cast, and thus it raised, in the Director's opinion, certain issues in respect of the maintenance of competition.

The Director's intervention essentially expressed his views on the need to assess this acquisition through a cost-benefit analysis of inter-modal control, ownership and integration. Briefly stated, the benefits of integration (i.e., the complementary aspects of inter-modal ownership) must be compared to the corresponding cost likely to flow from excessive market control (i.e., the monopolistic aspects of inter-modal ownership).

The matter was postponed and CN withdrew its option to gain effective control, reducing the thrust of the Director's concern.

Outcome: On February 10, 1984, the WTC released its decision not to disallow the proposed acquisition. The Committee reiterated the commitment it made during the hearings to hold an inquiry under section 22 of the NTA.

7. Review of Canadian National's payments of Rebates to the Cast Container Group.

Issue: Competitive Implications of Rebate Payment to Cast.

Nature of Intervention: The Railway Transport Committee (RTC) of the Canadian Transport Commission held hearings in 1983 to determine whether the payment of commissions to the Cast Container Group by Canadian National raised a question under section 380 of the Railway Act. The Director intervened in these proceedings in order to gain an insight into the competitive issues associated with the payment of these commission.

Outcome: In September 1983, the Director decided that there was not sufficient reason to be actively involved in the proceedings and therefore withdrew his intervention.

8. Canada Southern Railways.

Issue: Elimination of competition arising from the acquisition of railway properties by CNR and CPR.

Nature of Intervention: Consolidated Rail Corporation (Conrail), Philadelphia, Pennsylvania, controls a series of rail properties in southern Ontario which are generally referred to as the Canada Southern. These properties essentially consist of a double-tract tunnel between Detroit, Michigan, and Windsor, Ontario, a double-track line from Windsor to Niagara Falls and Fort Erie, Ontario, and a double-track bridge at Niagara Falls between Canada and the United States.

In a letter dated August 5, 1983, the Director responded to a public notice of the RTC calling for comments on CN and CP's proposed acquisition. In opposing the proposal, the Director referred to the elimination of competition with CN and CP's rail and other transport operations in southern Ontario and commented that this did not appear to be balanced by substantial benefits to Canadian shippers and the public in general.

In a related application, Erie Express Railway Corp. applied to the RTC for a Certificate of Public Convenience and Necessity as a first step to acquire and operate the Canada Southern. On December 23, 1983, the Director wrote to the RTC in support of the application, observing that the entry of an independent operator in the region would benefit Canadian shippers by providing a spur to innovation and the economic performance of the established railways, CN and CP.

On March 6, 1984, the RTC granted Erie Express a Certificate of Public Convenience and Necessity. At the hearings, the Director was presented by counsel and an expert witness Robert L. Banks who testified that the CN-CP proposal, if consummated, would have significant anticompetitive effects on transport markets in southern Ontario. He stated that the alternatives for disposing of the properties - the applications made by Erie Express Railways Corporation and Trans-Ontario Railways Company - were to be preferred to the CN-CP proposal.

The Director's final argument urged the CTC to disallow the merger as it would unduly restrict competition especially since there were alternative buyers.

Outcome: The decision allowed the CN-CP acquisition to be consummated since it was the only party with an agreement with Conrail, the owner of the Canada Southern, and since it did not unduly restrict competition or was otherwise prejudicial to the public interest. Both Erie Express and Trans-Ontario petitioned Cabinet to vary the decision. On March 29, 1985, Cabinet denied the petitions and instructed that a regulation pursuant to section 259 of the Railway Act be prepared preventing the abandonment of the operations of the Canada Southern before January 1, 2005.

9. Regulations affecting Freight Interswitching between Canadian Railways.

Issue: The enhancement of competition through extending interswitching limits and assessment of compensating rates.

Nature of Intervention: Under General Order T-12 the Railway Transport Committee (RTC) of the Canadian Transport Commission requires that upon request of a shipper all freight within a four-mile radius of a railway interswitching point be transferred to any carrier having access to that point. In a letter dated July 29, 1983, the Director responded to a public notice by the RTC calling for comments on the interswitching regulations. The Director recommended a liberalization of the terms and conditions for interswitching or compensating rates and questioned the need for any distance limit on its application.

In his second written submission, dated July 3, 1984, the Director proposed extending the present four-mile interswitching limit to the commercial and industrialized limits of each economic zone so as to provide intramodal rail competition to many more shippers than is presently the case. In addition, the Director submitted that any captive shipper not covered by this extension should be allowed to petition the CTC for regulated interswitching. The Director suggested that switching charges should be cost-based and

that a formula be developed by the CTC, in consultation with the railways, for determining charges that are compensatory but nondiscriminatory.

Outcome: The RTC report of November 1985 proposed the following:

(a) to maintain the four mile interswitching limit;

(b) where some sidings at a station are outside the four mile limit, to establish a secondary interswitching zone;

(c) to establish a maximum interswitching charge in the primary interswitching zone of $200 per car;

(d) to require negotiation of interswitching charges in the secondary zone. However, the RTC would establish a rate in the case of one agreement;

(e) to continue to require the line carrier to absorb a minimum of 50 percent of the interswitching charge.

Some of these proposals are being considered in the new National Transportation Act.

B. Communications

1. Pay Television.

Issue: Introduction of competition through the expansion of a company's operation.

Nature of Intervention: The CRTC conducted public hearings to review its pay television policy during the week of November 29, 1983, in response to Order in Council P.C. 1983-2878 dated September 20, 1983.

The Order in Council was issued by Cabinet following its review of appeals received concerning CRTC Decision 83-576, which extended the service area of Allarcom Limited, the regional licensee for Alberta, to include Manitoba, Saskatchewan and the Northwest Territories. The Order in Council expressed Cabinet's concern that this apparent amalgamation of regional licences was leading, in effect, to the creation of a second national pay television service in competition with First Choice Communications Corporation in the absence of due consideration of the implications of this development in light of the different obligations originally imposed by the CRTC on regional and national licensees. In addition, the CRTC indicated its intention to deal with a new application by Air Satellite

Corporation, the regional licensee for British Columbia, for approval to transfer effective control of its operations to Allarcom.

The Director intervened in the proceeding to support the expansion of Allarcom's operations as a means of introducing competition into areas where First Choice was, at the time, the only supplier of pay television services. In addition, in order to ensure that competition in the provision of pay television services proceeded on an equitable basis, the Director recommended that any operational obligations the CRTC chose to impose in a particular region should apply equally to all pay television operators in that region, regardless of whether their licences had been granted on a regional or a national basis. It was the Director's view that the events which had occurred in the Canadian pay television market, including the demise of C Channel and the current expansion of Allarcom, were natural responses to the normal workings of the marketplace.

Outcome: On January 5, 1984, the CRTC issued a decision approving the expansion of the service area of Allarcom Limited and permited the company to acquire effective control of Aim Satellite Corporation. In addition, the CRTC revised Allarcom's conditions of licence in keeping with the Director's general position on the issue of operational obligations to be imposed on licensees.

2. Telesat Canada - Final Rates for 14/12 GHz Service: Resale and Sharing.

Issue: Preclusion of competition through the prohibition of resale and sharing capacity.

Nature of Intervention: The CRTC conducted a hearing commencing the week of October 25, 1983, for the purpose of establishing rates and policies applicable to Telesat Canada's provision of 14/12 GHz satellite services. The CRTC indicated that it also intended during the course of its proceeding to consider the possibility of allowing the resale of excess satellite channel capacity held by broadcasters. The Director intervened in the proceeding to address the resale issue.

Telesat does not permit users of its services, other than common carriers, to lease less than a full satellite channel. In addition, Item 3.1 of Telesat Tariff 8001 requires users to obtain Telesat's permission before engaging in resale or sharing. The Director held that Telesat was abusing its monopoly position in the provision of satellite services in Canada by consistently refusing to grant permission to resell or share channel capacity to any

users of its services, other than regulated common carriers, without just cause. In the Director's view, this practice was unreasonable in that it precluded other users from competing with the members of Telecom Canada in the resale market. In this regard, in the course of the public hearing, the Director presented expert evidence favouring the permitting of resale and sharing on the basis of the contribution such activities would make to the economically efficient use of Canada's satellite transmission system.

The Director's final argument urged the CRTC to amend Item 3.1 of Telesat Tariff 8001 to permit broadcasters to engage in the resale of satellite services to other broadcasters without the prior approval of Telesat. It was the Director's position that broadcasters should be required to discontinue resale only when Telesat is able to demonstrate to the satisfaction of the CRTC that such a requirement is justified.

Outcome: In Telecom Decision CRTC 84-9 of February 20, 1984, the CRTC ruled, in keeping with the Director's recommendation, that Item 3.1 of Telesat Tariff 8001 should be construed, on a prima facie basis, as permitting broadcasters to assign, transfer or sublet excess capacity to other such undertakings for broadcast programming purposes.

3. Enhanced Services.

Issue: Expansion of Bell's service and its impact on competition.

Nature of Intervention: This matter arose from an application to the CRTC by Bell Canada in December 1980 for approval of a voice message service. The service permits subscribers to place a message in Bell's voice transmission network and have it delivered at a specified time or, in the event of no answer, to have it repeated until delivered.

The Director commented to the CRTC that this application constituted an expansion of Bell Canada's activities into the new area of computer-based services, commonly known as enhanced services, and as such raised a number of competition policy issues. Among these was the possibility that Bell might not be willing to grant potential competitors in the enhanced services market equal access to its public switched telephone network. In May 1981 the CRTC released Telecom Decision CRTC 81-10, which approved the Bell service and ordered the company to provide equal access to any potential competitor also wishing to offer a voice message service.

In November 1983 the CRTC issued Telecom Public Notice 1983-72 calling for public comments to guide the CRTC in deciding on the appropriate regulatory treatment of enhanced services in general. On February 6, 1984, the Director submitted comments recommending that CRTC adopt the definition that incorporates the view that basic telephone service constitutes no more than a pipeline in which voice and data messages are transmitted without manipulation or enhancement by the common carrier. In this view, any service which goes beyond the simple transmission of messages would constitute an enhanced service. The Director also recommended that the CRTC implement a number of safeguards against potential carrier abuses of their monopoly in the provision of basic services. These basic services form an integral part of the enhanced services provided by many noncarriers. In addition, the Director favoured a complete liberalization of the current restrictions on resale and sharing applicable to the provision of enhanced services.

Outcome: On July 12, 1984, the CRTC released Telecom Decision CRTC 84-18. In its decision the CRTC adopted a modified version supported by the Director. In keeping with the position of the Director, the CRTC also concluded that, in order for competition to develop in the enhanced services market, the resale of carrier services by enhanced service providers is required and will be permitted where it is clear that the service in question has, as its primary function, the provision of a basic service.

On March 7, 1986, the CRTC issued Telecom Public Notice 1986-26 requesting comments on an application submitted to the CRTC by CNCP for review of Telecom Decision CRTC 85-19. The Director filed written comments on May 9, 1986 in which he agreed with CNCP's argument that a new principle had arisen from the contribution freeze ordered by the CRTC in the Decision and its effect on CNCP's business plan and financial viability. CNCP's final reply was filed on July 18, 1986.

On October 31, 1986, the CRTC issued Telecom Decision CRTC which denied CNCP's application for review. The CRTC concluded that CNCP had failed to satisfy any of the established criteria for a section 63 review.

4. Services Using Vertical Blanking Interval or Subsidiary Communication Multiplex Operation.

Issue: Regulations pertaining to a new service should be minimized to foster a competitive environment.

Nature of Intervention: In response to CRTC Public Notice 1983-77, the Director submitted comments to the CRTC on July 29, 1983, respecting the appropriate regulatory treatment of

services to be offered in the future on a commercial basis by broadcasting undertakings using the Vertical Blanking Interval (VBI) and Subsidiary Communications Multiplex Operation (SCMO).

The VBI is an integral part of every television signal broadcasted but is not required to transmit the video image itself. Recent technological developments permit the use of the VBI for the provision of a variety of special services. Similarly, SCMO may be used to provide a number of services over the unused portion of the FM radio broadcast spectrum.

Both VBI and SCMO can be used for the distribution of alpha-numeric services, including electronic newspapers, games and stock market information. In addition, SCMO has the capacity to provide voice and music services. The market for these services is highly competitive, involving telecommunications carriers, paging firms, the print media and, potentially, cable operators. In view of the healthy competitive environment in which such services are offered and the fact that the provision of such services would be ancillary to the broadcaster's main undertaking, the Director proposed that any regulation of the market for these services should be kept to a minimum. Specifically, the Director recommended that the CRTC should seek only to ensure that the transmission of VBI and SCMO services do not interfere with other broadcast signals and that a portion of the available VBI and SCMO transmission capacity should be reserved for desirable noncommercial uses, such as closed captioning for the hearing impaired. In the Director's view there is no need for the CRTC to license providers of such services to control the nature of the VBI and SCMO services offered in the market or the means by which service providers derive revenues from their operations.

Outcome: In Public Notice 1984-117 dated May 17, 1984, the CRTC announced its intention to take a two-phased approach to regulating the use of VBI and SCMO facilities.

Phase I is in keeping with the Director's recommendations. Phase II of the Commission's plan will simply involve reviewing the experience with the Phase I decision.

To this end, the CRTC has instructed licenses authorized to provide VBI and SCMO services to file reports on their experience and progress by December 31, 1986. As of March 31, 1987, the CRTC had yet to issue directions on this matter.

5. Tiering of Cable Services and Universal Pay Television.

Issue: The minimization of regulations pertaining to tiered cable service to permit maximum level of competition.

Nature of Intervention: The Canadian Radio-television and Telecommunications Commission (CRTC) called for comments on this subject in Public Notice 1982-63 of July 7, 1982.

In its Notice, the CRTC invited comments respecting what services should be included in the basic and subsequent tiers (tiering is the combining of one or more services), the need for a requirement that cable operators wishing to reassign services among the various discretionary tiers seek CRTC approval and the need for the CRTC to regulate the retail price of discretionary tiers. In addition, the CRTC invited comments on the desirability of a mandatory universal pay television service. A universal service involves the addition to all existing cable system packages of one new channel for which all cable television subscribers would be required to pay a nominal fee in addition to their current payment for service. The universal service in question would, by and large, carry only Canadian programs.

In his submission, the Director argued that the CRTC should minimize its regulation of tiered cable service in order to permit the maximum level of competition to develop among providers of the service. Specifically, the Director recommended that all tiers, including the basic service tier, should be offered on a discretionary basis. Accordingly, the Director opposed the introduction of a mandatory universal pay television service. In addition, the Director recommended that, with the exception of the first or basic tier, neither the rates charged for discretionary tiers nor their content should be regulated. In the event that the CRTC chose to require consumers to purchase the basic tier before permitting them to subscribe to any other tiers, the Director urged the CRTC to impose accounting procedures on cable companies which would help detect any attempts by them to cross-subsidize their discretionary tiers from the revenues of their basic monopoly service.

Outcome: On October 26, 1983, the CRTC issued its policy in Public Notice 1983-245. The CRTC continued its requirement for cable service, and the operators right for American commercial networks. In addition, the CRTC required that any subscriber wishing to obtain a discretionary tier must first acquire the basic tier. The specific mix of programming offered on individual discretionary tiers was left to be determined by cable operators, but they will be required to offer one or more Canadian pay television or

specialty services with each foreign specialty service offered in a tier. The CRTC also required, as a general rule, Canadian content on a cable system and prohibition of foreign premium pay television.

The CRTC chose not to introduce mandatory universal pay television, it refrained from approving carriage of superstations by cable operators and indicated that the present accounting procedures were adequate for reviewing cost-separation.

C. Other

1. National Energy Board Hearing on Heavy Fuel Oil.

Issue: The impact on competition by permitting imports and exports of Heavy Fuel Oil freely.

Nature of Intervention: Under the National Energy Board Act, licences are required for both the import and export of heavy fuel oil. In the spring of 1983, the Board held a public inquiry into heavy fuel oil, its availability, impact of licensing importers and criteria for licences in Eastern Canada.

The Director addressed several issues and advocated that imports and exports of heavy fuel oil should be permitted to flow as freely as possible, allowing heavy fuel oil to be marketed in the most economical manner. He stressed that care must be taken to avoid creating artificial barriers that would price heavy fuel oil above electricity and natural gas, with which it competes. He also recommended that the least-cost energy alternative should be the main criterion on which the Board bases its decision regarding applications for imports, and that imports of heavy fuel oil should be permitted to flow as freely as possible.

Outcome: In its report in June 1983, the National Energy Board announced that it did not intend to make any basic change in the way in which it assessed and decided applications for the import and export of heavy fuel oil in eastern Canada. The Board concluded that a continuing balance of domestic production with demand could not be achieved without imports and exports; that transportation of domestic heavy fuel oil to the Atlantic Provinces would be uneconomic; that elimination of heavy fuel imports would not necessarily resolve the difficulties hampering gas penetration of the Québec industrial market; and that the import option provided essential price competition for independent marketers and for consumers in areas where gas is not an alternative source.

2. Establishment of a National Agency for Broiler Type Chicken Hatching Eggs.

Issue: The impact of supply management on broiler egg production, efficiency, prices, and other variables.

Nature of Intervention: In November 1983, the Director submitted a brief in response to the Notice of Public Hearing by the National Farm Product Marketing Council to enquire into the merits of establishing a national marketing agency for broiler chicken type hatching eggs. The proposal for the agency put forward by the Canadian Broiler Hatching Egg Producers' Association sought approval for powers to determine prices on a cost-of-production basis; setting production quotas; regulation of interprovincial and export trade; and the imposition of import controls on broiler type hatching eggs, broiler chicks, and primary and multiplier breeders, males and females. In his submission, the Director stated that he did not favour the establishment of a national board with supply management powers on the grounds that supply management of broiler egg production would have negative implications for efficiency including dynamic change, performance, prices, equity (income distribution) in the entire broiler production-marketing system, and would introduce production rigidities and complexity of decision making. Data were presented and studies cited to support the above opinion.

Outcome: The Council presented a written reply to the Director's submission which took exception as to the detrimental effect of supply management arrangements for broiler eggs with cost of production pricing, followed by new evidence by the Director to reinforce his earlier views. The National Farms Products Marketing Council is expected to report to the Minister of Agriculture on the issue.

In June 1984, the Minister of Agriculture approved the Council's recommendation concerning the establishment of a national agency for broiler hatching eggs. Potential signatories to a federal-provincal agreement (representing broiler hatching egg producers, federal and provincial governments) met for the first time in September 1984 to consider the proposed marketing plan, and again in January and in March 1985 to review revisions to the draft documents.

Further revisions are now being incorporated into the documents before they are forwarded to potential signatories for review and, possibly final approval.

1984-1985

A. Transport

1. Austin Airways Intervention.

Issue: Application for an air licence.

Nature of Intervention: On July 13, 1984, an intervention statement in support of an application by Austin Airways Ltd. to establish a scheduled service on the points Kapuskasing-Timmins-Toronto was filed with the ATC. The statement made the point that the allowance would offer needed competition to the existing carriers on the route, Air Canada and Norontair, and would be in accordance with the new Domestic Air Policy of allowing competition among local, regional and national air carriers.

Outcome: By decison No. 8526 dated December 7, 1984, the ATC approved this application citing favourably the Director's comments and the new Domestic Air Policy.

2. Pacific Western Airlines - Application to consolidate Licences.

Issue: Application to consolidate air licences.

Nature of Intervention: On September 10, 1984, an intervention statement before the ATC was filed in the matter of an application by Pacific Western Airlines (PWA) to consolidate two of its licences to operate commercial air services and to add the point Thunder Bay. The statement was filed in support of PWA's application and in anwser to objections filed by Nordair and CP Air. Opposition was expressed to a proposal by CP Air that a decision in this matter be delayed pending the outcome of the appeal in the Federal Express case. Nordair opposed PWA's application to serve the point Thunder Bay, maintaining that the present services provided by itself and Air Canada were adequate. The intervention supported PWA's application on the ground that the approval would be consistent with the new Domestic Air Policy and that PWA had provided sufficient evidence to find the proposed service to be consistent with the public convenience and necessity test.

This application would allow PWA to institute new services linking western and central Canada and provide a one-stop Vancouver-Toronto link. Approval would be an effective first step in allowing PWA to become a third national carrier.

Outcome: By decision No. 8477 dated November 16, 1984 the ATC approved PWA's application.

3. Kelowna Flightcraft - Application to Amend Its Commercial Air Services Licence.

Issue: Application to amend an air licence.

Nature of Intervention: On September 19, 1984, the Director filed a intervention statement before the ATC supporting an application by Kelowna Flightcraft Air Charter Ltd., doing business as Inter-City Air, to have operating restrictions removed from its scheduled service licence allowing service between Penticton, Kelowna, and Kamloops and Vancouver. A previous intervention by the Director had been a factor in the original decision by the ATC to grant this licence. Approval was recommended on the basis that the changed circumstances, in particular the withdrawal of flights by Pacific Western Airlines, made continuation of the restrictions obsolete. As well, approval would be consistent with the new Domestic Air Policy.

Outcome: It was not necessary for the ATC to make a decision on this matter as the restrictions were removed by the Minister of Transport after an application by Kelowna made pursuant to the air policy statement of May 10, 1984.

It should be noted that Kelowna Flightcraft has since withdrawn from this market due to competition from other carriers. The company continues to operate as a charter carrier.

4. Nordair - Application to Serve Sudbury, Timmins and North Bay, Ontario.

Issue: Application for an air licence.

Nature of Intervention: On October 5, 1984, the Director filed an intervention statement with the ATC supporting an application by Nordair to add the points Sudbury, Timmins, and North Bay, Ontario to its licences. Approval of the application was recommended on the basis that it would allow greater competition and improved service to these points, and would be in keeping with the implementation of the new Domestic Air Policy.

Outcome: By decision No. 8765 dated March 25, 1985, the ATC approved this application.

5. Voyageur Airways Ltd. - Application to Consolidate Licences.

Issue: Application to consolidate air licences.

Nature of Intervention: The Director filed an intervention statement with the ATC on October 22, 1984, supporting an application by Voyageur Airways Ltd. to amend and consolidate several of its licences to operate scheduled commercial air services. Approval of the application was recommended because it would allow Voyageur Airways Ltd. to be a more effective competitor by giving the carrier greater flexibility and freedom in the formulation of its route structure and the use of its equipment. It was also pointed out that approval would be consistent with the objective of the new Domestic Air Policy, which called for the ATC to give greater emphasis to the benefits of competition in rendering its decision on applications to operate commercial air services.

Outcome: By decision No. 8640 dated February 15, 1985, the ATC approved this application.

6. Eastern Provincial Airways - Application to Consolidate Licences.

Issue: Application to Consolidate air Licences.

Nature of Intervention: On December 7, 1984, the Director filed an intervention statement with the ATC supporting an application by Eastern Provincial Airways to consolidate its licences. Approval was recommended on the basis that it would give the carrier greater flexibility to react to changes in market demand and be generally beneficial to the competitive environment of the industry.

Outcome: By Decision No. 8770 dated March 27, 1985, the ATC approved this application.

7. Quebec Aviation Ltd. - Application to Consolidate Licences.

Issue: Application to consolidate air licences.

Nature of Intervention: On March 15, 1985, the Director filed an intervention statement with the ATC supporting an application by Quebec Aviation Ltd. to consolidate its licences to operate commercial air services. Approval was recommended on the basis of its being beneficial to the competitive environment of the industry and in keeping with the implementation of the new Domestic Air Policy.

Outcome: By decision dated August 27, 1985, the ATC approved the application.

8. Staggers Rail Act of 1980.

Issue: Implications of the Staggers Rail Act on Canadian Railways and Shippers.

Nature of Intervention: In August 1984 the RTC gave notice of a public hearing to inquire into the known effects and implications for Canadian railways and shippers of the deregulation of the U.S. rail industry resulting from the enactment of the Staggers Rail Act of 1980. The Director called four expert witnesses. E.M. Ludwick & Associates presented their survey results which indicated:

(a) a consensus exists among surveyed rail users for a significant limitation of the ability of the railways to set prices collectively;

(b) increased intramodal rail competition is viewed as beneficial; and

(c) 55 percent of the respondents' total rail expenditures is captive to either CN or CP.

Walter G. Rich and L. McCaffrey described the growth of short line railroads in the U.S. under deregulation and the role that short lines could play in Canada, particularly in Canada-U.S. transborder markets.

Cline D. Barton described how the substitution of market forces for economic regulation would benefit Canadian shippers presently served by only one railway. Such a policy of commercial freedom providing unimpeded entry into existing and prospective markets would give other carriers the same opportunities of new market access that CN and CP presently possess through joint arrangements with their U.S. rail carrier subsidiaries.

Of particular concern in this hearing was that the Staggers Act has permitted U.S. rail carriers to surcharge their portion of joint-through rates, as well as to unilaterally cancel such rates and close international gateways.

The Director submitted that promoting easier entry by granting running rights, expanding interswitching zones and easing access to new carrier entrants such as short lines, including transborder entry by U.S. rail carriers, would not only provide more efficient international routings but would also deter the closing of transborder gateways.

The Director urged the RTC to exercise its authority to restrict collective ratemaking by the Canadian railways on transborder traffic to participating carriers on joint movements.

With respect to confidential contracts the Director called for amendments to sections 275 and 380 of the Railway Act to permit secret rebates on transborder traffic. The Director emphasized that disclosure of the terms of secret contracts between the rail carriers, as advanced by CN and CP, would minimize rather than promote intramodal rail competition.

Outcome: In its final report the RTC recommended its endorcement of confidential contracts, including secret rebates, have significant competition policy implications for transborder traffic. It recommended the amendment of secton 279 of the Railway Act, prohibiting railway agreements on confidential contracts.

9. R. McCargar Trucking Ltd. - Operating Authority Application before the Manitoba Motor Transport Board.

Issue: Application for a trucking licence.

Nature of Intervention: R. McCargar Trucking Ltd. is owned by an Edmonton based trucking firm specializing in moving used household goods. The firm is not affiliated with any of the national van line companies.

In April and May 1984 the MMTB held a four day hearing into an application by R. McCargar for operating authority. The Director intervened in this matter in support of the applicant. In the past the MMTB had, with one limited exception, refused to authorize any carrier to transport used household goods extra-provincially (into or out of Manitoba) unless it had van line affiliation. All of the objectors to this application were van line agents.

The Director in his representation reviewed the anti-competitive history of the extra-provincial moving industry and argued for increased competition in the industry, especially as it applied to Manitoba. He argued that the licencing of independent extra-provincial movers, such as the applicant, would provide a source of price and product competition.

Outcome: The Board denied the application on November 8, 1984, on the basis that the application failed to prove that public convenience would be promoted.

10. Kleysen Transport.

Issue: Application for a trucking licence.

Nature of Intervention: The Director intervened in June 1984 before the Manitoba Motor Transport Board (MMTB) in support

of an application by Kleysen Transport, a family-owned Winnipeg trucking company, for general freight authority in truckload lots to and from the Manitoba-USA border.

The Director's evidence in a submission by an expert witness, Professor Norman Bonsor of Lakehead University, emphasized the inability of Kleysen Transport to obtain a balanced international traffic flow due to a reduction in competition in the for-hire trucking sector on transborder movements. The submission concluded that granting the authority would promote public necessity, maintain competition and would not lead to the existence of excess capacity.

Outcome: On October 12, 1984, the application was granted.

11. V.O.T. Transport Ltd.

Issue: Application for a trucking licence.

Nature of Intervention: On September 14, 1984, the Director filed a notice of intention to intervene before the Ontario Highway Transport Board (OHTB) in the matter of an application by V.O.T. Transport Ltd., a British Columbia firm engaged in the transportation of automobiles. The application sought authority to conduct this business from Ontario.

The Director introduced evidence through an expert witness, Professor Norman Bonsor, to demonstrate that allowing the application would introduce significant competition in the transportation of automobiles between Ontario and British Columbia, which is presently dominated by the rail carriers.

Outcome: On July 8, 1985, the OHTB handed down its decision, granting V.O.T.'s application.

12. Hillside Auto Carrier Limited.

Issue: Application for a trucking licence.

Nature of Intervention: On October 3, 1984, the Director filed notice of his intention to intervene before the New Brunswick Motor Carrier Board in the matter of an application by Hillside Auto Carrier Limited for authority to transport new automobiles, vans and trucks to and from all locations in New Brunswick and to other jurisdictions as authorized.

The Director introduced evidence on March 6, 1985, through an expert witness, Professor Norman Bonsor, to demonstrate that allowance of Hillside's application would introduce significant competition and that the transportation of automobiles was not a business subject to significant economies of scale and therefore not subject to market failure.

Outcome: On March 18, 1986, the New Brunswick Motor Carrier Board handed down its decision, denying Hillside's application due to a lack of shipper support.

13. Multimodal Integration.

Issue: Comments on Railways multimodal Integration.

Nature of Intervention: On May 16, 1984, the Director provided comments to the CTC's Water Transport Committee with respect to proposed terms of reference for an inquiry into the railway companies' expansion into other modes of transport, particularly water and truck. The thrust of these comments was that the inquiry was too narrow, that it should not focus exclusively on the situation of the Port of Halifax, but rather should engage in a broad cost benefit analysis of multimodal integration. An extensive list of issues and research questions was appended to the comments.

The thrust of these comments was to urge that basic empirical evidence be provided on the nature and extent of multimodal integration, whether integration by acquisition is artificially induced by regulation, and finally, whether vertical integration has resulted in anticompetitive behavior.

Outcome: In March 1985 the CTC decided to make this issue part of its planned hearings examining rail policy more generally.

B. Communications

1. Restructuring of Pay Television Industry.

Issue: Application to restructure the pay television industry.

Nature of Intervention: On August 16, 1984, the CRTC issued Decision 84-654 approving the restructuring of the pay television industry into two regional monopolies.

Under the restructuring First Choice Canadian Communications Corporation would serve Eastern Canada and Allarcom Limited Group of companies would serve Western Canada.

The applicants argued that a number of factors associated with direct competition in major markets led to fewer subscribers and lower revenue levels than projected, while expenditures remained high, resulting in severely deteriorating financial circumstances.

The Director submitted a written intervention on July 12, 1984, opposing the application to restructure the industry and appeared before the CRTC on July 12, 1984. The Director argued that the existing Canadian content conditions of licence were the primary cause of the companies financial difficulties and proposed revisions that would improve the companies' financial situation while retaining competition.

In their application to the CRTC the pay television companies stated that the existing Canadian content requirements would be met if the CRTC approved their proposal to form regional monopolies. However, a financial analysis of the companies' operations commissioned by the Director indicated that the companies would require reductions to their existing Canadian content requirements if they were to have any chance of becoming profitable. The Director raised the Canadian content issue in an attempt to preserve competition in the pay television industry.

The analysis presented by the Director demonstrated that reductions in the 30 per cent time requirement would (i) allow the pay television companies to shift a substantial portion of the money paid out to acquire programming away from the purchase of shelf product and into investments in new productions, (ii) allow the companies to invest more funds in each new production and thereby increase the quality of those productions to a level comparable to foreign product, and (iii) allow the companies to acquire rights to first exhibitions for pay television and acquire the rights to income generated by those productions when shown in different media. In so doing, the adjustment in the time quota could benefit the production industry, improve the poor financial condition of the pay television companies and thereby retain the advantages of competition for the general public.

Outcome: The CRTC approved the application. In doing so the Commission adopted a broad market definition of "home entertainment," and concluded that pay television companies face substantial competition from commercial television, video cassette recorders, new speciality services to be distributed by cable television commencing September 1, 1984, and non-programming cable services such as the NABU network.

2. Interexchange Competition and Related Issues.

Issue: Application to Interconnect.

Nature of Intervention: The matter was initiated upon an application by CNCP Telecommunications to the CRTC for permission to interconnect with the telephone networks of Bell Canada and B.C. Tel for the purpose of competing with those companies in the provision of long distance (interexchange) public telephone service. Also at issue in the resulting CRTC proceeding was whether to facilitate increased telecommunications competition by eliminating the prevailing carrier tariff restrictions on resale and sharing.

The Director's submission provided comments on a number of issues, but primarily took issue with the assertion of the telephone companies that interexchange competition would reduce their revenues sufficiently to require substantial increases in local exchange rates. The telephone companies claim that long-distance revenues subsidize local telephone service, since local revenues do not cover all assigned costs. He reiterated his long-held position that this subsidy argument is founded upon the unwarranted telephone company practice of assigning to the local network all of the costs of equipment used jointly in the provision of both local and long-distance service. The Director has consistently advocated a more rational treatment of the joint costs of providing telephone services, which undermines the legitimacy of any claims that long-distance telephone service subsidizes local telephone service.

Two expert witnesses testified for the Director, Professor Irwin's evidence concentrated on the effect that interexchange competition has had on the U.S. telecommunications industry and markets, the importance of resale and sharing, and the potential impact on the telecommunications system of bypass technology. Dr. Wilson's evidence also focussed on the U.S experience with interexchange competition and the many economic benefits to be derived from permitting resale and sharing of basic telecommunication services. However, a major part of Dr. Wilson's evidence centered around the debate concerning the possible existence that certain joint costs were in fact sensitive to toll usage and could be properly allocated to that category. On that basis, Dr. Wilson expressed an opinion on the appropriate level of compensation that CNCP should pay Bell and B.C. Tel for access to their networks.

At the hearings, the Director reiterated his position in the submission, and in response to the telephone companies initial request for rate balancing (aligning rates

to actual cost) indicated that until a fully effective costing methodolgy is identified and agreed upon, the telephone companies' argument for rate balancing and the effect of long distance competition on local rates remains unsubstantiated.

The Director's support for CNCP's application was based on evidence placed before the CRTC during the proceeding that indicated that while interexchange competition would not cause any significant increases in local rates, it could result in : (i) an increase in innovation and efficiency in the telecommunications industry; (ii) lower long-distance rates; (iii) an increase in demand for long-distance service; and (iv) a positive impact on the level of economic activity across Canada.

The Director also indicated that the "reverse onus" of new competitive applicants suggested by Bell Canada was a forestalling tactic, and rate balancing is not a prerequisite for fair competition.

Outcome: On August 29, 1985 the CRTC released Telecom Decision CRTC 85-19, which denied CNCP's application to compete with Bell Canada and B.C. Tel in the provision of long distance service. The CRTC was of the opinion that CNCP would not be viable in the long run, though the evidence indicated that there were benefits to be obtained from the competition in the long distance market. Rebalancing rates by existing companies was also denied. CNCP has submitted comments on the above decision, the application is being reviewed.

On March 7, 1986, the CRTC issued Telecom Public Notice 1986-26 requesting comments on an application submitted to the CRTC by CNCP for review of Telecom Decision CRTC 85-19. The Director filed written comments on May 9, 1986 in which he agreed with CNCP's argument that a new principle had arisen from the contribution freeze ordered by the CRTC in the Decision and its effects on CNCP's business plan and financial viability. CNCP' final reply was filed on July 18, 1986.

On October 31, 1986, the CRTC issued Telecom Decision CRTC 86-18 which denied CNCP's application for review. The CRTC concluded that CNCP had failed to satisfy any of the established criteria for a section 63 review.

3. British Columbia Telephone Company 1984 CRTC Construction Program Review.

Issue: Impact of B.C. Tel's planned capital expenditures.

Nature of Intervention: In response to CRTC Telecom Public Notice 1984-37 the Director participated in the review of B.C. Tel's Five Year Capital Plan conducted by the CRTC during October and November 1984.

The Director's interest in the review concerned the impact of the company's planned expenditures on the utilization of Telesat Canada's satellite transmission facilities in light of the Telecom Canada/Telesat Canada Connecting Agreement and the Telecom Canada guidelines for the allocation of message toll traffic to satellite facilities. Telesat Canada is not directly involved in preparing its utilization forecasts for message toll traffic. Instead it accepts the forecasts prepared by the telephone company members of Telecom Canada without input or scrutiny. Consequently, the CRTC intended to examine the planning guidelines used by Telecom Canada in allocating message toll traffic to satellite facilities, in the context of future construction program reviews of Telesat and the other federally regulated Telecom Canada members.

The Director's view is that the exclusion of Telesat Canada from the planning and forecasting of telephone company initiated traffic is unacceptable as it is in Telesat's interest to urge the telephone companies to direct increasing percentages of total message toll traffic to Telesat. The Director holds that exclusion of Telesat from the planning process indicates the telephone companies' sensitivity to the conflict of interest, which the Director contends is inherent in the Telecom Canada/Telesat Connecting Agreement. Furthermore, it emphasizes the telephone companies' potential bias in favour of allocating message toll traffic to their land-based systems, which could be more cost effectively transmitted by the satellite facility.

During the 1984 review meeting B.C. Tel officials denied that the company has any bias against the use of satellite facilities and traffic is allocated according to economically efficient transmission medium.

Outcome: As of March 31, 1985, the CRTC had completed the public hearing phase of the proceeding but had not yet rendered its decision.

4. Cable Television Rate Indexing.

Issue: Indexing of Cable television rate increase.

Nature of Intervention: On February 15, 1985, in response to CRTC Public Notice 1984-305, the Director submitted comments to the CRTC opposing its proposal to permit cable television

companies to increase their monthly fees annually by a maximum amount equal to 80 percent of the annual increase in the Consumer Price Index without the prior approval of the CRTC.

In his submission the Director argued that the rate indexing is not an appropriate regulatory treatment of cable rates given the industry's natural monopoly characteristic and the associated need to effectively scrutinize rates as a means of protecting the public interest. In this regard the Director argued that the rate indexing would not allow the CRTC to protect subscribers from excessive rates because indexing does not (i) compel cable firms to reduce costs, (ii) provide the CRTC with the opportuinity to pressure cable firms to reduce costs, (iii) ensure that monopoly rents are applied to developing the Canadian broadcasting system in accordance with the firm's licence to operate, (iv) provide an incentive to improve productivity, (v) ensure that productivity gains that may occur are reflected in rate adjustments, and (vi) pass through to subscribers the regulatory cost savings that might result from indexing.

Outcome: On February 13, 1986, the CRTC issued Public Notice 1986-27 entitled Proposed Regulations Respecting Cable Television Broadcasting Receiving Undertakings. As originally proposed, the Regulations allow cable television companies annual rate adjustments of up to 80 percent of the percentage increase in the Consumer Price Index without the prior approval of the CRTC.

On August 1, 1986, the CRTC enacted the cable television regulations, contained in Public Notice 1986-12, in their final form. The provisions addressing partial indexing were not allowed.

5. Structural Separation of Multiline and Data Terminal Equipment.

Issue: Comments on providing different services through separate companies.

Nature of Intervention: On November 9, 1984, the CRTC issued Public Notice 1984-66 requesting comments on whether Bell Canada and B.C. Tel should be required to provide multiline telephone and data terminal equipment and related services only through a separate company.

In issuing the notice the CRTC expressed its concern that the established telephone carriers, which also supplied monopoly services, could use the revenues from their regulated monopoly services to cross-subsidize their

competitive operations such as the provision of terminal equipment, and thereby frustrate the development of competition.

The Director submitted final argument on March 5, 1985, which indicated that requiring telecommunication carriers to provide services through a separate corporation is a desirable and effective measure for the detection and prevention of possible anti-competitive cross-subsidization of such services. The Director also commented that such a policy would permit the removal of competitive services from the regulatory arena and thereby reduce the regulatory burden on the affected firms.

Outcome: The CRTC decision indicated that the costing approval was cost-effective and appropriate means of dealing with the issue of cross-subsidization.

C. Other

1. National Energy Board Hearings - Review of Toll Design and Methodology of TransCanada Pipelines Limited.

Issue: Annual Rate Hearing Application.

Nature of Intervention: Hearings before the National Energy Board concerning the regulation by the Board of the transmission of natural gas by TransCanada Pipelines Limited commenced on October 30, 1984. The Director's concern in intervening was that regulations and toll design governing TransCanada Pipelines Limited restrict access to transportation service by industrial users who wish to ship gas that they acquire in Western Canada. Transportation of that gas is unavailable where it is used in a market currently serviced by TransCanada's gas supply. This matter was postponed. In the interim, TransCanada proceeded with its annual rate hearing application. The Director intervened to contest the retention of a tariff provision that prevented independent shippers from displacing sales of natural gas in TransCanada's traditional eastern markets. The Director argued, firstly, that the NEB lacked the jurisdiction to, in effect, regulate the marketing activities of TransCanada, and, secondly, that the operation of the tariff provision prevented the competitive marketing of natural gas.

In its Decision the NEB declared that the tariff provision was not unreasonable in the circumstances at the time. In the meanwhile, the federal government and provinces deregulated natural gas. The Board was required to reconsider its decision in this light. The Director intervened addressing two specific issues addressed by the

Board. The first related to the incidence of transportation charges. The Director urged the Board to amend current tariff provisions to prevent the incidence of a disproportionate recovery of transportation costs from these new buyers in order to facilitate the development of competitive sales.

The second issue addressed by the Board was whether a change in access provisions could be accomodated in light of contractual relations between TransCanada and its traditional producer suppliers. Under these arrangements, TransCanada, the producers and two consortia of banks (TOPGAS) had refinanced TransCanada's debt incurred by way of prepayment for gas supplies under its purchase contracts. TransCanada argued that the carrying costs on the initial debt of $2.7 billion should be borne on a proportional basis by any new sales that supplanted sales that TransCanada currently had under contract with its distributor customers.

The Director, in opposing this position, urged the Board to consider the effect of such sharing on the development of a competitive market. The Director maintained that such sharing was not necessary to allow TransCanada's producers to compete, and in fact, the imposition of these charges on independent sales would inhibit introduction of competitive gas supplies and thereby significantly reduce the benefits intended to flow from natural gas deregulation. The decision by the board meant that these costs would not be fully shared, and only part, or less than a proportionate share, should be paid by new sales.

At the same time the Director made a submission to the Pipeline Review Panel, established under the October 31, 1985 Agreement to examine the long-term operation of interprovincial and international pipelines in the buying, selling and marketing of natural gas. The Director advocated common carriage status for TransCanada and the separation of the pipeline's transportation function from its function as a marketer. The Director further proposed that consideration be given to a phase-down in TransCanada's contracts with its distributors to allow the distributors access to competing gas supplies and thus give the distributors bargaining power in negotiating market prices under these long-term contracts.

Outcome: In June 1986 the Panel issued its report and endorsed contract renegotiation but supported the principle of sanctity of contract thereby precluding any mandatory write-down of the distributors' contracts with TransCanada. The report supported the principle that the marketing function of the pipeline be separated from its provision of

transmission services and recommended non-discriminatory access to pipeline systems and gas markets. It also endorsed the NEB's recommendations on the sharing of TOPGAS carrying charges.

2. Anti-dumping Tribunal - Refined Sugar.

Issue: Dumping of Refined Sugar in Canada.

Nature of Intervention: In April 1984 the Department of National Revenue, following receipt of a complaint from the Canadian Sugar Institute, made a preliminary determination that U.S. refined sugar had been dumped in Canada between April and December 1983.

The Director submitted that the injury caused was de minimus and not material. In support of his argument he compared the volume of dumped refined sugar and the volume of domestic production of like goods; the volume of dumped goods and the volume of apparent domestic consumption of like goods; the relative import and export trade flows of refined sugar and like goods; and the relative levels and sizes of domestic and foreign refinery margins. He also submitted that it is of particular importance to preserve such competition as was offered by the limited quantities of "dumped" imports given the oligopolistic structure of the domestic refined sugar industry, which historically has not been exposed to competition from foreign sources.

Outcome: On July 23, 1984, the Anti-dumping Tribunal dismissed the issue of material injury of dumping.

3. Footwear Inquiry Intervention - The Canadian Import Tribunal.

Issue: The impact of import quotas on footwear.

Nature of Intervention: On November 26, 1984, the Anti-dumping Tribunal (now the Canadian Import Tribunal) began hearing testimony regarding the effects of global import quotas on footwear. The Tribunal was instructed to examine the continued need for the quotas, first introduced in 1977. Among other factors, the Tribunal's mandate was to consider the impact of the quotas on consumers. If it found that imports caused or threatened serious injury to domestic producers, the Tribunal was directed to recommend a formula phasing out quotas within a maximum of three years after scheduled expiry in November 1985.

On November 29, 1984, the Director appeared before the Tribunal to present an Opening Statement in which he set out a framework for analysis of the effects of quotas and

provided some preliminary conclusions regarding their inimical influence on competition and resource allocation in the industry. The Director argued that the quotas had imposed a substantial net cost to Canada, particularly as a result of the burden placed on consumers, and that the quotas should not be extended. The Director presented his closing submission on January 15, 1985.

Outcome: The Tribunal in its Report, concluded that quotas were no longer warranted in light of the adjustments in the industry. In other sectors (mainly women's and girls' dress and casual footwear) the Tribunal recommended quotas be continued on a progressively phase-out basis due to its vulnerability. The Government accepted the recommendations.

1985-1986

A. Transport

1. Nordair Inc. - Application to Consolidate air Licences.

Issue: Application to consolidate licences.

Nature of Intervention: On April 9, 1985, the Director filed an intervention with the ATC in support of an application by Nordair Inc. to consolidate two of its licences to operate commercial air services. The consolidation request affected service to various points in Quebec, Ontario and Manitoba, including the cities of Montreal, Toronto and Winnipeg. The ability to provide new non-stop service and the enchanced opportunity for network operating efficiency were identified as advantages to consolidation. The statement cited Nordair Inc.'s record as an effective competitor and also suggested that consolidation would be consistent with Freedom to Move, the July 1985 Discussion Paper from Transport Canada advocating competition rather than regulation as the major determinant of industry structure, conduct and performance.

Outcome: By decision No. 9584 dated March 12, 1986, the application was approved.

2. Soundair Corporation (Commuter Express), Mississauga - Request to Operate Toronto to Cleveland.

Issue: Application for an air licence.

Nature of Intervention: On July 4, 1985, the Director wrote to the Minister of Transport in respect of a request by Soundair Corporation to operate a scheduled international air service between Toronto and Cleveland. Authority to designate carriers to operate on international or

transborder routes is at the discretion of the Minister of Transport pursuant to bilateral air agreements. The Director's statement urged that this discretion be exercised in Soundair's favour as Soundair was an innovative and efficient carrier - the type of new entrant necessary for a dynamic and competitive airline industry.

Outcome: By letter dated September 17, 1985, the Minister of Transport exercised his discretion, according to the terms of the Canada-U.S. air bilateral agreements, and requested the CTC to select a carrier to operate on this route. By decision No. 9485 dated January 24, 1986, the ATC approved Soundair's application.

3. Air Atlantic Ltd. - Application to Operate a Commercial Air Service.

Issue: Application for an air licence.

Nature of Intervention: On October 11, 1985, the Director filed an intervention with the ATC supporting an application by Air Atlantic Ltd. to operate a scheduled commercial air service connecting certain points in Newfoundland, Prince Edward Island, New Brunswick, Quebec and Nova Scotia. The Director submitted that the new service would offer competition to incumbent carriers, including Eastern Provincial Airways Limited, Air Canada and Labrador Airways Limited, and that approval of the application would be consistent with the new Domestic Air Policy of May 1984 and would also be in accord with the endorsement of competition and its benefits appearing in Freedom to Move.

Outcome: By Decision No. 8035 dated January 14, 1986, the ATC approved this application, and the arguments of the Director were noted therein.

4. Wardair Canada Inc. - Application to Operate Scheduled Commercial Air Service.

Issue: Application for an air licence.

Nature of Intervention: On February 14, 1986, the Director filed an intervention with the ATC in support of an application by Wardair Canada Inc. to operate a national scheduled commercial air service. The statement recommended approval on the basis that the new service would offer needed competition to existing dominant carriers (Air Canada, CP Air, and Pacific Western Airlines), would offer plant rationalization advantages in anticipation of a deregulated operating environment, and would be consistent with the recommendations in Freedom to Move and the subsequent report of the House of Committee on Transport.

Outcome: On March 20, 1986, the ATC approved Wardair's application.

5. Roadway Express, Ltd. - Intervention before the Ontario Highway Transport Board.

Issue: Application to transfer trucking licences.

Nature of Intervention: On May 10, 1985, the Director filed a statement of intervention before the OHTB in the matter of an application by Roadway Express, Ltd. to transfer to itself operating licences held by Harkema Express Lines Ltd. The intervention argued that allowing the transfer would be beneficial to competition.

The Director introduced evidence through an expert witness indicating that allowing the entry of large American carriers into the transborder trucking market would not substantially harm the operators of Canadian trucking firms. The expert witness cited the experience in Quebec, where American firms have operated for several years, and empirical evidence in Quebec and the United States showing that in certain trucking markets, specifically short-haul less-than-truckload service, smaller firms have an operational advantage over firms such as Roadway, which specialize in long-haul and less-than-truckload services.

Outcome: On December 28, 1985, the OHTB rendered its decision recommending that the Ontario Minister of Transportation and Communications allow the transfer. A motion for judicial review of the Minister's decision by objectors to the application was rejected on December 1, 1986.

B. Communications

1. Telesat Canada/Telecom Canada Connecting Agreement.

Issue: Application to amend an agreement.

Nature of Intervention: On July 15, 1985, the CRTC received an application from Telesat Canada and Bell Canada for approval to amend the system interconnection agreement (Connecting Agreement) made between Telesat and the members of Telecom Canada on December 31, 1976.

Under the proposed amendment, Telesat would be permitted to develop, market and sell all satellite services to any end users. The existing agreement required that Telesat limit its sales of satellite services to telephone companies only. Other changes included introducing a

ceiling on transfer payments from Telecom Canada until their discontinuation in 1987, and allowing the leasing of partial radio channels to non-telecom users.

The Director was of the opinion that the amendments removed important constraints to competition within this market and therefore should be viewed positively. The Director also submitted that these changes would provide Telesat with greater corporate independence and encourage aggressive marketing on the part of Telesat. This, in turn, would stimulate the introduction of new satellite services in the provision of long-haul data video and other private line services.

However, the overall agreement contained other constraints that would impede Telesat's ability to diversify and effectively compete with terrestrial carriers. Consequently, the Director recommended that the amendments to the Connecting Agreement be given interim approval by the CRTC, but requested that the proposed Connecting Agreement as a whole be given a fuller public examination before any final decision was made.

Outcome: The CRTC granted interim approval of the amendments but rejected the latter proposal. The CRTC rendered its final decision in this matter on May 8 1986. The CRTC supported the Director's opinion that the Connecting Agreement would be improved by these amendments and approved that implementation. However, the CRTC concluded that it was not desirable at this time to broaden the scope of the proceeding to include further public proceedings.

2. British Columbia Telephone Company - Purchasing Policy.

Issue: A change in competitive bidding purchasing policy.

Nature of Intervention: On July 23, 1985, B.C. Tel, advised the CRTC that the company wished to abandon its existing competitive bidding purchasing policy. It informed the CRTC that the company would instead favour Microtel Inc. as its supplier of first choice. The company also suggested that a price comparison test would be relied upon to ensure that the prices paid for its telecommunications equipment purchases were just and reasonable.

Competitive bidding came into effect in 1980 after B.C. Tel acquired the two largest suppliers (later amalgamated into Microtel) of telecommunications equipment. The CRTC in its November 10, 1986, decision agreed with the Director's position. B.C. Tel is required to adhere to its present competitive purchasing procedure until it can demonstrate that a change would maintain subscriber protection at its present level.

In support of its proposed changes, B.C. Tel submitted that competitive bidding had impeded the volume and quality of proprietary information flows between B.C. Tel and its affiliates. As a result the benefits of vertical integration had been negated. Moreover, B.C. Tel claimed that Microtel's future viability and growth had also been jeopardized by the existing purchasing agreement.

The Director, who submitted written comments, to the CRTC Public notice 1986-11 concluded that extensive flow of proprietary information is being exchanged between B.C. Tel and its affiliates and the present purchasing agreement is not threatening Microtel's future financial viability.

The Director was also of the opinion that price comparison studies are not an efficient and reliable means of ensuring that the equipment purchased by a vertically integrated carrier from its subsidiary, as is the case for B.C. Tel and Microtel, constitute necessary procurements or that the prices paid for such equipment or its equivalent are the lowest available.

The availability to Microtel of an expanded captive market in B.C. Tel purchases was also seen as leading Microtel to become risk averse, and thereby disinclined to develop new products and markets, and further foreclosing its market to potential dynamic competitors.

Outcome: The CRTC in its November 10, 1986, decision agreed with the Director's position. B.C. Tel is required to adhere to its present competitive purchasing procedure until it can demonstrate that a change would maintain subscriber protection at its present level.

3. Resale of Primary Exchange Service.

Issue: Comments on impact of resale of primary exchange service.

Nature of Intrvention: On January 23, 1986, the CRTC issued Telecom Public Notice 1986-8 inviting comments from all federally regulated carriers and other parties on permitting firms to acquire bulk local telephone service from federally regulated service for resale in competition with telephone companies, in particular, on the impact of permitting resale to provide primary exchange voice services.

The Director's submission indicated that a decision permitting resale to provide local telephone service would produce a number of benefits for subscribers and consumers, including the more efficient use of the telephone network, cheaper telecommunication services, and the increased availability of technical advances to business and residential subscribers.

In particular, the Director's submission draws the CRTC's attention to the advantages of shared tenant services. It is argued that such services allow multiple users in a single location, such as an office tower or industrial park, to enjoy the cost savings associated with the sharing of a sophisticated telecommunications switch and associated telephone lines. In addition, the submission urges the CRTC to allow individuals to own and operate pay telephone and to retain the proceeds from such installations. The Director argues that by allowing such ownership the public would benefit from increased public access to telephone service and possibly from lower rates. Since the type of firms which will engage in the reselling of local service will be unlikely to possess market power, the Director argues that regulation of this activity by the CRTC should be limited to ensuring that those who resell primary exchange voice services conform to existing industry standards for the provision of such service.

Outcome: On Februray 12, 1987, the CRTC released Telecom Decision CRTC 87-1 which concludes that resale to provide primary exchange service is in the public interest. The CRTC agreed with the arguments of the Director and other intervenors that competitive entry into the provision of local telephone service would provide a number of benefits to telephone subscribers and consumers. Based on the costing and revenue evidence before it, the CRTC further concluded that there was little opportunity for uneconomic entry by potential sellers into this market. The CRTC therefore dismissed the telephone company's arguments, that warned of significant contribution erosion.

The Commission, however, denied the joint application by Canadian Business Telecommunications Alliance and the Association of Competitive Telecommunications Suppliers that subscribers be allowed to own and operate pay telephones. The Commission expressed concern that competition in this particular service market would focus primarily on the most lucrative pay telephone locations. This in turn would create a competitive disadvantage for the telephone companies who, in the past, have been encouraged by the CRTC to provide pay telephone service in locations where costs often exceed revenues. All federally regulated carriers have been instructed by the CRTC to file tariffs which, once approved, will implement this Decision.

C. Other

1. National Energy Board - Review of the Tariffs of Interprovincial Pipe Line Limited relating to the apportionment of space among shippers on its pipeline system.

Issue: The Apportionment of space among crude oil shippers in Interprovincial Pipe Line System.

Nature of Intervention: Hearings before the NEB with respect to the apportionment of space among crude oil shippers on the Interprovincial Pipe Line System commenced on May 27, 1985. In April 1985 the demand to ship crude oil on Interprovincial exceeded the capacity of the pipeline, resulting in the shutting of light crude oil in Western Canada.

The issue before the Board was whether to retain, modify or replace the existing method of apportionment based upon historic shipments. A further issue was whether the historic method of apportionment was compatible with the Western Accord, which provided for the deregulation of the petroleum industry effective June 1, 1985.

The Director's concern in intervening was that the historic method of apportionment could have anti-competitive consequences that would frustrate the government's initiatives to create open markets. Interprovincial and a number of other intervenors urged the Board to adopt variations of a current tender system of apportionment based upon monthly nominations made by shippers. Other interested parties argued for the retention of the historic method of apportionment.

The Director argued that a system based on current tenders would be least restrictive of competition and would best facilitate the free market objectives of the Western Accord.

Outcome: In July 1985 the Board made its decision, concluding that the historical apportionment method is no longer appropriate. An apportionment system based on current tenders be adopted, with certain safeguards to assure supply to areas truly dependent on Canadian feedstocks.

2. Canadian Import Tribunal - Surgical Tapes.

Issue: Dumping of Surgical Tapes into Canada.

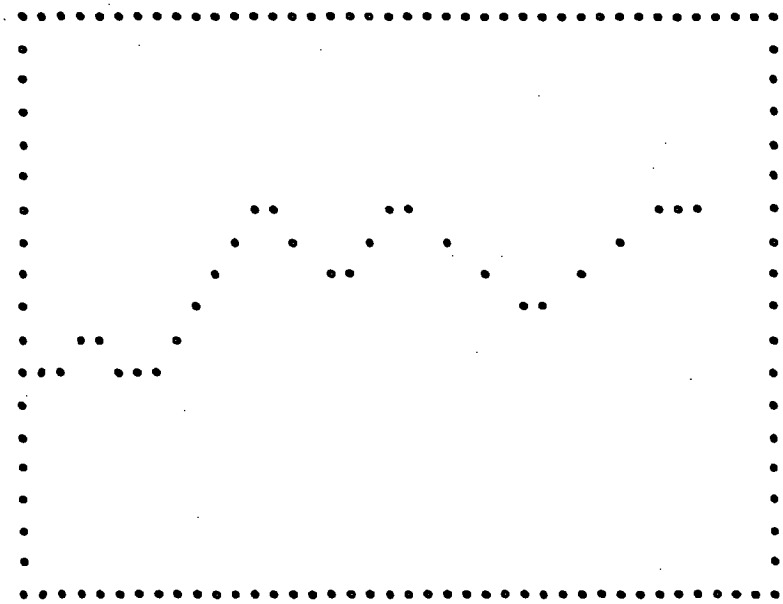
Nature of Intervention: On August 6, 1985, the Department of National Revenue made a preleminary determination of dumping with respect to the importation into Canada of surgical tapes and plasters originating in Japan. The decision was based on an investigation carried out by the Department following a receipt of a complaint from Johnson & Johnson Inc., a Canadian manufacturer of surgical tapes, that Gainor Medical Canada Limited, a distributor, was dumping tapes manufactrured by Nichiban Co. Ltd. of Japan in to the Canadian market.

The Director did not intervene in these proceedings. On December 13, 1985, the Tribunal announced that it would accept oral and/or written public interest representations under subsection 45(2) of the Special Import Measures Act. The Director subsequently made a written submission to the Tribunal setting out the factors that, in his opinion, were relevant to the determination of whether an anti-dumping duty should be imposed on the importer of the Japanese tapes. In particular, the Director made reference to the following considerations: (a) The product is an essential one which is primarily purchased by public institutions. (b) Gainor's entry would bring competition to the segmented monopolies enjoyed by the two companies. (c) Prices were lower in a more competitive United States market. Gainor's presence was expected to have a moderating effect on price levels. (d) The effect on Gainor of imposing anti-dumping duty was expected to be more serious than the effect on Johnson & Johnson Inc. of maintaining the status quo. (e) In reference to transparent surgical tapes, which Johnson & Johnson imports, the value added in Canada is minimal, calling for a partial or complete removal of anti-dumping duty on Gainor.

In a later submission the Director indicated that competition should be reviewed when examining public interest issues.

Outcome: On February 13, 1986, the Tribunal ruled that, after examining the public interest submissions, it was not of the opinion that the amount or level of anti-dumping duty imposed as a result of its finding of likehood of material injury should be altered in any way.

4. SUMMARY OF INFORMAL REPRESENTATIONS



4. SUMMARY OF INFORMAL REPRESENTATIONS

The object of this chapter is to briefly summarize each informal representation chronologically by sector for the period 1976-1986. The representations in transportation are first presented, followed by representations in communications and other sectors. The other sector groups together representations in various sectors, agriculture, finance, etc.

Summary of informal Representation for each Sector by Year

1976-1977

C. Other

1. Ontario Securities Commission.

Issue: The benefits of free market forces in determining commission rates.

Nature of Representation: On July 19, 1976, the Director presented a submission to the Ontario Securities Commission on the occasion of its hearings regarding fixed commission rates on the Toronto Stock Exchange. In doing so, he made it clear that his intervention was not to judge the issues or to recommend a particular course of action, but rather to review the pros and cons of fixed commission rates in light of competition policy. He expressed the opinion that a persuasive case can be made for allowing free market forces to determine commission rates. In addition, he drew to the attention of the Commission that the fixing of such rates by the members of the Toronto Stock Exchange themselves without approval of the Ontario Securities Commission or under its specific supervision would be in violation of section 32 of the Combines Investigation Act. This section of the Act, forbidding private price-fixing agreements, became applicable to many service industries as of July 1,1976.

Outcome: In its decision dated October 28, 1976, the six commissioners who studied the fifty-two submissions were unable to agree completely. After considering all the facts relating to competitive forces in effect and appreciating that hard evidence in support of either fixed or negotiated commissions was limited, the majority concluded that it would not be in the public interest to direct the immediate introduction of negotiated rates in whole or in part. They concluded that the Exchange and its members should be given

a further opportunity to introduce a rate structure which would be perceived to be fair by the industry's clients, the general public and the Commission.*

1977-1978

C. Other

1. The Professional Organizations Committee of Ontario.

Issue: Liberalization of statutes dealing with Professional Organizations and reliance on competition as a regulator of markets.

Nature of Representation: In December, 1977, the Director submitted a brief to the Professional Organizations Committee of Ontario. The Committee was established by the Attorney General of Ontario to study the administration of certain statutes dealing with professional organizations with a view to making recommendations for legislation setting the legal framework within which these professions are to operate. During the year, the Committee requested written submissions from interested parties. Because of the significance of competition policy to such a review, the Director's submission focused on the increasing reliance on competition policy as a regulator of markets for professional services at the federal level in Canada through the application of the Combines Investigation Act, in the Province of Quebec, in the United States and in the United Kingdom. The Director reminded the Committee of the public benefit flowing from competition and forwarded a copy of an interim report on a study of professional licensing by Professors T.R. Muzondo and B. Pazderka of Queen's University. "Safeguarding against the abuses of monopoly power can be achieved by restricting the profession's control of these activities which are absolutely necessary to protect the public by specifically and narrowly defining the sphere of those activities, and by providing a mechanism for effective regulation including the appointment of lay members to governing bodies."**

---

* Ontario Securities Commission, Bulletin (November 1976), pp. 289-303.

** "Submission to the Professional Organizations Committee of Ontario," by R.J.Bertrand, Director of Investigation and Research, C.C.A.C., p. 53.

Outcome: Several independent studies were prepared for the Professional Organizations Committee and in 1980 it published a Report entitled **The Report of the Professional Organization Committee.** The report made eithty-one specific recommendations, several of which pertained to licencing, fees, advertising, etc. "Our recommendations have a prescriptive thrust that is closely tied to the principle we espouse. With respect to the structures and processes of professional self government our recommendations seek lean professional statutes that will establish the powers and composition of each governing body, stipulate the essential committee structure, and ensure that proper avenues of appeal will be available. We believe that the regulatory environment should respect the need to economize on the burdens that must be carried by the legislative process. Accordingly, the professions should not be forced to request legislative amendments in order to secure from time to time structural changes that are of no consequences to interests other than their own interest in efficient self-government."*

With regard to accounting, the Report acknowledged "the concerns of the Director of Research and Investigation under the Combines Investigation Act that the proposed revisions may still be unduly restrictive with respect to frequency and prominence of advertisements and the media which may be utilized."**

1978-1979

B. Communications

1. Maritime Telegraph and Telephone Company Limited Application for Tariff Approval of Voice Page Service.

Issue: Application for approval of tariffs.

Nature of Representation: On November 23, 1978, Maritime Telegraph and Telehone Company Limited (Maritime Tel) made an application to the Board of Commissioners of Public Utilities for the Province of Nova Scotia to have tariffs approved for a voice paging service.

The Director appeared before the Board stating that his primary interest in this matter was to support the concept of Maritime Tel supplying outpulsing services to

---

* Op. cit. p. 17.

** Op. cit. pp. 189.

licensed radio common carriers at reasonable rates and to suggest that the proposed tariffs would eliminate current competition to the applicant. In particular, the Director was concerned whether such action would constitute unreasonable discrimination against competitors within the meaning of Section 104 of the Public Utilities Act of Nova Scotia.

In its Decision the Board considered in detail both the evidence of the Director and the specific concern of the Director, namely, whether Maritime Tel should be required to supply outpulsing services to licensed Radio Common Carriers (RCC). In its Decision, the Board ordered Maritime Tel to provide outpulsing services to Air Page Communications by September 30, 1981. Maritime Tel appealed to the Supreme Court of Nova Scotia, however it was unsuccessful.

In May 1982, it was learned that Air Page Communications Limited had sold all of its assets to Maritime Tel. This acquisition was considered by the Nova Scotia Board of Commissioners of Public Utilities in a public hearing on December 21, 1982, and although the Director did not participate as an intervenor, he did submit comments on the anticompetitive effects of the acquisition. On February 9, 1983, the Board in its Decision granted Maritime Tel approval to acquire the assets of Air Page.

On the matter of establishing outpulsing rates for direct dial paging, the Director, in a letter dated January 15, 1983, requested the Board to initiate hearings on this matter. In addition, TAS Communications, operating as a radio common carrier in St John's, Newfoundland, has applied for an RCC operator's licence for Halifax, Nova Scotia and has also pressed the Board for a hearing on the same issue.

On April 14, 1983, Maritime Tel made an application to the Board for permission to begin offering dial paging service.

A public hearing on the matter was held between June 24, 1983, and July 5, 1983. The Director intervened and presented Charles M. Dalfen as an expert witness. Mr. Dalfen reviewed the CRTC's findings in the Colin's decision, by which the CRTC first allowed the interconnection of competing paging companies to the local switched network of the federally regualted common carriers. Mr. Dalfen also discussed appropriate costing methodologies to be used in setting rates for outpulsing service. The Director's standing before this Board was questioned.

Outcome: On November 4, 1983, the Board approved rates approximately 40 percent lower than those proposed by Maritime Tel on an interim basis, pending resolution on

costing methodologies. Unbundling of rates were required to prevent cross-subsidization. The Board also ordered delay of the proposed paging service.

2. New Brunswick Telephone Company Limited Application for Network Extension Telephone Service.

Issue: The proposed toll gives the applicant an unfair advantage over potential competition.

Nature of Representation: On December 22, 1978, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for approval of proposed rates and charges for a new service to be offered by the applicant known as Network Extension Telephone Service, i.e., radio paging service.

The Director stated that he was concerned that the proposed tariff, which provided that the applicant's radio-paging service be directly interconnected with the applicant's telephone network, would grant the applicant an unfair competitive advantage in the event firms competing with the applicant with respect to radio paging were not granted similar access to the network. The Director also stated his concern that competitors would be seriously disadvantaged in their ability to provide the wide-area roaming feature which the applicant proposed to offer its customers by allowing one-way messages from one calling area to another without payment of toll charges. Finally, the Director noted his concern that the proposed classification of radio-paging service as a telephone service might serve to create a monopoly in radio paging in the province of New Brunswick. The Director participated at the public hearings and called expert evidence.

The Board released a decision dated October 10, 1979, which approved the tariff but held that the complaint of unjust discrimination filed by the Director and other intervenors was a valid complaint.

In a related matter, the Board convened a public hearing for March 2, 1983, to consider a tariff application by N.B. Tel to eliminate hook-up charges for the former customers of radio common carriers acquired by the telephone company. In Februray 1983, the Director in a letter to the Board requested that the matter of outpulsing be considered as part of the March 2, 1983, hearing or in the alternative that a separate hearing be set.

At the hearing of March 2, 1983, Capital Communications and Multi-Services Ltd. of Fredericton, New Brunswick, submitted a complaint to the Board. The

complaint requested that the Board set tariffs for telephone awnsering, radio paging, and mobile radio services interconnected to the network of N.B. Tel. Such tariffs would comprise rates for access to the telephone network and the provision of designated telephone numbers, known as outpulsing service.

Subsequently, the Board convened a general issue hearing to consider the potential impact of systems and terminal interconnection on telephone service in the province. Capital Communications and Multi-Services Ltd. once again raised the issue of outpulsing service and rates in the context of this hearing.

Outcome: On June 16, 1986, the Board issued its decision on general issues relating to interconnection in the telecommunications industry in New Brunswick. As part of this decision, the Board considered the issue of outpulsing and rates to fall within their definition of level III interconnection. The Board defined level III interconnection as "interconnection to the public switched network of circuits or communication systems owned by customers or other carriers."

The Board concluded that any subsequent decision on interconnection at level III would be deferred until specific applications are received, supported by data derived in accordance with a costing system acceptable to the Board. Furthermore, the board determined that such data would not be available until the carriers implemented an appropriate costing system, compatible with the findings of Phase III of the CRTC Cost Inquiry.

Any further complaint and or application by Capital Communications and Multi-Services Ltd. must meet the criteria established by the Board and will be considered as a separate proceeding.

1979-1980

B. Communications

1. Garden of the Gulf Motel Application for Connection of COAM PABX to Island Telephone Company Limited System.

Issue: The competitive impact of the application for connecting facilities.

Nature of Representation: On June 12, 1979, Garden of the Gulf Motel of Summerside, Prince Edward Island, brought an application before the Public Utilities Commission of Prince Edward Island seeking the connection of the applicant's crossbar PABX, to the Island Telephone Company Limited's

(Island Tel) facilities. The Commission chose not to hear from other parties including the Director, however the competitive issues in this application were addressed by the applicant through counsel and witness, (originally retained by the Director).

The Commission denied the application, however the applicant appealed this judgement. In its judgment, the Court allowed the appeal and modified the decision of the Public Utilities Commission so that the application of Garden of the Gulf Motel to connect its privately-owned terminal equipment would be stayed pending the preparation by Island Tel, and approval by the Commission, of suitable regulations governing the connection of customer-provided or owned terminal equipment. Prior to approving such regulations, the Commission was required to hold a public hearing so that all interested parties could express their views on such regulations. This hearing was required to commence not later than January 31, 1982.

On December 31, 1981, Island Tel filed an application with the Commission proposing amendments to the Company's General Tariff to provide for connection of customer-provided terminal equipment to the telephone network. The Director did not participate in these hearings.

Outcome: The Commission has now approved regulations governing the connection of customer-owned equipment and Garden of the Gulf Motel has been able to complete the interconnection it sought in its original application.

1980-1981

A. Transport

1. Domestic Advance Booking Charters, 1981.

Issue: Comments on the proposed simplified domestic charter regulations to promote competition.

Nature of Representation: The Director has continued to monitor a number of follow-up matters originating from the Air Transport Committee Decision No. 5369 on Domestic Advance Booking Charters and the Order-in-Council varying this decision. The Air Transport Committee Decision permitted Air Canada and C.P. Air to each offer a maximum of 25 inter-regional return flight Domestic Advance Booking Charters between points on their respective licences. Regional carriers were permitted to operate Domestic Advance Booking Charters within their respective operating territories. The Order in Council removed the ceiling of 25 inter-regional Domestic Advance Booking Charter return

flights and permitted Regional Carriers to fly Domestic Advance Booking Charters anywhere in Canada for a period of three year, after which time the matter was to be reviewed.

In one follow-up matter, the Director filed a submission following the Air Transport Committee's invitation to comment on a discussion paper dealing with proposed simplified rules (Class 10) to replace existing regulations on domestic charter services. To promote administrative convenience and to enhance competition, several existing regulations were to be eliminated. In addition, proposed new entrants in the domestic charter market would be required to prove public convenience and necessity. However, the current Domestic Advance Booking Charter requirements for all passengers to purchase round-trip transportation and to observe a minimum stay at the destination until after the first Sunday from departure would be retained. The Director, in his submission, stressed competitive parity and noted that further innovations in low-priced air fare market are most likely to be achieved through the operation of a market system in which entry is free and governed to the maximum possible extent by competitive forces.

Outcome: In late 1983, the CTC published a reference document, "From the contents of this paper it may be seen that there may be rule changes that merit serious consideration for introduction; rule changes that would correct fundamental regulatory problems and which would provide a fair and equal opportunity for a number of carriers to compete for the liesure travel markets. ...the rule changes...would if adopted without change, result in the creation of a new type of specialized unit toll commercial air service which would replace those services now provided under the domestic ABC and ITC Regulations."* Shortly thereafter, in May 1984, the government issued its new Canadian Air Policy which deregulated the airlines in Southern Canada.

1981-1982

A. Transport

1. Standing Committee on Transportation - Domestic Air Carrier Policy.

Issue: Comments on existing and proposed domestic air policy from a competition policy perspective.

---

* "Regulation of ABC (Domestic) and Domestic ITC Operations," CTC, Air Transport Committee and Research Branch, p. 6.8.

Nature of Representation: During the period under review, submissions prepared in the Branch were presented by the Director of Investigation to the Standing Committee on Transport containing assessments of existing and proposed domestic air policies from a competition policy perspective, as well as an independent proposal for the selective deregulation of domestic air carriers. These concerns were raised later at the hearings before the House of Commons Standing Committee on Transport which are further discussed in the next intervention.

Outcome: The Standing Committee on Transport issued its Report in late March 1982 and acknowledged the major concerns of the Director.

2. Domestic Air Carrier Policy, 1981.

Issue: Proposed Domestic Air Carrier Policy and its impact on competition.

Nature of Representation: On August 14, 1981, Transport Canada released a document entitled "Proposed Domestic Air Carrier Policy (Unit Toll Services), August 1981" defining the future roles of Canada's national, regional and local air carriers.

The House of Commons Standing Committee on Transport held public hearings in this matter in Ottawa between January and March 1982 and heard several witnesses. The Director in his testimony before the Committee expressed the view that the stated objective and specific policy proposals of Transport Canada are far too restrictive of competition. He stated that reliance on the marketplace could best serve the public interest in this industry, and a market-oriented approach with free entry as a cornerstone would afford carriers entrepreneurial freedom in responding to the needs of the travelling public while also improving the performance and efficiency of the industry.

Later the Director filed a written argument expanding and clarifying his arguments.

Outcome: The Standing Committee on Transport issued its Report in late March 1982. The Report acknowledged the Director's point of view by stating that free entry, the end of regulated competition, would stimulate higher load factors, greater plane utilization and increased seating densities, thus improving efficiency and reducing costs.

3. Draft General Rules of the Canadian Transport Commission.

Issue: Revision of the General Rules of the Canadian Transport Commission (CTC) to provide a means for the promotion of competition.

Nature of Representation: On June 1, 1981, the (CTC) indicated its intention to hold a public meeting in July to hear interested parties wishing to make representations concerning a proposed revision of the General Rules of the CTC.

The Director reviewed the proposal and filed his comments with the Secretary of the CTC, suggesting that Rule 105 of the Draft General Rules of the CTC be amended so as to permit the Director to comment to the CTC on proposed acquisitions such as those contemplated by section 27 of the National Transportation Act. An amendment of this kind would provide a practical means for the Director to effectively exercise his mandate to promote competition with respect to such acquisitions.

Outcome: New General Rules were published by the CTC on May 16, 1983, under which interventions may be made by any person who is interested in an application or an objection. Under these conditions, the Director is in a position to comment on matters before the CTC, including proposed acquisitions subject to section 27 of the National Transportation Act.

B. Communications

1. Ontario Telephone Service Commission (O.T.S.C.).

Issue: Terminal Attachment to telephone systems in Ontario.

Nature of Representation: The Ontario Telephone Service Commission, the regulatory body responsible for independent telephone systems in the Province of Ontario, issued a Public Notice on November 18, 1981, requesting submissions from interested parties respecting issues related to customer provided terminal attachment to telephone systems in Ontario.

The Director submitted the evidence of Charles A. Zielinski, the former Chairman of the New York State Public Service Commission, on April 30, 1982.

A hearing was conducted by the Commission in Toronto from June 23 to June 25, 1982. The Director filed written final and reply arguments on July 22 and August 13, respectively.

Outcome: By Order No. 4188 issued on November 18, 1982, the Commission: 1. ordered terminal attachment on an interim basis, 2. authorized the attachment of customer provided extension sets and equipment to residential single lines, but required that the first phone or main station must be owned by the telephone company, 3. required that residential inside wiring be owned by the telephone company, 4. allowed business single line extension sets to be customer provided but required that the main station be owned by the telephone company, 5. required in the case of a PBX, that the inside wiring up to the PBX be owned by the telephone company but that the subscriber provide wiring to customer provided extension phones from the switch, 6. denied terminal attachment to party line subscribers, 7. denied terminal attachment to business subscribers in systems with fewer that 1500 main stations, 8. required that customer premises equipment be certified by the federal government's sponsored Terminal Attachment Program (TAP) or meet the FCC Rules Part 68. The Commission did not require that complementary equipment (recording devices, visual ear) be certified if accompanied by either an acoustical or induction connection device or a connection device which is compatible with the company provided connecting device.

2. Régie des services publics du Québec (Régie).

Issue: Liberalization of terminal attachment in Québec.

Nature of Representation: In early 1981 the Minister of Communications of the Province of Québec requested the Régie des services publics du Québec to undertake a study respecting the economic and technical consequences of interconnection in the Québec telecommunications market. The Régie was directed to conclude its study in September 1981 by presenting its conslusions and recommendations to the Minister. The Régie is the regulatory agency responsible for telephone companies in the Province of Québec, other than Bell Canada which comes under the authority of the Canadian Radio-television and Telecommunications Commission. In response to a public notice issued by the Régie which described the nature of its study to include both system interconnection and terminal attachment, the Director filed a writen submission dated April 9, 1981. In his submission the Director reviewed the United States' and Canadian experience, discussed some of the typical arguments opposing interconnection, and recommended a scheme of liberalized interconnection. On May 14, 1981, the Director appeared before the Régie during the public hearings phase of its proceedings and anwsered questions from the panel on his submissions.

On September 30, 1981, the Régie presented its report to the Québec Minister of Communications who, in mid-October, released the report to the public. In brief, the Régie accepted the Director's and other intervenor's submission for liberalized terminal attachment, however, with the primary instrument remaining the responsibility of the telephone company. Interconnection between competing networks (system interconnection) was not recommended, although interconnection to the public telephone network by mobile radio telephones and radio paging devices was supported.

On April 21, 1982, the Régie issued a public notice calling for a hearing to commence on September 14, 1982, dealing with the exact nature of terminal attachment in the Province of Québec.

On August 25, 1982, the Director filed a written submission with the Régie covering matters he expected to deal with at the public hearings.

The Director called as his witness, Mr. Charles Dalfen, a former vice-chairman of the CRTC. The Régie's hearings were held from October 5 to 15, 1982. On November 5, 1982, the Director filed his written argument with the Régie.

Outcome: A decision was rendered by the Régie on January 31, 1983, generally, accepting the Director's arguments and promoted the liberalization of terminal attachment.

3. Alberta Government Telephones - Terminal Attachment.

Issue: Competition issues and potential discrimination against present subscribers arising from permitting customers to own and maintain terminal telephone equipment.

Nature of Representation: Alberta Government Telephones (AGT) filed an application with the Public Utilities Board of Alberta (the Board) on February 16, 1981, which would have the effect of permitting customers to own and maintain terminal telephone equipment such as primary and extension telephones, PBX's, Key systems and inside wiring. A motion for interim approval of AGT's application at the prehearing was denied by the Board.

Evidence was filed by AGT and the Director submitted detailed interrogatories to AGT and witnesses were cross-examined.

The Director submitted evidence prepared by Charles A. Zielinski, former Chairman of the New York State Public Service Commission at the second phase of the

hearing. He provided the Board with the experience of the New York Commission relating to terminal attachment.

The Director supported the main thrust of AGT's application but proposed the following changes which he felt were necessary to allay concerns relating to competition issues and discrimination against present subscibers: (a) that AGT be required to sell in-place single line equipment and to apply the proceeds from such sales to reduce the embedded investment currently remaining undepreciated in the company's rate base; (b) that AGT be required to sell such equipment at a price equal to at least the net book value of the equipment in question, unless the company can satisfy the Board that the fair market value of such equipment is below value; (c) that AGT be required to develop, for approval by the Board following full comment, a contribution test that would clearly and precisely identify and separate costs and revenues for each major non-basic service offering; (d) that AGT be required to file reports on a regular basis with the Board showing whether or not AGT's revenues from the sale of in-place multi-line business equipment exceed the costs; (e) that AGT be required to comply with five conditions for fair competition set forth in the Director's argument; (f) that AGT be required to adopt TAPAC standards for the attachment of terminal equipment and that the Board perform the function of final arbiter in any disputes over compliance with such standards; and (g) that AGT be required to provide for the certification of terminal equipment (data) for attachment to the AGT network.

On March 26, 1982, AGT submitted to the Board an Application for Review and Variance of the decision.

The Board subsequently informed AGT that as a result of an earlier decision concerning Method of Regulation, AGT need only file for acknowledgement any services it wished to offer on a non-basic basis. Consequently, on June 18, 1982, AGT filed for acknowledgment a tariff containing non-basic services to be offered under a liberalized regime of terminal attachment. On June 25, 1982, AGT submitted another filing with the Board seeking the approval to delete basic terminal (voice) services, from the company's basic service category and to place such services in its non-basic service category. Basic services are regulated by the Board while non-basic services are unregulated. On July 11, 1982, terminal attachment became a reality in the Province of Alberta. The Director indicated a number of issues that he planned to address during the public hearings. On October 8, 1982, the evidence of Dr. Nina Cornell was submitted on behalf of the Director.

The Director's submission at the main hearing argued that AGT's application be approved subject to the following modifications and conditions: 1. that AGT be required to offer terminal equipment services and products through a separate corporate entity that does not share facilities with the corporation offering monopoly services; 2. that, in the alternative, the Board convene a special issue hearing to consider the matters of appropriate costing and accounting methodologies and to address the necessity of supplementing this regulatory tool with a separate subsidiary requirement; 3. that the Board require AGT to make available to the public a list of non-household subscribers who rent multiline equipment from AGT pursuant to two tier or long term contracts; 4. that the Board direct AGT to permit the interpositioning of terminal equipment once the necessity standards are developed; and 5. that AGT be prohibited from using its buying power to obtain exclusive selling rights to certain types of terminal equipment.

Outcome: In a decision issued on September 27, 1983, the Board approved the deletion of the terminal equipment services in question from AGT's basic service category, with the observation that the prevailing potential for the entry of competitors in the terminal attachment market justified deregulation.

The Board chose not to adopt the Director's recommendation that AGT be required to offer terminal equipment services and products through a separate corporate entity that does not share facilities with the parent corporation, as it was of the opinion that its costing methodologies were adequate to permit the Board to detect cross-subsidization.

The Board, contrary to the Director's recommendation, was of the opinion that AGT's interpositioning policy did not impair competition and publication of customer contracts was not needed as procedures existed to prevent flow of such information from its monopoly division to its competitive division.

4. Newfoundland Government Telephone Company Limited - Mobile Radio and Paging Services.

Issue: Cross-subsidization arising from a tariff that was not approved and the adequacy of costing methodologies.

Nature of Representation: In February 1981, TAS Communications Systems Limited (TAS) of St. John's, Newfoundland, initiated an action in the Supreme Court of Newfoundland seeking an injunction with damages and a declaration against Newfoundland Telephone Company Limited (Nfld Tel) that Nfld Tel was offering as part of a special

facilities tariff, item 370.7, certain competitive services (radio paging and two-way mobile radio) without the approval of the Newfoundland and Labrador Board of Commissioners of Public Utilities as required by section 67 of the Public Utilities Act. TAS claimed in its application to the Court that Nfld Tel's actions were detrimental to its business. It was further claimed by TAS that the Board itself had refused to require Nfld Tel to file their rates for these services. On May 5, 1981, the Supreme Court of Newfoundland, Trial Division, issued a judgement denying a Nfld. Tel motion for dismissal of the TAS application.

No attempt will be made to describe the several appeals that followed or the issue of the directors capacity to appear before provincial boards which was reviewed earlier on.

In October 1981, Nfld Tel filed a general rate increase application before the Board which the Director believed would be the proper forum to raise the issue of the competitive concerns regarding the adequacy of tariff item 370.7, the same contentious issue in the TAS court action.

The main hearing commenced on December 9, 1981, and the Board, referring to the Court of Appeal Decision, made a ruling that they would not hear evidence or argument on the adequacy of tariff item 370.7 and would await the decision of the courts on this issue. Although this ruling restricted the Director's prepared case, he participated in cross-examination and delivered an oral argument. The two major issues raised in the Director's intervention were that: (i) the evidence disclosed that there was cross-subsidization of a very real and substantial nature from the telephone company's regulated assets into the 370.7 services, and (ii) the Boards' present testing methods for cross-subsidization and compensatory rates were inadequate to ensure fair competition in a changing telecommunications market structure.

On January 22, 1982, the Board released its decision in this matter. In addressing the issues raised by the Director, the Board concluded that their present accounting tests and the telephone company costing methodologies were appropriate. However, they did suggest that further examination of the issues would be contemplated pending conclusion of the proposed CRTC Cost Inquiry.

On April 27, 1982, Nfld. Tel filed an application with the Board for approval of a new service to be called Dial Access to Radio Paging Service. The Board subsequently issued a public notice setting a hearing date of May 20, 1982.

The main hearing took place from June 3, 1982, until June 7, 1982, at which time the Director presented the expert evidence of Mr. Charles M. Dalfen, former Vice-Chairman of the CRTC, concerning his experience with the provision of competitive telecommunications services such as those embodying radio paging and mobile radio communications. TAS and the Canadian Radio Common Carriers Association also appeared at these hearings.

Outcome: On June 10, 1982, the Board released its decision in this matter which accepted a "value of service" concept in establishing rates for outpulsing access as opposed to the cost-based methodology used by the CRTC in the Colins Decision and put forward in the present matter by the Director and his witness. The Board did agree to set a compromise date for in-service start-up and agreed that the standards that should apply would be those listed in the Department of Communications CS-04 Issue 1. The Board also expressed an interest in examining in a separate proceeding the issues of wide area paging and two-way mobiles.

5. DOC/Microwave Licensing.

Issue: Licencing of microwave radio.

Nature of Representation: On November 29, 1980, the Department of Communications published its notice No. DGTN 004-80, Review of Certain Aspects of the Microwave Radio Relay System Licencing Policy related to Intercity Delivery of Signals for use by a Broadcasting Undertaking. Though no submission was sent, the Director's staff began to monitor future proceedings. Subsequently, DOC issued a supplementary notice DGTN-004-81 on August 15, 1981 on the same subject. Several submissions were filed by participants, however the Director did not actively participate, because of extenuating circumstances.

Outcome: On March 19, 1983, the Department of Communications announced their new procedure in notice No. DGTN-002-83. The Department reaffirmed the underlying provisions of its 1970 microwave radio communications policy. That policy requires that applicants demonstrate that: "there is some public interest and need to be served by the creation of new facility, that existing communications facilities cannot properly satisfy this interest and need; and that the applicant will conform to the standards of service and the technical requirements of existing network or that the most effective and economical use of the radio spectrum is around."* DOC will also make it easier for those in the

* The Canada Gazette Part I, March 19, 1983, p. 2454.

broadest business to establish their own inter-city microwave links provided they are used for the delivery of broadcast signals.

C. Other

1. Ontario Securities Commission Hearings on Competition Rates.

Issue: Securities Act - the impact on efficiency of flexible brokerage rates.

Nature of Representation: On October 5, 1981, the Ontario Securities Commission (OSC) commenced hearings "In the matter of the Securities Act, 1978, S.O. 1978, c.47, as amended" and "In the matter of Part XV of the by-laws of the Toronto Stock Exchange (TYSE)."

On September 11, 1981, the Director filed a written submission on this matter. The Director was represented by counsel and a witness at the formal hearings in November 1981. In both the written and oral submissions, the Director attempted to look at the comparable merits of fixed and flexible brokerage rate systems. He noted that his analysis led him to conclude that a switch to a system of negotiated or flexible brokerage rates would increase efficiency in the brokerage industry and also in capital markets. In addition, he noted that individuals and institutions would be treated equitably in a flexible brokerage rate system. Further, he stated that an analysis of the effects of the change of the rate structure in the United States would lead one to conclude that a new system is working very well in that country and that, while one cannot directly match U.S. experience in the Canadian context, he was confident that there was enough similarity in the market milieu in the countries to allow him to predict that similar results could be expected in Canada.

The Director made his final written submission reiterating his position and assessing other submissions.

Outcome: On June 25, 1982, the OSC handed down its decision which repealed Part XV of the TSE by-laws effective April 1, 1981, thereby abolishing fixed brokerage rates and establishing the potential for rate competition in the Ontario brokerage industry, largely based on the Director's submission.

2. House of Commons Sub-Committee on Import Policy.

Issue: Canadian Import Legislation - the potential for increased protectionism.

Nature of Representation: This Sub-Committee was established by the Standing Committee of Finance, Trade and Economic Affairs to consider public representations regarding Proposal on Import Policy - A Discussion Paper Proposing Changes to Canadian Import Legislation transmitted by the Departmment of Finance under date of July 1980. This Discussion Paper comprehended proposals for change grouped under the headings of (I) Anti-dumping and Countervailling Duties Legislation, (II) Safeguard Actions Against Injurious Imports, and (III) Responses to Foreign Government Acts, Policies or Practices. Additional issues of a substantive nature arose during the course of the Sub-Committee's deliberations, the most prominent of which included the need for (a) increased transparency of anti-dumping and countervail actions, (b) improved monitoring and prompter reactions in the case of products imported for capital projects, and (c) greater accomodation of competition policy and consumer interests by the official body or bodies designated to administer the revised import legislation.

On April 7, 1981, the Director made a representation to the Sub-Committee which drew attention to the potential for increased "protectionism" in some of the proposals for change. On October 21, 1981, the Director made a second submission that endorsed and expanded upon the comments regarding the potential for protectionism in the earlier representation by considering additional issues and presenting empirical evidence on Canada's need to maintain as open an economy as practical in order to obtain the full benefits of competition. The cornerstone of this second submission was the recommendation that the terms of reference of the official body or bodies designated to administer the revised import legislation be expanded to permit taking account of domestic competition implications in decisions.

On November 9, 1981, the Director appeared at a hearing of the Sub-Committee to discuss the issues raised in the two written submissions. At a second appearance on February 11, 1981, at the Sub-Committee's request, the Director's representatives focused on the importance of taking competition implications more fully into account in reaching decisions on import policy issues.

Outcome: The recommendations made in the Sub-Committee's Report included one which would allow appeals of Anti-dumping Tribunal decisions to the Tariff Board on the basis of public or consumer interest considerations. The interdepartmental committee, which was subsequently established to deal with these recommendations on behalf of the Minister of State (Finance), reached the opinion that this last recommendation would subject complaints to two trials. It therefore considered it preferable to recommend to Cabinet that the Anti-dumping Tribunal be allowed to

receive and consider evidence with regard to public interest considerations and to recommend to the Minister of Finance that the full amount of the dumping or countervailing duty not be imposed if contrary to the public interest.

1982-1983

A. Transport

1. CTC Public Hearing into "Deep Discount" Domestic Air Fare Rules.

Issue: Fences surrounding the sales of fares discounted by more than twenty-five percent.

Nature of Representation: On June 17, 1982, the Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) issued a notice of Public hearing concerning air fare discounting practices of domestic scheduled air carriers.

Specifically, the public hearings would consider a number of Show Cause Orders concerning the discount fares of the national and regional carriers, and a proposal of the ATC to adopt a general rule that, unless subject to "adequate justification", all future scheduled air carrier fares discounted in excess of 25 per cent below comparable economy class tickets (termed as "Deep Discount" fares by the ATC), must adhere to a number of regulatory conditions, including a mandatory return trip requirement, advance booking and minimum stay requirements, and prohibitions against ticket refunds and itinerary changes.

The related Show Cause Orders required the affected carriers to show at the hearings why all currently offered Deep Discount fares should not be dis-allowed unless the fares were made to the ATC's proposed restrictions.

In the Show Cause Orders, the ATC made several observations which suggested a desire to maintain demand for the higher cost economy class fares and a concern that the recent pricing initiatives of the domestic air carriers might be evidence of "destructive competition", shifting discretionary travel to the summer, diverting full economy paying fares to discount fares which could result in decreases in financial stability and service quality, particularly flight frequency.

The Director's submission expressed concern regarding the assumptions of the ATC proposals of: (a) The Concept of "Destructive Competition", (b) The Concept of the

Economy Class Fare is the Principal and Natural Air Travel Product, and (c) The Assumption that the Demand for Air Travel is Price Inelastic.

In support of his position, the Director filed evidence of expert witnesses Dr. W. Jordan and Dr. B. Campbell indicating: (1) In periods of excess capacity, it is economically rational for air carriers to price below average cost. (2) Demand for air travel, on average, is price elastic. (3) Numerous business people would not fly if they were effectively prevented from using "discount " fares. (4) There is no evidence that the necessary conditions for "destructive competition" exist in air transportation, and (5) The best policy would be to give airline managements wide pricing and service design freedoms without regulatory interference.

Apart from the Director's, Consumer's Association of Canada and Canadian Manufacturers Association's opposition at the hearing, all participating carriers supported the proposals seeking to improve their relative competitive positions. In fact, prior to the commencement of the hearing, a number of carriers, including Air Canada and CP Air, stated an intention to file fares to be effective in September 1982, which conformed to the proposed rules and as well were discounted by no more than 25 percent.

Outcome: The Committee's decision was released on August 19, 1982, and adopted a policy very similar to that proposed prior to the public hearing. Where the policy differs from the proposal, the policy is more restrictive (a) in the mandatory conditions for air fares priced more that 25 percent below economy fares, and (b) in requiring "justification" for all air fares priced below economy class, not just "Deep Discounts." Two possible exemptions from the policy were noted: services operated with propeller-driven aircraft and city pairs served only by one air carrier.

B. Communications

1. New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of its General Tariff.

Issue: The inhibition of competition from small independent radio common carriers arising from the interpretation of items in a tariff.

Nature of Representation: On November 3, 1982, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public

Utilities of the Province of New Brunswick for an interpretation of Items 1230.2 and 1600.3 of its General Tariff respecting Network Extension Telephone Service (i.e. radio paging) and Call Completion Service (i.e., telephone answering service). Specifically, N.B. Tel requested Board approval of an interpretation that would permit the company to eliminate hook-up charges for those customers transferring to Network Extension Telephone Service or Call Completion Service from the services offered by radio common carriers whose assets the company had acquired.

At the public hearing of March 2, 1983, the Director appeared through counsel before the Board and requested status as an intervenor. The Director cited his concern for the competitive effect of the proposed interpretation of items 1230.2 and 1600.3 of the General Tariff which would unfairly inhibit competing small independent radio common carriers from acquiring a larger customer base. In addition, there was some concern on the part of the Director that the acquisition policy of New Brunswick Telephone Company, Limited might serve to create a monopoly for radio paging and telephone awnsering service in the province of New Brunswick.

Outcome: The matter of whether the Director has the capacity to appear before the Board was appealed to the Supreme Court of Canada -- and has already been examined elsewhere. Consequently, the hearing proceeded without the Director's participation.

2. Alberta Government Telephones - Selector Level Access Rates.

Issue: Application for a rate increase.

Nature of Representation: On June 26, 1981, the Canadian Radio Common Carriers Association requested the Public Utilities Board of Alberta to review radio paging selector rates as part of Alberta Government Telephone's (AGT) application for a general rate increase. On June 22, 1982, the Director wrote to the Public Utilities Board (PUB) indicating his intention to intervene in the matter. The Director's concern arose from the use of cost-based rating methodology to ensure fair and reasonable rates for selector level access and the applicability of these rates to both telephone carrier and the radio common carrier on an equitable basis. During the hearing, the Director urged the Board to require AGT to unbundle the network access portion of its paging rates. The Director's expert witness Mr. C.M Dalfen indicated "...where a telecommunications carrier is planning to provide a service, such as a radio paging service, to the public in competition with other suppliers, and where the carrier enjoys a monopoly over a fundamental

service required by its competitors, extreme care must be taken to ensure that the rate set for the fundamental service is set in a non-discriminatory manner employing a costing methodology that applies equally to the carrier and its competitors."*

Outcome: The Board in its Decision No.E83076, of May 27, 1983 did not accept any of the Director's arguments. "The Board finds no reason to require AGT to unbundle those rates to ensure that it imputes such a charge to itself for rate making purposes. The Board also finds no reason to require AGT to unbundle its radio paging rates to ensure its radio paging service is compensatory."**

3. Role of Telesat Review.

Issue: Review the role of Telesat.

Nature of Representation: On December 8, 1981, Cabinet varied Telecom Decision 81-13 allowing Telesat to continue as a carrier's carrier. However, Department of Communication (DOC) was to undertake a review of the role of Telesat and to report to Cabinet. The Telesat review (a joint departmental project) prepared by several experts consisted of five major parts: (1) an assessment of the development of satellite technology (2) an assessment of demand for satellite service, (3) earth station ownership policy, (4) the U.S. experience, and (5) the satellite terrestrial intermodal competition. In the preparation of its final report DOC was to integrate all the studies.

Outcome: DOC issued a report, wherein Telesat's needs as a carrier were assessed and its mandate was altered so as to permit it to compete with other carriers.

C. Other

1. Fact Finding Inquiry into Egg Production Costs.

Issue: The impact of the cost of production formula on egg producer prices and efficiency.

Nature of Representation: In June 1982, the Director made representation at a public hearing of the National Farm Products Marketing Council (NFPMC) to review the cost of production formula (COP) used by the Canadian Egg Marketing Agency (CEMA) as the basis for setting producer prices for eggs. The thrust of the Director's submission was that the existing high egg quota values are an indication that egg

---

* Exhibit No.97.

** PUB Alberta Decision No. E83076, p. 100.

prices are too high and that the current egg pricing arrangements do not promote an efficient and competitive production and marketing industry for eggs required by the National Farm Producers Marketing Agencies Act. The Director suggested three areas for improvement in the structure, methodology and implementation of the COP formula for eggs, these being the treatment of freight and handling, the range in the size of flocks used in the COP survey and the manner in which the formula is updated and administered. The Director's recommendations were as follows: (1) Provincial prices should be set equal to provincial costs of production plus a producer return. This implies eliminating from the formula the use of a national weighted average of costs of production at the farm gate as well as freight and handling charges. (2) Cost of production studies should be made available to show whether efficiency gains are available from adjustments in the scale of production, in which case the cost of production formula should include these more efficient flock sizes. Concurrently, quotas should permit much larger size of production units. (3) (i) Production coefficients should be updated more frequently. (ii) Quota values be included in the formula in such a way that they be used as the indicator of the adequacy of product prices relative to costs. Furthermore, price increases should be disallowed when quota values reach levels that indicate the presence of excessive rents. (iii) The responsibility for the calculation of the COP estimates should be undertaken by statutory regulatory agencies and not by producer organizations themselves.

Outcome: The Panel of Inquiry supported the Director's first recommendation. The Panel, in a report submitted to the NFPMC in September 1982, recommended that the present system of national weighted averaging of prices be changed to one based on provincial cash costs and Grade 'A' conversion factors, along with national productivity, overhead, depreciation and production return factors. In addition, the Panel also made recommendations regarding changes in accounting procedures, labour and interest charges, financial and insurance costs, grade price differentials and premiums, depreciation, quota trading, production patterns and legislation.

2. Régie des marchés agricoles du Québec - Controls on the Wholesale and Retail Prices of Milk.

Issue: The merits eliminating controls on the price of milk.

Nature of Representation: In January 1983, the Régie des marchés agricoles du Québec held public hearings on the merits of maintaining or eliminating controls on the price of milk at the wholesale and retail levels. The Director presented a submission to the Régie and was represented at the hearings.

In his submission the Director showed that, in the last few years, the dairy industry in Canada had experienced major structural changes. These changes occured in provinces where there are no controls at the wholesale and retail levels, as well as in provinces where such controls are exercised.

The submission reviewed the spread between the price paid to the producer for milk and the retail price in major Canadian urban centres. It was stated that while retail prices varied from city to city reflecting differences in producer prices, over time the retail-farm price spread in the various locations varied little. The Director submitted that there was no evidence that price controls were necessary to prevent unwarranted distributive margins. In fact, existing market pressures had required participants in the dairy industry to compete more aggressively. These pressures emanated both from merchandising changes at the retail (where chain stores account for most milk products sold) and from the existence of alternative substitute foods for milk.

The Director concluded that while it could not be clearly shown that the regulation of milk prices in Québec had achieved desirable objectives, it was nevertheless true that, should the Régie wish to police the regulation effectively, a considerable administrative expenditure would be incurred.

Outcome: On March 9, 1983, the Régie announced its decision to abandon the control of wholesale prices of milk. It would continue, however, to control the minimum and maximum retail prices. Subsequently, the Québec cabinet reversed the decision of the Régie to decontrol wholesale prices for fluid milk.

3. Régie des marchés agricoles du Québec - Submission on the establishment of a marketing board for maple syrup.

Issue: The negative implications for efficiency, performance, prices and equity arising from a marketing scheme with supply management powers.

Nature of Representation: In September 1982, the Director submitted his views to the Régie des marchés agricole du Québec on applications by Les producteurs de sucre d'érable du Québec and La Fédération du producteurs de sucre et sirop d'érable du Québec for approval of a joint marketing plan for Québec maple syrup and maple sugar producers.

The applicants sought the creation of a producer's board with the powers provided in section 68 of the Québec Farm Products Marketing Act to expand markets for maple

syrup and to improve their operational and pricing efficiency. In addition, they requested that the proposed board be given the authority under section 67 to exercise supply management techniques to fix prices, quotas and conditions of sale for maple syrup marketed in domestic and export markets. The first category of activities are exempted from the application of the Combines Investigation Act unless carried out pursuant to valid federal or provincial legislation.

The Director informed the Régie that he found merit in the establishment of Québec maple syrup marketing scheme whose purpose would be market development and improvement of the operational and pricing efficiency of the marketing system. This determination was based on the apparent existing disparity in bargaining power between producers of maple syrup and the buyers and processors, only four of which account for more than eighty percent of the purchases of maple syrup from producers.

The Director further advised the Régie that he did not favour the establishment of a marketing scheme with supply management and price fixing powers. The Director based this recommendation on his finding that a maple syrup producers' board with supply management powers would not be able to determine the "optimum" level of output any better than the individual producer. It would not deal with the influence of weather and other natural events on the level of output. Furthermore, the costs of the newer larger size operations are not yet known, and there is a lack of knowledge of the average cost of production of a maple syrup grove that is presently representative of the industry. For these reasons, the Director concluded that a supply management marketing scheme with powers to fix prices would have net negative implications for efficiency, performance, prices and equity.

Outcome: At the end of the fiscal year, the Régie called a vote of the Québec producers on the desirablity of the proposed joint plan for the Québec maple syrup and sugar producers.

1983-1984

A. Transport

1. CTC Review of the Economic Regulation of Commercial Air Services Using Rotary Wing Aircraft.

Issue: Regulatory changes broadening partial deregulation governing Rotary Wing Aircraft could be less restrictive of competition.

Nature of Representation: On April 29, 1980, the Minister of Transport initiated a period of relaxed regulation for helicopter carriers.

On February 3, 1983, the CTC's Air Transport Committee (CTC) issued a notice of public hearing concerning all factors relating to the economic regulation of commercial air services using rotary wing aircraft, but excluding specific individual licence applications.

The Director, in a written submission dated April 11, 1983, indicated that the introduction of increased competition within the helicopter industry would promote a better overall industry performance. The submission suggested that with about 130 firms of varying size in the industry, the loss of a few firms that are unable to meet the competition of more efficient rivals would not put in jeopardy the provision of service throughout the country. It pointed out that the contestable nature of helicopter markets, due to the mobility of helicopters and the ability to adjust fleet size rapidly by leasing aircraft, removes, to a great extent, the need for regulation to protect against the possibility of monopoly exploitation.

In view of these factors, the Director recommended that the policy of partial deregulation introduced in 1980 be substantially broadened by : (a) extending the long-term tariff deregulation to short-term charters, and (b) reducing the requirement that new entrants prove "public convenience and necessity" to a lesser standard such as "fit, willing and able" that would be less restrictive of competition.

Outcome: On March 2, 1984, the ATC announced that it had decided to continue the trial period of reduced regulation for three years, until December 31, 1987. A change of particular interest was the exemption of long-term charter tariff rates from the provisions of section 113 of the Air Carrier Regulations during the extended period of relaxed regulation. This has the effect of restoring the application of the Combines Investigation Act to the pricing behavior of the helicopter industry which has been the subject of regulation of the ATC.

2. Alberta - Review of Intercity Bus and Trucking Regulation.

Issue: Intercity Bus and Trucking Regulations to promote a competitive and efficient trucking industry.

Nature of Representation: On September 6, 1983, the Honourable Marvin Moore, Minister of Transport for Alberta, solicited comments on a proposal to relax substantially

restrictions on entry into some intercity bus and trucking markets.

The Province of Alberta regulates its intraprovincial motor carriers differently from its extraprovincial counterpart. Entry into extraprovincial trucking is far more regulated than trucking within the province.

On November 7, 1983, the Director wrote to the Minister and expressed his support for the initiative but also held the view that while present entry policies had the effect of fostering a highly competitive and efficient trucking industry within the province, it made it quite difficult for new competition to develop in extraprovincial markets. The Director emphasized that easier entry is needed, particularly in extraprovincial trucking markets where there appears to be little effective competition.

Outcome: On January 6, 1984, a news release announced that only entry into intraprovincial charter busing would, for the present, be substantially deregulated. This new policy does not alter the present state of extraprovincial regulation for charter buses or trucking.

3. Domestic Air Fare Policy Review.

Issue: The impact of deregulation on domsetic fares.

Nature of Representation: Pursuant to a notice issued in December 1983, the Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) held public hearings on the regulation of domestic air fares, for both scheduled and charter services. Two witnesses were called by the Director. Dr. William Jordan, a professor of economics at York University, gave evidence at the hearings on a comparison of fare levels between the regulated airline industry in Canada and the deregulated (since January 1, 1979) industry in the United States. Mr. Robert J. McAdoo, a managing officer with People Express Airlines, reviewed the successful performance of that carrier as a low-cost operation in the U.S. industry in a deregulated environment.

Outcome: The Interim Report of the Hearing Panel was released on May 9, 1984, in which it recommended continued economic regulation of the air carrier industry, but reform along the lines suggested in the Report of the House of Commons Standing Committee on Transport, published in December 1982. Specific recommendations by the ATC included retaining the geographic role of carriers and the distinction between type of service, attaching greater weight to competition in judging application, and maintaining a zone of pricing flexibility.

Almost coincident with the issuance of the ATC Interim Report, the Minister of Transport announced on May 10, 1984, a "New Canadian Air Policy." This policy was the result of work by an interdepartmental working group that had examined the overall issue of the economic regulation of the air transport. The Director and members of his staff were active in this exercise.

The policy changes announced by the Minister of Transport, which only applied in Southern Canada, went further than the recommendations of the Interim Report. The practice of distinguishing between local, regional and national carriers in route applications was ended, carriers were encouraged to apply to the Minister to have operating restrictions removed from their licences and to apply to the ATC to consolidate their licences to allow greater flexibility in route structure. As a result of the policy announcement a freer pricing structure than that recommended in the Interim Report was established in September 1984.

4. Manitoba Review of Motor Carrier Regulations.

Issue: Comments on inefficiency of the Motor Carrier Regulations arising from entry control.

Nature of Representation: In a letter dated November 25, 1983, the Director sent comments to the Government of Manitoba's Task Force Review of Motor Carrier Regulations. Regarding the regulation of entry, the Director referred to the Task Force's report, **Manitoba Motor Carrier Industry: Problems, Issues, Options,** where there were numerous examples of regulations inducing inefficiency in the motor carrier industry. In attacking regulatory barriers to entry in the industry, the Director recommended the removal of the test of Public Convenience and Necessity, or at the least a shifting of the onus of the test to carriers opposing an application for operating authority.

Outcome: In September 1984 the Task Force published its report titled **Recommendations on Motor Carrier Regulation.** The Director wrote to the Honourable John S. Plohman, the Minister of Highways and Transportation, on October 22, 1984, and attached a detailed set of comments regarding the Task Force report. The report was generally supported on the basis that the changes proposed would represent an important step in placing greater reliance on competition to improve overall performance in the trucking industry in Manitoba. At the same time, the Minister was urged to take a stronger initiative with regard to the liberalizing entry into the industry than had been recommended by the Task Force. Finally, with respect to changes recommended for the regulation of intraprovincial rates, it was suggested that

consultation take place to ensure that no confusion develop over the application of The Highway Traffic Act and the Combines Investigation Act.

Subsequently, meetings between the Chairman of the Manitoba Motor Transport Board and members of the Bureau have been held to discuss these and other issues.

B. Communications

1. Alberta Government Telephones - 1983 Rate Application.

Issue: Rate increase application.

Nature of Representation: On February 1, 1983, Alberta Government Telephones (AGT) applied to the Alberta Public Utilities Board for a general rate increase.

The Director at the hearing sought to present expert evidence concerning the inadequacy of an accounting procedure employed by AGT known as the contribution test. The services offered by AGT are separated into basic, or regulated, and non-basic, or unregulated categories. The contribution test is designed to determine if the aggregate revenues of the non-basic services make a net contribution to the basic service category. However, because the test does not examine the profitability of individual offerings, it does not permit the Board to determine whether one non-basic service subsidizes another within the same category. This is particularly significant in view of the fact that some of AGT's non-basic services, such as the publication of its yellow pages directory, are effective monopolies. The contribution test cannot establish whether the revenues of such services are used to permit the company to reduce the prices charged for other non-basic services offered in competition with independent firms in the market.

Based on the information obtained in the course of the hearings on the subject of contribution the Director noted that in 1982, AGT's profit from the provision of its yellow pages directory accounted for virtually all of the contribution from non-basic to basic services. In light of this fact, it appeared that AGT's profit from the provision of other non-basic activities, such as the sale of terminal equipment were not contributing to the basic service and therefore may not have been recovering their full share of the company's costs of engaging in those competitive activities. In addition, the Director submitted that the record of the hearing suggested that AGT's competitive services were not covering their full share of the company's debt and equity costs. Accordingly, the suitability of the

contribution test as a safeguard against the cross-subsidization of AGT's competitive services with revenues from its monopoly services was in serious doubt.

Outcome: The Board in its Decision No. E 84083 found in favour of the Director respecting the improper inclusion of certain monopoly services in the non-basic category and has ordered those services to be transferred to basic, and to remove the revenue and expense effect of these services from the contribution test.

The Board found in favour of AGT concerning the non-basic category the company assigned to the yellow pages directories. The Board maintains that the directory competes with other forms of advertising media. The decision did not address the Director's argument that the directory appears to comprise the entire contribution to basic.

The Board accepted AGT's submission that the non-basic services did not cover their full share of interest charges and are thus subsidized by the basic service.

2. Interconnection in the Telecommunications Industry in New Brunswick.

Issue: The impact of competition arising from interconnection and the potential for cross-subsidization due to inadequate costing methodologies and intercompany pricing.

Nature of Representation: On September 12, 1983, the Board of Commissioners of Public Utilities of the Province of New Brunswick issued a notice announcing that a public hearing would be held to consider issues relating to interconnection in the telecommunications industry in New Brunswick.

The Director filed a written submission with the Board on March 5, 1984, along with the evidence of two expert witnesses, W. H. Melody of Simon Fraser University and Charles M. Dalfen of Ottawa, who appeared on the Director's behalf during public hearings held in May and August 1984. These submissions argued that competition in the provision of telecommunication products and services will provide users with an enhanced choice of equipment and services, lower prices and increased efficiency and flexibility. They also addressed the various regulatory tools available to the regulator to prevent cross-subsidization of competitive services by monopoly services, as well as complementary mechanisms that could be implemented to speed up the development of fair competition in the market. The Director submitted that reliance on

accounting methodologies and reporting procedures cannot provide adequate protection against cross-subsidization and would greatly increase the regulatory burden. In the Director's view, the Board should require that all of N.B. Tel's competitive services be offered through a separate subsidiary in order to minimize the potential for cross-subsidization and the Board's regulatory involvement in monitoring N.B. Tel's competitive activities.

Outcome: On June 16, 1986, the Board released its decision in this matter. The Board approved the right of residential and business subscribers to own their own telephone network. It further ruled that it will consider private line and public long distance system interconnection applications in the future. However, these types of applications will be considered only after a suitable costing methodology has been approved and implemented. N.B. Tel was given ninety days to file unbundled rates for terminal attachment prior to the Board initiating further hearings to consider these rates and other issues arising from its decision.

N.B. Tel filed unbundled rates for terminal attachment on September 15, 1986 and related evidence on September 16 and 26. The Director in his comments argued that N.B. Tel's proposed network access rates appeared discriminatory for those customers who chose to own their terminal equipment. The Director further argued that interim safeguards similar to those established by the CRTC were required pending the development of an appropriate cost accounting methodology. A legal argument pertaining to the Board's jurisdiction to order such safeguards was also presented.

3. Attachment of Customer - owned Terminal Equipment to the Public Switched Network in Nova Scotia.

Issue: Competition arising from terminal equipment attachment and the potential of cross-subsidization of unregulated business with regulated revenues.

Nature of Representation: On July 18, 1983 Maritime Telegraph and Telephone Company Limited (Maritime Tel) applied to the Board of Commissioners of Public Utilities for the Province of Nova Scotia for approval of certain modifications to its general tariff to allow for the connection to its telephone network of customer-provided terminal equipment and of conditions and rates related to the rental by Maritime Tel of terminal apparatus.

At the hearings the Director introduced evidence on the different means available to the Board to ensure that competition in terminal equipment would proceed on sound

grounds and that cross-subsidization of Maritime Tel's competitive services with revenues from its regulated monopoly activities would not occur.

He argued that the Board could most effectively avoid undesirable cross-subsidization by insisting that Maritime Tel offer competitive services through a separate subsidiary. He indicated further that accounting safeguards and ongoing regulatory supervision could not alone offer adequate protection against cross-subsidization and would greatly tax the resources of the Board.

The Board of Commissioners of Public Utilities for the Province of Nova Scotia released its decision in this matter on November 28, 1984, concluding that terminal attachment will be permitted for all multiline systems and extensions on single line services and that there will be unbundled rates. Provision of competitive terminal service by Maritime Tel will eventually be deregulated and will be carried on through a separate division of the company. The decision also specifies that Maritime Tel will be required to work with the Board to develop appropriate changes to its accounting systems to allow for proper tracking by the Board.

On February 14, 1985, Maritime Tel applied to the Board for approval of its plans to sell and lease new multiline terminal equipment on a partially deregulated basis for an interim period pending the establishment of a separate division until late 1985.

In his final argument at the hearing the Director questioned the urgency of Maritime Tel's entry into the direct sale terminal market prior to the establishment of a separate terminal division, given the inadequate anti-competitive safeguards. He urged the CRTC to deny the application or establish stricter regulatory controls pending establishment of a separate division.

Outcome: On December 23, 1985, the Nova Scotia Board of Commissioners of Public Utilities denied authority to Maritime Telegraph & Telephone Company, Limited (Maritime Tel) to sell and lease in-place terminal equipment before the establishment by the company of a separate terminal equipment division. In making this decision, the Board agreed with the Director and concluded that the pricing approach proposed by Maritime Tel would not maximize the contribution to be obtained from the sale and lease of multiline terminal equipment. The Board also agreed with the Director's concern regarding the implications of divestiture by Maritime Tel of its terminal assets before the real value of those assets has been established.

On February 5, 1986, the Director wrote to the Board noting the importance of the structural separation issue and recommended that the Board consider a public process to review the adequacy of the separation, accounting and reporting mechanisms proposed by Maritime Tel. In its response of February 14, 1986, the Board indicated that on completion of the project team study and report, it would decide on the proper process for implementation of the necessary regulations. On May 16, 1986, Maritime Tel filed a report, accepted by the project team, on the development of appropriate costing procedures relating to the activities of the terminal division.

On September 17, 1986, the Board issued an Order of Implementation which approved the report as a suitable basis upon which to examine the financial performance of the terminal division of Maritime Tel. A test period commenced as January 1, 1987, and the Board will evaluate the results of the test period after December 31, 1987. Maritime Tel has been ordered to file, on a confidential basis, detailed monthly reports on the financial results of the terminal division and to continue filing monthly reports respecting sales of multi-line equipment, consumer telephone products and lost sales of terminal equipment. In addition, the Board has ordered Maritime Tel to file quarterly financial summary reports on profit and loss for public review and comment by interested parties. In making this order, the Board has rejected the need for public process prior to implementation of the separate terminal division.

C. Other

1. Ontario Securities Commission - Review of the Role of Financial Institutions in the Brokerage Industry.

Issue: The potential for domination by banks through their participation in the brokerage industry.

Nature of Representation: After the Ontario Securties Commission (OSC) announced its decision to unfix brokerage rates in Ontario, the Toronto-Dominion Bank introduced its Green Line Investor Service (GLIS), which offered bank customers all the services of brokerage firms with the exception of the actual execution of trades.

GLIS raised controversy in the financial community, with opponents of the plan arguing that it undermined the basic structure of the financial industry within which banks, trust companies, insurance companies and brokers maintain distinctly separate operations. Soon after the GLIS service was announced, the OSC requested that it be withdrawn pending the results of its hearing into the

general question of the proper role of financial institutions in the brokerage industry. The hearing commenced on June 20, 1983.

The Director intervened at these hearings arguing that, while he fully supported the introduction of innovative services in the financial marketplace which would encourage lower brokerage rates and improved service to investors, he was concerned that the full participation of the banks in the brokerage industry could ultimately lead to their dominance of it, given their size relative to other participants in the market. The Director suggested that all stock transaction orders should be placed with a stock broker, thereby encouraging banks and brokers to compete for the savings and loans requirements of investors. Banks and brokers would, however, be encouraged to network other banking broker services in an attempt to provide the concurrence and innovative features of GLIS. This alternative to the GreenLine type of service would, while encouraging innovation, reduce the risk that the banks might come to play too large a role in the brokerage industry.

Outcome: On October 31, 1983, the OSC in handing down its decision in this matter established that the "core function" in the brokerage sector of the financial industry was underwriting. The OSC found that the soliciting of sales and the provision of advise to clients by brokers were activities that were essential to the underwriting function of the brokerage industry. Accordingly, the OSC permitted banks to act as securities access brokerage agents provided they registered as such with the OSC. The terms of registration prohibited the banks from engaging in soliciting or giving advice and compelled them to abide by the "suitability rule," which required agents to inform clients when a planned investment is not in the clients best interest.

2. Ontario Energy Board Hearings Concerning Ontario Industries using Natural Gas as a Feedstock.

Issue: An examination of the proposals for a regulatory system in Ontario Industries using Natural gas as a feedstock that would be more responsive to dynamic market forces.

Nature of Representation: The Ontario Energy Board commenced public hearings in July 1983, for the purpose of examining and reporting on a number of matters affecting Ontario industries which use natural gas as a feedstock, particularly those involved in manufacturing amonia-based products. The Board was directed by the Government of Ontario to report on the market environment in which the "Affected Industries" operate, including how natural gas

prices in Ontario affect the competitive position of Ontario manufacturers in the North American market. The Board was also required to report on the effects that proposals by the "Affected Industries" regarding alternative methods of purchasing their natural gas requirements would have on Ontario gas utilities and their other customers. In addition, the Board was to report on the nature, extent and causes of any disparity in rates charged among the Ontario gas utilities to the "Affected Industries" as well as on the advisability of introducing a common rate across Ontario for natural gas for feedstock purposes.

The price for natural gas to the Ontario market is subject to regulation by both the Alberta and the federal governments, who jointly set the price at the Alberta border. The National Energy Board regulates the charges of TransCanada PipeLine Limited, the sole transporter of gas from Alberta to Ontario, for transporting the gas from the Alberta border to the gas utilities, in Ontario. The Ontario Energy Board regulates the distribution activities of the Ontario gas distribution utlities, including the approval of rates for gas sold to customers.

Natural gas for the Ontario market is currently purchased from Alberta gas producers by TransCanada, carried through its facilities, then sold by TransCanada to contracted Ontario gas distribution utilities and finally sold by these utlities to Ontario industrial, commercial and residential users. During the period when demand for natural gas was rapidly increasing, TransCanada contracted with Alberta gas producers for supplies to meet the then-forecast evergrowing demand requirements of the future. Due to declining demand TransCanada entered into an agreement with its contracted producers and financiers. This agreement had the effect of excluding potential new suppliers of gas to the Ontario market and reserving the Ontario market, including its growth potential, to TransCanada's contracted producers at least until the end of this decade.

At the hearings, the problem facing Ontario gas-using industries was identified as regulated natural gas prices for a vital production input that were substantially higher than market-determined natural gas prices available to their competitors in the United States, Alberta and elsewhere in the world. As a result, efficient Ontario industries found themselves in a competitively disadvantageous position in both domestic and foreign markets.

Alternative supply arrangements like "direct purchases" were proposed. The Director's intervention sought to assist the Board to assess the competitive implications of various proposals and to support those that would be more responsive to dynamic forces.

In his final submission to the Board, the Director supported the concept of direct purchase because of the positive effects on competition in Ontario and Alberta. The Director also stated that be believed that there was a conflict of interest between TransCanada's business as a buyer and seller of gas and its transportation service. He saw the effect of direct purchase arrangements as diluting both TransCanada's monopoly in buying gas for Ontario and its monopoly in selling such gas to Ontario markets.

Outcome: In its report of February 10, 1984, the Ontario Energy Board recommended direct purchasing, giving effect to it in the Ontario Energy Board Act, supporting such applicants before regulatory boards, rejecting common feedstock rates and considering a direct subsidy to assist amonia producers if appropriate.

3. Professional Engineers Act and Architects Act - Province of Ontario.

Issue: Regulations providing for the schedules of suggested fees.

Nature of Representation: During the year, the Ontario Legislature considered new legislation governing the engineering and architectural professions. Among other things, the Professional Engineers Act, 1983, included a proposal to empower the Council of the Association of Professional Engineers of Ontario to make regulations, subject to approval by the Lieutenant Governor in Council, providing for the setting of schedules of suggested fees. On February 1, 1984, a submission was made on behalf of the Director before the Standing Committee on the Administration of Justice of the Ontario Legislature on the proposed legislation.

Outcome: The Bills were passed by the Legislature and received Royal Assent on May 1, 1984.

1984-1985

A. Transport

1. Regional Taxicab Licensing - Lower Mainland of British Columbia.

Issue: The manner in which taxicabs are licenced.

Nature of Representation: On March 20, 1984, the Motor Carrier Commission of British Columbia issued a notice announcing that a public hearing would be held to consider the manner in which taxicabs are licenced on the Lower Mainland of British Columbia.

British Columbia requires any taxicabs that delivers passengers to a municipality outside the municipality in which the passenger was picked up to have a MCC licence. One of the issues under review was the advantages and disadvantages of licencing taxicabs in this area on a regional basis.

In his submission, the Director favoured the adoption of a regional licencing system, the general easing of the entry restrictions in the industry and the adoption of uniform rules and regulations designed to have the least restrictive impact on competition. The Director felt that several significant benefits were possible from the adoption of these recommendations, including a more efficient distribution and utilization of taxis in the Lower Mainland, the development of more efficient dispatch systems and the introduction of new aggressive firms into markets that have become isolated due to entry restrictions.

In a related matter, the Director addressed a letter on March 27, 1985, to the Motor Carrier Commission of British Columbia in response to a notice of public forum concerning the manner in which ground transportation services are authorized to serve passengers using Vancouver International Airport. The Director suggested that although a regulatory framework may be necessary for the efficient operation of these services, he urged the Commission to adopt a framework that places the least restrictions on the competitive forces in the market. In this regard, he drew the Commission's attention to the Seattle-Tacoma Port Authority's attempts to deregulate the taxi industry at the Seattle-Tacoma airport and the subsequent reintroduction of regulation that is as effective, but not as restrictive on competition, as the original legislation.

Outcome: On July 14, 1984, the Motor Carrier Commission issued its report on Taxi Cab Licencing in the Lower Mainland of British Columbia. One of the four actions the Commission proposed to take was the modifications of the interpretation of the word "originating" so as to enable taxicabs, under certain specific conditions, to pick up passengers in areas that heretofore they have been unable to serve legally.

C. Other

1. Financial Markets: Ontario Securities Commission Policy Review.

Issue: Proposal for regulations in financial markets that are narrower in scope and less restrictive of competition.

Nature of Representation: On May 2, 1984, the Ontario Securities Commission (OSC) issued a press release outlining its intention to convene a policy review hearing to examine the terms and conditions under which non-residents, domestic financial and non-financial institutions are allowed to operate in the Ontario securities industry.

The policy review arose as a result of an application by Daly Gordon Securities to divide its brokerage business into two separate entities - one to deal in the regulated market, and the other to deal in the non-regulated (exempt) market.

In the regulated market, market intermediaries have to be registered (registrants cannot be more than 25 percent foreign) with the OSC and securities have to be qualified by prospectuses. Neither is necessary in the exempt market where securities, such as government debt instruments and short-term commercial paper, are traded and there are no restrictions on who can participate.

The Director's submission at the OSC hearings argued that the prevailing restrictions which govern the ownership of market intermediaries operating in Ontario have a negative impact on the ability of the capital market to fully serve the present and future needs of Canadian investors and issuers of securities. Specifically, the Director recommended that: (i) registration requirements not be imposed on persons dealing exclusively in the exempt market; and (ii) registrants be allowed to do exempt trades through affiliated unregistered companies not subject to registration requirements.

The OSC report reflected an acceptance of the essential arguments put forth by the Director in his submission, and by other respondents at the hearing concerning the desirability of allowing the Ontario securities industry greater access to capital and of allowing increased participation in the industry by foreign firms. However, those OSC proposals expressly intended to maintain the objectives of substantial Canadian control of the industry and a strict segregation of each institutional "pillar" of the financial system would, in some respects, be restrictive of competition and would have the potential of unnecessarily limiting the efficiency of the capital markets.

The Director's letter in response to discussion draft regulations outlined a number of alternative means of accomplishing the goals espoused by the OSC which would be less restrictive of competition. It was suggested that greater competition would be likely if the limitations on registrations of foreign dealers were less stringent, that increasing the permissible levels of investment in resident

securities firms by both foreign and institutional investors would provide greater access to capital while retaining Canadian control, and that the OSC should convene a further rulemaking proceeding after it has collected data on activities in the exempt markets.

Outcome: On December 4, 1986, the Ontario government announced its intention to implement new rules governing entry into and ownership of the securities industry in Ontario. Highlights of the proposals are as follows:

(a) Effective June 30, 1987,

(i) any Canadian investor including a financial institution can own 100 percent of a securities firm, (ii) non-residents can own up to 50 percent of a Canadian dealer, (iii) foreign owned dealers can carry on business in the exempt (non-regulated) market with no capital limitations, and (iv) a universal registration system will be established which will require all intermediaries in the Ontario securities industry to be registered with the OSC.

(b) Commencing June 30, 1988

(i) non-residents can own 100 percent of a Canadian securities dealer, and (ii) foreign-owned dealers can engage in any securities activities without restrictions.

The Ontario government's proposals recognize the growing trend towards the internationalization of securities trading, the benefits in terms of competition and efficiency of allowing increased participation in the industry by foreign firms, and the need for the Ontario securities industry to have greater access to capital in order to compete successfully in domestic and offshore markets.

2. Regulation of Financial Markets.

Issue: Ontario Securities Commission Policy Review of non-voting common shares.

Nature of Representation: Financial markets in Canada and elsewhere are undergoing rapid changes. Traditional boundaries that have separated the activities of banks, trust companies, insurance and securities dealers are being eroded by market forces, resulting in increased integration and substantial overlap in the services being provided by different types of financial institutions. These developments have challenged the objectives and effectiveness of the existing federal and provincial regulatory structures, which are based more in terms of the traditional segmentation of financial markets along institutional lines rather than on the nature of the

services these institutions provided. It is important that in the various policy reviews currently underway, the efficiency and competition policy considerations be examined and taken into account.

In July 1984 the Director made a submission to the Ontario Securities Commission (OSC) in its policy review of the proliferation of non-voting common shares. The submission argued that there is no economic basis for banning restricted common shares because, given the available evidence on capital market efficiency, the market will effectively be able to price such shares according to the degree of restriction.

Outcome: In its final decision the OSC decided not to prohibit these shares.

3. Section 41(4) of the Patent Act and the Government Policy in the Pharmaceutical industry.

Issue: The extension of compulsory licencing on competition, employment, growth, rates of return, etc. in the Pharmaceutical industry.

Nature of Representation: Section 41(4) of the Patent Act provides for the issuance of compulsory licences for the manufacture or importation of patented pharmaceutical products in Canada, upon payment of a statutory royalty. Provision for compulsory licencing for the manufacture of drugs has existed in the Patent Act since 1923 and was broadened to provide authorization for importation of drugs under compulsory licence in 1969.

While the 1969 amendments stimulated competition and reduced drug prices, there has been concern over alleged adverse effects on employment and research and development in the industry. In 1984 the government appointed the Eastman Commission to examine the impact of section 41(4).

The Director's submission contained an empirical analysis of the performance of the pharmaceutical industry in Canada. Based on information published by Statistics Canada, it concluded that the extension of compulsory licencing provisions in 1969 did not have a significant adverse impact on the levels of research and development, employment and growth in the industry. Indeed, since 1969 the rates of growth in employment and the value of sales in the pharmaceutical industry have generally exceeded the corresponding rates of growth for the Canadian manufacturing sector as a whole. Financial rates of return in the pharmaceutical industry have also generally exceeded corresponding rates for the manufacturing sector.

Since buying groups occupy an important position in the pharmaceutical industry, the submission addressed the status of these associations in relation to the Combines Investigation Act. The submission also commented on several apparent anti-competitive practices in the pharmaceutical industry, including predatory pricing and the use of fighting brands, and the status of these practices under the Act. The Director appeared before the Commission to make an oral statement and reiterated his concern.

Outcome: The Commission's Report supported retention of the compulsory licencing system on the grounds that it has promoted increased competition and reduced drug prices. The Report rejected allegations that compulsory licencing had adversely affected the pharmaceutical industry's overall performance or R & D performance. Recommendations were made to restore the perceived competitive imbalance between patent holding and generic firms, and to streamline the competitive process.

The Government announced that revisions to section 41(4) of the Patent Act would be introduced.

4. Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission).

Issue: Economic union and development prospects for Canada.

Nature of Representation: The Director presented a submission to the Macdonald Commission in which he emphasized the importance of competition in stimulating economic efficiency and recommended increased reliance on market forces to achieve the objectives of growth and development. Identified as key areas were trade liberalization, a review of regulation and public ownership, opportunities for increased exports and modernization of existing competition laws. The submission also responded in detail to questions raised by the Commission on the immunity of both professional societies and Crown corporations from the Combines Investigation Act and on the effectiveness of the Director's right to intervene before regulatory boards.

Outcome: The Commission's recommendations, released in September 1985, are generally consistent with the thrust of the Director's submission and with Bill C-91, the proposals to amend the Combines Investigation Act.

1985-1986

A. Transport

1. Prairie Provinces Joint Hearing - Trucking.

Issue: Development of a common list of commodities which can be transported without the requirement to prove public convenience and necessity and the holding of joint provincial hearings.

Nature of Representation: Further to the February 27, 1985, agreement of the Council of Ministers Responsible for Transportation and Highway Safety to take action to achieve the objective of "developing and implementing common lists of commodities the transportation of which may be taken without a requirement to prove public convenience and necessity," the Alberta, Manitoba and Saskatchewan Motor Boards issued a Public Notice inviting submissions and announcing joint public hearings on this matter.

The Director, through an expert witness, filed a written submission and recommended that all of the commodities proposed for designation as ease of entry commodities be so designated. He also recommended that there be uniformity between intra- and extra-provincial designation and that consideration be given to holding additional hearings so that the list of ease of entry commodities would be as wide as possible.

The expert witness retained by the Director appeared before the Joint Panel. A summary of the Director's submission was read at subsequent hearings that the Joint Panel held in different cities.

Outcome: As of March 31, 1986, Alberta and Manitoba have issued a decision designating several commodities as ease of entry commodities. On April 4, 1986, the Saskatchewan Highway Traffic Board issued a similar decision. The decision of the Board reflected in part the Director's submission.

2. Proposed Regionalization of General Freight Carriers - Manitoba.

Issue: Regionalization of operating authorities of general freight carriers.

Nature of Representation: On October 15, 1985, the Director filed with the Manitoba Motor Transport Board a letter of intervention in response to the public notice of July 18, 1985, relating to the Board's proposal to regionalize the operating authorities of general freight carriers.

In his letter, the Director offered comments on the likely effects of this proposal and indicated that he would submit evidence at any subsequently held hearings on this matter. Such evidence would demonstrate that the best protection the Board could offer to smaller carriers from being taken over by the larger ones is to create an environment that will allow them to become more effective, cost competitive and innovative.

Outcome: At the end of the fiscal year the Board had not yet called any hearings.

3. Freedom to Move - House of Commons Standing Committee on Transport.

Issue: Comments on the Regulatory reform paper, addressing cross-subsidization in Crown corporations, easing foreign entry into trucking and easing entry in air in Northern and remote areas.

Nature of Representation: By Order of October 7, 1985, the document entitled Freedom to Move, the July 1985 Transport Canada Discussion Paper on regulatory reform, was referred to the House of Commons Standing Committee on Transport.

On the specific points mentioned in the Order of Reference, the Director stated that Freedom to Move may not go far enough in ensuring that Crown corporations operate as efficiently and competitively as private firms. In the absence of privatization, it was urged that imposed public duties be segregated and compensated directly, thereby avoiding the potential for cross-subsidization. Closely enforced guidelines, it was said, could also be used as a substitute for the discipline of private ownership.

The foreign control of Canadian transportation companies was seen by the Director as primarily a concern of the Canadian trucking industry. Studies commissioned by the Director on the transborder LTL trucking industry were cited as support for the position that local Canadian carriers are strong and are not apt to suffer from entry by foreign carriers into the Canadian trucking industry.

The Director submitted that service to northern and remote areas could benefit from less regulation and more competition in terms of service frequencies, fares and rates. Where service reduction may occur, and where services are necessary, direct public assistance should be available.

On compensatory rail rates and predatory pricing, the Director cautioned that predation will not be a significant problem in a deregulated environment.

However, assuming that the compensatory rate provision in the Railway Act is to be maintained (section 276), the Director urged that the text should be modified so as to ensure that non-compensatory rates should be disallowed only when they have the effect or tendency of substantially lessening competition. Generally, the matter before the Committee, had direct implications and increased role for the Combines Investigation Act.

Outcome: In its Report dated December 18, 1985, the Committee endorsed some of the points raised by the Director, particularly those regarding services to northern and remote areas and Crown corporations. The Committee urged a strenghtening of section 276 but without any competition criteria. The Report formed part of the background in the revision of the National Transportation Act.

4. Airport Management Task Force.

Issue: Competition policy concerns associated with various airport management schemes.

Nature of Representation: In the May 1985 budget the government announced that options for a new self-sustaining system for managing federal airports were being developed. This initiative was again discussed in Freedom to Move. As part of this airport review, the Minister of Transport struck a governmental committee to closely examine many of the outstanding issues.

To apprise that Committee of the competition policy concerns associated with various airport management schemes, a member of the Director's staff sent to the Committee a preliminary assessment of possible competition issues. Close liason is continuing with the Committee.

Outcome: As of March 31, 1986, the Committee's report was pending.

C. Other

1. Parliamentary Committee Hearing Concerning the Regulation of Canadian Financial Institutions.

Issue: Comments on the Green Paper on financial regulation to reduce the potential for abuse in self-dealing and abuses in conflict of interest.

Nature of Representation: On July 10, 1985, the Director appeared before the House of Commons Standing Committee on Finance, Trade and Economic Affairs to present his views on

the Finance Departments' Green Paper on financial regulation. The document identified key regulatory issues and outlined possible regulatory responses to changes in this sector.

The Green Paper proposal focussed on two key issues: the control of self-dealing and conflict of interest abuses. In his submission to the Committee, the Director stressed the importance of ensuring that the regulatory measures adopted to safeguard institutional solvency and financial system stability do not unnecessarily impede competition and the free play of market forces, thereby creating inefficiencies in our capital markets.

On the issue of self-dealing, the Director expressed the view that alternative mechanisms are available to reduce the potential for abuse in self-dealing transactions. The Director submitted a detailed proposal for discussion based on the creation of an internal corporate control committee to consist of independent Board Directors, empowered to evaluate proposed non-arm's-length transactions. Under such a system, legal responsibility would be established requiring the corporate committees to consider the interests of both shareholders and depositors and to provide monitoring and redress procedures.

The Director's brief concurred with the position in the Green Paper that Chinese Walls (going through independent federally incorporated financial companies) can be used effectively to control conflicts of interest that can arise between fiduciary and other types of financial activities. However, it suggested that the use of such procedures could be expanded to manage a broader range of potential conflicts, thereby allowing a greater commingling of financial activities within individual institutions. The Director argued that this type of regulatory approach could be particulary important for smaller financial institutions for which the creation of a financial holding company may not be practical. Heavier reliance on the Chinese Wall could constitute another way of enhancing competition among financial institutions, could result in broader access to services for consumers, and could promote greater efficiency within the financial services industry than could likely be achieved by net-working arrangements alone and also entail less regulatory involvement.

Outcome: On November 26, 1985, the House of Finance Committee released its report on the federal Green Paper. The recommendations and conclusions reflected the Committee's belief in a need to balance the public policy objectives of institutional solvency and system stability, and competition, while at the same time improving prudential safeguards and providing greater diversification of corporate powers to non-bank institutions. The House

Committee's concept of how best to regulate financial institutions closely resembled that which formed the basis of the Director's submission, regarding self-dealing and conflict of interest abuses.

2. Senate - Financial Markets.

Issue: Comments on Green Paper on Financial Deregulation.

Nature of Representation: On March 5, 1986, several representatives from the Department of Consumer and Corporate Affairs appeared before the Senate in camera. The thrust of their submission was similar to the previous representation discussed above and will not be repeated.

Outcome: On May 1, 1986 the Standing Committee on Banking, Trade and Commerce published its sixteenth report **Towards a more Competitive Financial Environment,** relating to regulations of Canadian financial institutions. It endorsed the nine underlying principles which appear on the first page of the **Green Paper.** "In so doing we are echoing the views of virtually all of the submissions we received and all of the witnesses who appeared before the Committee."* The Report contains three parts: 1) Consumer Protection and Financial Institution Stability: improving consumer protection; ensuring the soundness of financial institutions and the stability of the financial system; controlling self-dealing; guarding against abuses of conflict of interest. 2) Enhancing Competition: promoting competition, innovation and efficiency; enhancing the convenience and options available to individuals and businesses; promoting international competitiveness and domestic economic growth. 3) Federal-Provincial Considerations: promoting the harmonization of federal and provincial regulatory policies. The Senate Committee suggested eigty-one recommendations on the above three areas.

3. Regulations of Financial Markets.

Issue: Submissions to the Ontario Government - on Regulation of Financial markets questioning the rationale of regulatory entry barriers from diversifying in other markets.

Nature of Representation: Financial markets in Canada and elsewhere are undergoing rapid changes. The objectives and effectiveness of the existing regulatory structure have been challenged. In July 1985 the Director made a submission to the Ontario Govermnent Task Force on Financial

---

* Source cited above, p. 15.

Institutions. The submission addressed issues concerning concentration and competition in financial markets. It stated that concentration was less of an issue, provided that entry into financial markets was not unnecessarily impeded by regulation. The submission questioned the rationale for maintenance of regulatory entry barriers such as those preventing financial institutions from diversifying into other markets within the financial services sector, and the existence of limits on foreign ownership and entry. Such constraints, it was argued, had a negative impact on the flexibility of the Canadian financial system to respond to changing market conditions and to serve the needs of lenders and borrowers.

Increased integration of the financial system, including increased ownership of financial institutions by non-financial firms, has also raised concerns about possible self-dealing and conflicts of interest. Discussions on the subject have suggested, as a protective measure, an outright ban on non-arm's length transactions between financial institutions and their affiliates. The Director's submission argued that such an approach may prohibit otherwise beneficial and legitimate transactions. An alternative regulatory structure, relying more on enhanced corporate governance, increased director's responsibility, internal audit committees and Chinese Walls was proposed. These measures have been successfully invoked in other jurisdictions to alleviate concerns in this regard.

Outcome: Although the Ontario Task Force report did not propose full integration or removal of limits on foreign entry and ownership, it did call for increased diversification and competition and recommended most of the Director's suggestions.

4. Corporate Defensive Tactics.

Issue: Comments on Ontario Securities Commission's policy on defensive tactics of target companies.

Nature of Representation: Regulation of Target Company Defensive Tactics - Policy 9.4 of the Ontario Securities Commission (OSC) addressed issues relating to capital market and economy-wide efficiency, and stressed the importance of takeover bids in allocating assets to their valued uses and in constraining and removing inefficient managers. According to Policy 9.4, the OSC would scrutinize managerial takeover defenses and take action if shareholders were deprived of the ability to respond to an offer.

The Bureau's submission argued that various types of corporate defensive tactics raise the costs of takeovers and could insulate inefficient target firm management from

the discipline of the market for corporate control. This could result in loss of economic welfare. It proposed that the OSC should strive to implement measures to enhance shareholder suffrage, and restrict the use of all types of managerial defenses, except those which are clearly in the shareholders' interest, such as management solicitation of higher competing offers and/or provisions of information regarding the merits of the offer.

The Bureau's submission commended the OSC for adopting a flexible case-by-case approach to assessing particular managerial actions during an offer or if one was imminent. However, concern was expressed that the policy may not send clear signals to management and shareholders, and that more precision and definitional distinction may be required in the wording of the policy. It was suggested that the Commission strive for greater distinction between practices which are clearly abusive and those which are beneficial to shareholders and that clearer criteria be established regarding the conditions under which the Commission will intervene or take action. It was also proposed that greater clarification be given regarding what factors the Commission will use to determine if shareholders were "severely limited in the ability to respond" to a takeover offer.

Outcome: The Commission is currently reviewing comments on its policy.

5. Office des professions du Québec.

Issue: The impact of Provincial sanctioning of tariff of fees on competition and quality standard.

Nature of Representation: During the course of the year seven professional corporations applied to the Office des professions to have their tariff of fees renewed and sanctioned by the provincial authorities.

The Director's submission indicated that provincially sanctioned tariffs do not guarantee the maintenance of a high standard of quality but may increase prices above the competitive level. Such tariffs are therefore not in the public interest and should be abolished. The Director also noted that the existence of such tariffs cause distortions on the supply side of the market for professional services.

The Director reiterated his belief at the hearings in May 1986.

Outcome: The comments of the Director were well received by the Office des professions du Québec, which were reflected in their final report issued in December 1986.

6. Revisions to Canadian Copyright Law.

Issue: Prohibiting copyright societies from engaging in exclusive licencing arrangements with their members.

Nature of Representation: The White Paper on revision of the Canadian Copyright Act was referred to the Subcommittee of the Parliamentary Standing Committee on Communications and Culture.

In April 1985 the Director provided a written submission to the Parliamentary Subcommittee. The submission focused on the proposed expanded role of copyright societies and the status of such societies in relation to specific provisions of the Act. The submission suggested that the Subcommittee consider prohibiting copyright societies from engaging in exclusive licencing arrangements with their members. In the U.S., the American Society of Composers, Authors and Publishers is subject to such a prohibition under the terms of relevant antitrust consent decrees. A number of organizations representing the users of copyrighted materials have supported a similar prohibition in Canada, to facilitate direct negotiations between creators and users. The submission emphasized that the regulatory jurisdiction of the proposed Copyright Tribunal should be clearly defined. This would ensure that the Combines Investigation Act remains applicable to aspects of the societies' activities that are not subject to active regulation by the Tribunal.

On June 18, 1985, the Director appeared before the House of Commons' Subcommittee and responded to several questions. Regarding mergers he indicated it would be reviewed in light of the possible efficiencies resulting from reduced transaction costs as well as the apparent anti-competitive effects.

Outcome: Consistent with the Director's suggestion, the Subcommittee Report recommended that the jurisdiction of the agency to regulate copyright societies be limited to approving the societies' rates. Other recommendations substantially increased protection for copyright holders, including expansion of the range of rights attached to copyrighted works and extension of copyright protection to new types of works. Prohibition of exclusive licensing arrangements between copyright societies and their members was not recommended.

5. ANALYSES OF INTERVENTIONS

```
$$$$$$$$$$
$
$$$$$$$$$$
         $
$$$$$$$$$$
```

5. ANALYSES OF INTERVENTIONS

The purpose of this analyses is not very dissimilar from abstract algebra - to systematize and generalize wherever possible. Rather than study each new situation in isolation, it is better to recognize it as an example of a particular kind of situation. Then a body of knowledge can be applied to it, and its similarities and differences from other situations of the same type can be examined. Perhaps the most important reason is to unify the basic issues in the various interventions in the different sectors. This analyses proceeds in the following manner. First, the formal interventions will be classified using various criteria. Second, the informal representations will be classified. Third, an attempt will be made to briefly describe an economic model and to apply informally an economic model to the major issues classified to see if it enables one to determine the benefits to be obtained from the intervention. Fourth, the overall effectiveness of the interventions will be roughly measured using the decision of the regulatory body.

a. Classification of Formal Interventions

The formal interventions for the period 1976-1986 are classified by the major sectors, transport, communications, and other. Interventions in each sector are further categorized into the various markets, for example air, rail, etc. These are further classified by the major issue in the interventions, for instance, licence application, merger, etc. Since in some interventions more than one issue may arise, for classification purposes however, only the most significant one is used.

For the period under consideration there were a total of 70 formal interventions, 31 were in transport, 28 in communications and 11 in other sectors. In the transport sector the interventions in air, trucking, rail, shipping and busing were 18, 5, 5, 2 and 1 respectively. In communications, the interventions in the markets of telephone, telecommunications across Canada (CNCP Telecommunictions), domestic satellite (Telesat-Canada), Cable television systems, mobile radio and radio paging services (radio common carriers), and cellular common carriers were 12, 2, 4, 6, 4 and 0, respectively (see Table 1). In the other sector, 2 interventions were in agriculture, 3 were in resources and six interventions pertained to international markets (See Table 1). From the standpoint of the analyses, the issue by which the intervention is classified is the most-significant. In transport for the period under consideration there were 21 interventions regarding licence applications for new services, amendment to services, etc., 5 merger applications and 5 interventions pertaining to general issues

(regulations, rebates, etc.). In communications there were 7 interventions pertaining to rate and tariff applications, 8 pertaining to access and licence issues, 3 regarding mergers and agreements, and 10 addressing general issues (regulations, cross subsidization, etc.) (see Table 1). With respect to the other sector, the issue in 5 interventions concerned the impact of dumping/imports, the issue in two interventions in the agricultural sector pertained to the effect of supply-management powers, two interventions examined tariff protection one intervention was concerned with rate application and one with space apportionment (See Table 1A).

On aggregating the sectors, the major issue by which the interventions can be classified are licence and access (29), rate (8), merger (8), dumping/imports (5), supply-management (2), tariff protection (2), space apportionment (1) and general (15) (See Table 2). From this last category (general) the most important issues pertained to regulations (5) and cross-subsidization (3).

TABLE 1

FORMAL INTERVENTIONS 1976-1986

TRANSPORT	COMMUNICATIONS	OTHER	TOTAL
31	28	11	70

TRANSPORT 1976-1986

ISSUE	AIR	TRUCKING	RAIL	SHIPPING	BUS	TOTAL
Licence App	16	4			1	21
Merger	2	1	1	1		5
General			4	1		5
	18	5	5	2	1	31

COMMUNICATIONS 1976-1986

ISSUE	TELE-PHONE	CNCP TELECOM	TELESAT SATELLITE	CABLE TELEVISION	RADIO COMMON CARR.	CELLULAR COMMON CARR.	TOTAL
Rate Inc. App	5			1			6
Tariff App.					1		1
Access App.	1	2			2		5
Licence App.				2	1		3
Agreement			2				2
Merger	1						1
General	5		2	3			10
	12	2	4	6	4		28

TABLE 1A

OTHER 1976-1986

ISSUE	AGRICULTURE	RESOURCE	INTERNATIONAL	TOTAL
Supply-Management	2			2
Dumping/Imports		0/1	2/2	5
Tariff Protection			2	2
Rate Application		1		1
Space Apportionment		1		1
	2	3	6	11

TABLE 2

FORMAL INTERVENTIONS BY ISSUE 1976-1986

ISSUE	TRANSPORT	COMMUNICATIONS	OTHERS	TOTAL
Rate Application		7	1	8
Licence & Access App.	21	8		29
Merger	5	3		8
Supply Management			2	2
Dumping/Imports			5	5
Tariff/ Protection			2	2
Space Apportionment			1	1
General (Including Regulation and Policy)	5	10		15
	31	28	11	70

TABLE 3

FORMAL INTERVENTIONS TO BOARDS, COMMISSIONS AND TRIBUNAL 1976-1986

ISSUE	TRANSPORT	COMMUNICATIONS	OTHERS	TOTAL
C.T. Commission	25			25
C.R.T. Commission		28		28
Federal Board /Tribunal			6/3	9
Federal Marketing Agency			2	2
Provincial Motor Trans. Board	6			6
	31	28	11	70

Another way of classifying the interventions though not useful for this analysis is according to the bodies to whom they are submitted. Fifty-three interventions were submitted to Commissions, 12/3 were made to Federal boards/Tribunals and 2 were presented to Federal Marketing Agencies (See Table 3 for a further breakdown).

b. Classification of Informal Representations

The informal representations (48) for the period 1976-1986 are classified as previously into the major sectors, by issue and according to the type of regulatory body. The details can be seen in Table 4. The major issues by which the informal representations can be classified are regulations (16), policy (11), access/interconnection (8), rate (4), fee/price setting (4), supply-management (3) and general (2) (see Table 5). The informal representations to federal and provincial boards are shown in Table 6.

The total formal and informal interventions (118) are aggregrated by issue (See Table 7). The most important issues are licence and access (36), regulations (21) rate (13), policy (13), general (10), merger (8) supply-management (5), dumping/imports (5), and fee/price setting (4).

TABLE 4

INFORMAL REPRESENTATIONS 1976-1986

TRANSPORT	COMMUNICATIONS	OTHER	TOTAL
14	14	20	48

TRANSPORT 1976-1986

ISSUE	AIR	TRUCKING	RAIL	SHIPPING	BUS	TOTAL
Regulations	5	3			1	9
Policy	4	1				5
	9	4			1	14

COMMUNICATIONS 1976-1986

ISSUE	TELEPHONE	TELESAT SATELLITE	CABLE TELEVISION	RADIO COMMON CARR.	CELLULAR COMM. CARR.	TOTAL
Access App.	6					6
Tariff App.	1			4		5
General		1		2		3
	7	1		6		14

OTHER 1976-1986

ISSUE	AGRICULTURE	FINANCIAL	GENERAL	TOTAL
Regulations		3	4	7
Policy		3	2	5
Fee/Price Setting		2	2	4
Supply- Management	3			3
Additional Services		1		1
	3	9	8	20

TABLE 5

INFORMAL REPRESENTATIONS BY ISSUE 1976-1986

ISSUE	TRANSPORT	COMMUNICATIONS	OTHER	TOTAL
Regulation	9		7	16
Policy	5	1	5	11
Access App.		6	1	7
Rate App.		5		5
Fee/Price Setting			4	4
Supply Management			3	3
General		2		2
	14	14	20	48

TABLE 6

INFORMAL REPRESENTATIONS TO FEDERAL AND PROVINCIAL BOARDS 1976-1986

	ISSUE	TRANSPORT	COMMUNICATIONS	OTHER	TOTAL
FEDERAL	Commission/adhoc Comm.	6		2	8
	Standing Committee/Senate	3		2/1	6
	Federal Marketing Agency			1	1
	Committee	1			1
	Dept. of Communications		2		2
PROVINCIAL	Boards/Régie		13/1	/2	16
	Commissions		2	6	8
	Government	2		2	4
	Committee			2	2
		12	18	18	48

TABLE 7

FORMAL INTERVENTIONS AND INFORMAL REPRESENTATIONS BY ISSUE 1976-1986

ISSUE	TRANSPORT	COMMUNICATIONS	OTHER	TOTAL
Rate Application		12	1	13
Licence & Access App.	21	14	1	36
Merger	5	3		8
Supply Management			5	5
Dumping/Imports			5	5
Tariff Protection			2	2
Fee/Price Setting			4	4
Space Apportionment			1	1
Regulation	12	2	7	21
Policy	5	3	5	13
General	2	8		10
	45	42	31	118

c. Analyses of Formal Interventions and Informal Representations Using an Economic Model

Before applying an economic model to the major issues in formal interventions and informal representations, perhaps it would be best to briefly describe the economic model. Alternatively, as in the majority of texts one could examine each industry in isolation and apply a tailored economic model to more appropriately fit the situation. The approach used here is more aggregative and is more generally concerned with the consequences of the interventions and representations.

A fundamental concept in economic analyses is efficiency, from the standpoint of society, given the distribution of income, an efficient allocation of resources requires that net social benefits (i.e. total social benefits minus total social cost[1]) from the consumption of goods and services be at a maximum. The maximization of net social benefits will occur when marginal social benefits (MSB) = marginal social costs (MSC) (marginal being defined as a change resulting from a change in an additional unit).

From the standpoint of individual consumption, an optimal position is reached by maximizing net private benefits. Just as for society as a whole, net private benefits will be at a maximum when marginal private benefits (MPB) = marginal private cost (MPC)[2]. Private and social costs and benefits are not necessarily equal.

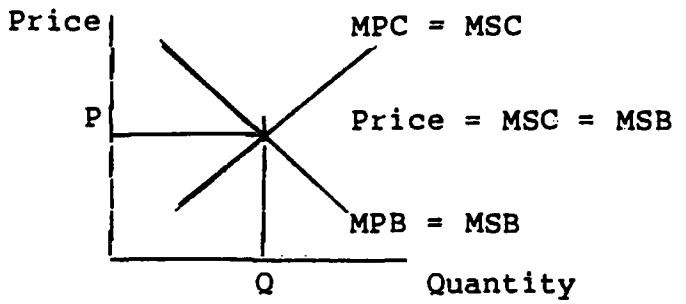
Under most conditions, MPB and MPC schedules are equivalent to demand and supply schedules. MPC is equivalent to the price that the consumer pays for the goods, and thus in order to maximize private benefits, an individual will purchase units of the goods where MPB = price.

---

1. Total social benefits are defined as the sum of all individual increments of satisfaction (benefits) enjoyed by members of a society. The total social cost of producing additional units of one commodity is equal to the amount of satisfaction that is foregone because less of another commodity is produced.

2. MPB is defined as the benefit which accrues to the individual consuming the good or service, and MPC as the cost incurred by the consumer or producer in the production of the good or service.

As stated earlier, the efficient allocation of resources requires that MSB = MSC. If MPB = MSB and MPC = MSC in every market, the market-determined allocation of resources will be an efficient allocation. Marginal social cost pricing is a necessary condition for obtaining an efficient allocation of resources. If all markets are perfectly competitive, the market mechanism will automatically generate prices such that price = MSC = MSB (a result referred to as a Pareto optimal allocation of resources).3 This is illustrated in the following diagram.



There are three distinct sets of circumstances under which the market mechanism will not lead to an efficient allocation of resources: 1. Monopoly Power, 2. Decreasing Longrun costs, and 3. Missing markets (externalities). When a market fails, price does not reflect real marginal social costs or benefits. Market failure causes private [i.e. individual] costs and benefits and social costs and benefits to diverge. The inability of markets to allocate resources efficiently provided a rationale for government-intervention.

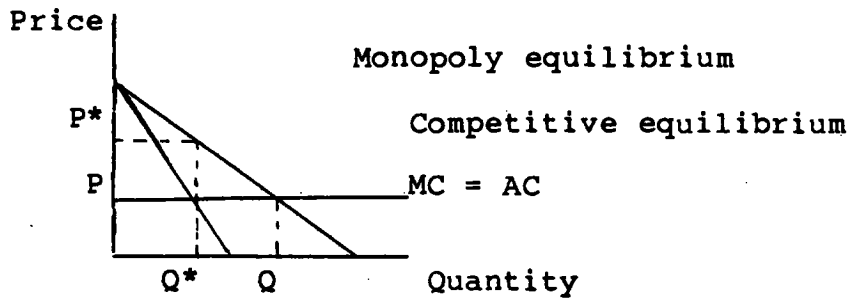
1. Monopoly Power

The efficient allocation of resources from the standpoint of production requires that price = marginal revenue (MR) = marginal cost (MC). This will not occur

---

3. It should be pointed out that the theory of the second best, provides a general caveat about regulation aimed at allocative efficiency. It indicates that Pareto optimal conditions define welfare-maximizing conditions only when they are applicable to all economic activities. "This makes decisions about regulation much less straightforward since good judgement about complicated circumstances rather than formally demonstrable optimal conditions must be relied upon in deciding what to regulate, how to regulate and what the resulting social benefit wil be." Promoting Competition in Regulated Markets A. Phillips. ed. The Brookings Institution/Washington, D.C., 1975, pp. 5-6.

where there is monopoly power, since the monopolists profit maximizing output and price do not satisfy the above. In the case of a competitive industry, the intersection of the supply curve (MC = AC -- average cost) with the aggregate market demand curve yields a welfare maximizing output (see diagram) (at this price and quantity, the marginal social cost is equal to the marginal social benefit).



From the above diagram, it is clear that the competitive output is larger and price lower than that which would have prevailed under monopolistic production. Further performance is also superior.[4] Consumer surplus (i.e. traingle above P) is also smaller under monopolistic production, because of the deadweight welfare loss (shaded area) caused by misallocation of resources because price is above marginal cost, and transfer of income from consumers to producers (i.e. triangle above P*). Welfare would therefore be increased under competitive production. From the dynamic view, the true deadweight-welfare loss is understated, because the lack of competition may lead production costs to rise above their competitive costs because of various reasons: a. X inefficiency, b. money spent on retaining monopoly power, c. extraction by factors of production of higher payments.

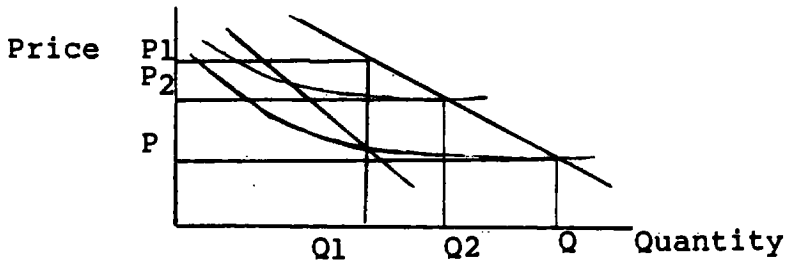
Market power can only exist in the longrun in the presence of barriers to entry, for example absolute unit cost differences, economies of scale, capital cost, product differentiation, legal barriers, etc.

---

4. Measured variously by the height of price relative to the average cost, relative efficiency of plant (compared to the most efficient) and excess capacity, size of sales-promotion costs relative to the costs of production, character of product (choice, quality and variety), and rate of progressiveness (technological change, innovation and diffusion).

2. Decreasing Long-run Costs (Natural Monopoly Situation)

An economically efficient allocation of resources requires that producer's undertake production where Price = MC. However, with decreasing long-run costs[5], a profit maximizing producer would not operate at this point, since price would be below long run average cost [LRAC] (see diagram) and in consequence the firm would suffer a loss. A profit maximizing producer would set price where MR = MC. In this case economic welfare is not maximized because price is greater than MC, and output is below the efficient level.



The essential problem is how to force the firm to produce a socially optimal level of output. One should not force the firm to produce where price equals LRAC, because 1. output is socially suboptimal, and 2. price will be suboptimal, further also actual price will be higher and output lower, because of X inefficiency, Averch-Johnson effects, etc. Efficient regulation of decreasing cost industries will require the introduction of a two-part pricing scheme. The price per unit must be set equal to MC, and the resulting deficit must be met from a fixed charge imposed on users.

Market failure can also arise when a single producer is able to supply a number of different products more efficiently than can a number of firms. The basis for declining costs in the case of multi product firm is that complementarities in production lead to large shared or common costs. In the case of a multiproduct "natural monopoly", policies directed at obtaining an efficient allocation of resources have focused on "Ramsey prices".

3. Externalities (Missing Markets)

Perfect competition will fail to ensure an

---

5. In order for a natural monopoly (decreasing long run cost) situation to occur, it must be shown that: 1. Fixed costs must be equal to a large percentage of total costs, 2. Fixed capital assets must have a very long life and be highly indivisible, and 3. The production process must give rise to very large economics of scale. See: Kahn, A.F., The Economics of Regulation, (New York, J. Wiley) 1971.

efficient allocation of resources if externalities are present. When an activity undertaken by members of society leads to an effect (beneficial or harmful) that is unpriced, externalities arise. One of the necessary conditions for the existence of a market is that individuals who do not pay for a good or service must be excluded from consuming it. In the case of externalities, excludability is absent, and thus the market is not able to function. The individual economic agent will choose to produce or consume where the private marginal cost of the activity is equal to the private marginal benefit. The efficient allocation of resources requires, however, that the social marginal cost be equated with the social marginal benefit. The externality cannot be internalized into the price system.

Having described the basic model, it can be applied to the majority of the basic issues in the interventions.

1. Licence Applications and Access Applications (36)

Before intervening in licence and access applications a careful micro analyses of the market or submarket concerned is undertaken. The interventions then generally proceed along the lines suggested by the basic model indicating that the market mechanism will not lead to an efficient allocation of resources and stressing some of the implications that flow as they apply to a particular situation. This does not imply that an economic model is used in every application, but rather the implications of the economic model are behind the intentions of all interventions.

First, the existence of a monopoly or near monopoly situation in a particular market is established. The benefits to be derived from competition as a result of entry of new or established firms are then derived. Basically emphasis has been placed on lower prices, increased output, increased variety of outputs, rate of progressiveness, improved allocation of resources, etc. all of which are predicted by the economic model. The above arguments may be further supported by showing that the demand curve is elastic or there is shipper support and the market is not fragile so as to lead to destructive competition.

Second, in certain markets, those characterized as a natural monopoly, a body of empirical work is referred to showing that the market is not subject to market failure because of decreasing long run costs. If economies of scale are indeed significant, the argument generally proceeds by showing that natural monopoly situation is not sufficient to justify entry regulation as (1) the scale economies that create the natural monopoly are largely exhausted at volumes

that allow for more than one firm; (2) regulation is unable to limit the exploitation of market power; (3) there are other remedies that are more effective than regulations (the existence of potential or actual entrants may well provide a discipline superior to regulation, or the direct costs of regulation may be as large as the potential costs to consumers because of the loss of scale economies under competition), and (4) the emergence of new technologies is eroding the natural monopoly position.

Third, the inefficiency of the existing situation may be shown because of entry regulation and licence restrictions. As a result prices are higher and the cost curve (MSC) is higher. Emphasis in the interventions is then placed on increased output, lower prices, lower costs, increased variety of outputs, improved allocation of resources, etc. all these results are predicted by the basic economic model.

After reviewing some or all of the three ingredients mentioned above, the interventions then proceed to indicate that the Public Convenience and Necessity test or the Public Interest criteria as required by the respective statutes are accordingly satisfied, and the granting of the application would be beneficial.

2. Rate Applications (13)

Rate application interventions have examined a number of issues - price comparison tests (i.e. intercompany transfer prices), procurement policies, rate of return, rate indexing to consumer price index, costing methodology, contribution test, structure of rates between different services, reasonableness of bulk rate discounts, rates having a discriminatory effect, etc. Twelve of the thirteen rate application interventions were in communications. Though the general equilibrium model as stated is extremely aggregrative, the underlying principles can be applied to many of the problems.

".. the key principle which emerges from these cases is that where a telecommunications carrier is planning to provide a service, such as radio paging service, to the public in competition with other suppliers, and where the carrier enjoys a monopoly over a fundamental service required by its competitors, extreme care must be taken to ensure that the rate set for the fundamental service is set in a non-discriminatory manner employing a costing methodology that applies equally to the carrier and its competitors... If the telephone company were to charge itself less for this monopoly service than it charges the radio common carriers', it would be giving itself an undue

competitive advantage.[6] The Federal Communications Commission of the U.S. in the Guardband case (1968) 12 FCC (2d) 841, stated: "... We are not in any way addressing ourselves to the level of the charges, prescribing any particular level or pattern of rates, or otherwise partaking in the ratemaking process which is and will remain the function of the appropriate authorities in the particular jurisdiction where the services are to be provided. As already stated, we are concerned only that the wireline carrier shall fix the costs and charges to the nonwireline carriers on the identical basis, for the same components when each makes a one-way signaling offering in the same community, as its own."

The regulation of air fares is described in **Air Transport Committee Policies and Practices in the Regulation of Air Fares.** "The concept of basing the economy fare on a formula was first introduced by Air Canada in 1970. The Air Canada formula consisted of a fixed charge to reflect the carrier's terminal costs, plus a mileage charge which was proportional to the distance flown... It will be readily apparent that a fare constructed by a formula is an average fare and may not represent the true cost of serving a route segment...In spite of the foregoing drawbacks, the Committee has accepted the concept of fare formula as a practical approach to the determination of domestic economy fares for two basic reasons: firstly, it establishes a certain equitability in the pricing of economy air fares by directly relating price to distance travelled, e.g. the greater the distance, the higher the fare; and secondly, it results in fares that are commensurate with the average cost of operation...it is not within the Committee's mandate to judge whether the costs are at the lowest possible level that could be achieved. The Committee has accepted investment decisions such as those leading to fleet composition and overall capacity as management prerogatives..."[7]

Emphasis in the interventions is then placed on increased output, lower prices, lower costs (x-inefficiency, Averch-Johnson effects, etc.), improved allocation of resources, etc. all those results are predicted by the basic model." Further, to ensure that the practice is not unduly preferential or unjustly discriminatory, appropriate costing methodologies, undundling of rates, etc. have been emphasized.

---

6. Evidence of Charles M. Dalfen, submitted by the Director of Investigation and Research, Combines Investigation Act before the Alberta Board of Commissioners of Public Utilities, the matter of application by A.G.T to the P.U.B. for an Order approving charges and the existing rates, tolls or charges of A.G.T.
7. Op. cited above, pp. 13-15.

3. Merger Applications (8)

The economic model can also be used to examine the effects of horizontal mergers.[8] An analyses of the individual markets[9] is undertaken first, and the interventions generally proceed along the lines suggested i.e. the market mechanism would lead to market failure.

First, the creation of a monopoly or near monopoly situation in a particular market is established. The potential harm[10] is then emphasized in the form of higher prices, reduced output and variety of output; other dimensions of performance, like the impact on competing technologies, profitability, etc. all of which are implied by the economic model. Other courses of action are sometimes suggested such as favouring alternative purchasers or providing for special conditions or undertakings in the agreement - for instance trackage rights, competitive access, disposing of sub-markets that are monopolies, ban on additional future mergers, etc. - to enhance competition.

After reviewing the potential danger of the merger, the interventions have thus atempted to show that the merger would unduly limit competition or be prejudicial

---

8. The model also applies to vertical mergers, as Pareto optimality requires optimal allocation of several inputs and an optimal price system. Vertical mergers can lead to foreclosure and higher input prices to competitors than would have prevailed under competitive market conditions.

9. Several factors are considered, a list of which was first provided by D.H. Henry, in Notes for an address to the Montreal Economic Association: 17 October, 1961 (mimeo), pp. 14-15.

10. A vast empirical literature has demonstrated a positive statistical relationship between measures of industry structure, such as entry barriers and concentration, and average industry profit using cross section data. In the Xidex Corporation acquisitions of Scott Graphics and Kalvar Corporation, it was shown that prices in each affected product line were found to increase after the acquisition which yielded substantial profit gains, sufficient to recover the cost of the acquisition in about two years. See "The Price and Profit Effects of Horizontal Merger: A Case Study", D.M. Barton and R. Sherman, J.I.E., pp. 165-177.

to the public interest as required by the respective statutes. If the intervention supported the merger (two instances), it emphasized the benefits and synergies to be derived form enhancing competition brought on by the merger.

4. Supply Management Interventions (5)

Supply Management and/or price-setting issues have occurred in the Agricultural sector where a Marketing Council has attempted to determine the optimum level of output and determine the cost of production formula.

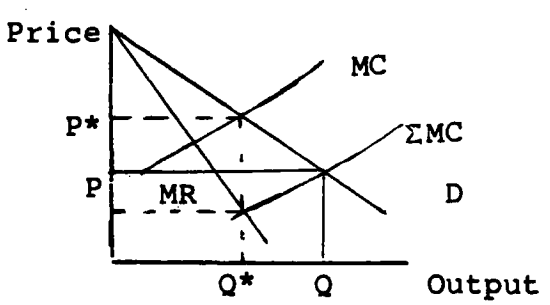
The model[11] suggests the formation of a cartel leads to reduced output, raises prices and causes income distribution issues. Further, the attachment of values to quotas eventually leads to increases in costs. The use of cost of production formula based on estimates not necessarily designed to exclude all the inefficient producers leads to other distortions.

5. Cross-Subsidization/Costing Methodologies (5)

Cross-subsidization generally involves the presence of monopoly power in at least one market. Without

---

11. Assuming competitive behaviour output and price are determined at P and Q. With the formation of the cartel assuming joint profit maximization, output and price are Q* and P*. The difficulty of determining the optimum level of output is self-evident if the exact MC is not known.



being repetitious, interventions on this issue12 are first concerned with some of the consequences of monopoly power, but primarily with the use of that monopoly power in competitive markets for predatory purposes, inhibiting the entry or expansion of new or existing firms with its consequences on output, prices, technologies, etc. Further, a major problem has been to detect such activity, leading to the demand for appropriate costing methodologies or separation of companies or divisions, rate unbundling and rate balancing. The economic model can be used to examine the effect of cross-subsidization.

6. Regulations (21)

The economic model can also be used to examine effects of the changes proposed in representations concerning regulations.

The most important regulatory changes restricting competition that have been denounced in interventions in transport deal with removing entry control and rate control. To promote competition in various transportation modes that may be subject to natural monopoly, regulations pertaining to competitive access, running rights, interswitching, competitive line rates, etc. have been proposed. Representations in transport have also proposed the removal of regulations affecting costs, for example, removal of licence restrictions, operating restrictions, rail-line abandonment, filing requirements, etc.

In the financial sector, the regulatory changes proposed in representations advocate promoting competition by removing regulations that have restricted entry (diversification of existing firms and foreign entry), competitive determination of brokerage rates, etc. and suggesting ways of dealing with abuses of self-dealing and conflict of interest.

---

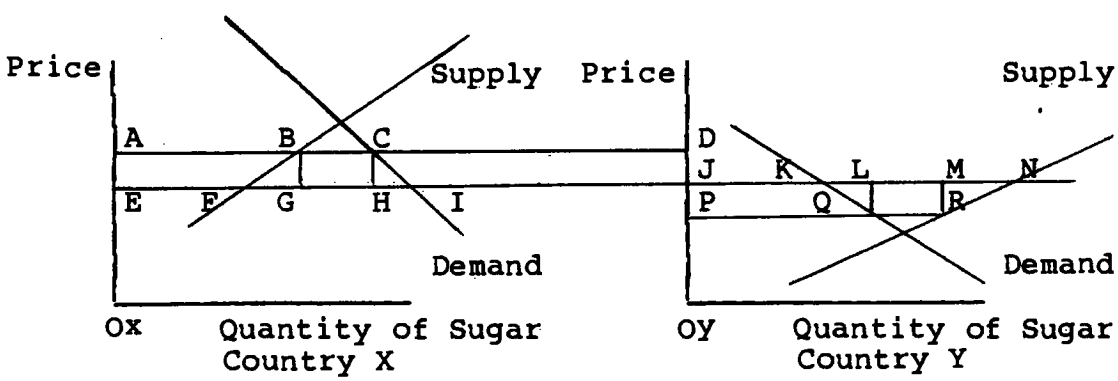
12. Other variants of the cross-subsidization argument is the need for taxation by regulation (cross-subsidizing profitable with an unprofitable routes) which is considered to be inefficient primarily because it leads to a higher level of costs. Possibly, additional cases could arise if there are missing markets (externalities) where SMC is below PMC, or cases where the secondary market is subject to economies of scale and cross-subsidization will increase output in that market, leading to further scale economies.

In other sectors, representations have proposed removing regulations that have restricted competition for example, proposed fee schedules, advertising, etc. Representations have also proposed enhancing competition by proposing amendments to statutes so as to provide for compulsory licencing, prohibition of copyright societies engaging in exclusive licencing arrangements, etc.

Generally, the approach in representation has been to remove statutes/regulations that restrict competition, reduce efficiency or increase cost, to amend statutes or regulations to promote competition, and to oppose proposed regulations that reduce competition.

7. Tariff and Import Quota Applications (7)

The issues pertaining to the imposition or raising of tariffs and import quotas can be analysed within the context of an open economic model (i.e. a model with international trade). The economic model used previously was a closed economic model, nevertheless the effects of a tariff or quota can be examined as follows: given international trade between two countries X and Y, the equilibrium price (when imports of country X equal exports of country Y) EO^x (=JOY) is shown in the figure.



Suppose country X imposes a tariff DP on her sugar imports from country Y, the price of sugar in country X increases to AO^x, and the price in country Y decreases to POY (prices are in equilibrium when imports equals exports). Since, we are only concerned with country X (i.e. the importing country) the tariff will increase price and consequently imports are reduced. The detrimental effect of a tariff are particularly emphasized when the imports form a major source of competition to industries that are monopolized or highly concentrated. Several other effects can be examined in terms of the above diagram, the reduced consumption of sugar (EI to AC), redistribution of consumer surplus from consumers to producers (ABFE), increased production (EF to AB) and a change in government receipts (BC). The magnitude of the effects described depends on the

size of the tariffs, as well as the elasticities of the supply and demand curves. Similarly, one can examine the effects of imposing quotas.

Free international trade will make it possible for the country as a whole to achieve a higher level of welfare than can be achieved under autarky.

d. Effectiveness of Interventions by the Bureau of Competition Policy

The effectiveness of interventions can be measured possibly in several ways, perhaps the simplest measure is to use the decision of the regulatory body. This does not imply that the simplest measure is necessarily the best, the impact of the Bureau of Competition Policy on future regulatory proceedings and future industry expectation, the general impression created by the Bureau of Competition Policy, arguments won on appearing, etc. are dimensions of effectiveness that cannot be easily quantified.

DECISIONS OF THE REGULATORY AGENCIES IN FORMAL INTERVENTIONS 1976-1986

SECTOR		FAVOURABLE	PARTIALLY FAVOURABLE	UNFAVOURABLE	WITHDRAWN
Transport	31	23	2	5	1
Communications	28	16	4	8	
Other	11	6	2	3	
TOTAL	70	45	8*	16**	1#

The decisions of the regulatory body (or body appealed to) have been classified as 1. favourable, 2. partially favourable, and 3. unfavourable. The partially

---

* The decisions to the following formal interventions were classified as partially unfavourable: 5, 9, 10, 12, 20, 29, 32 and 38.

** The decisions to the following formal interventions were classified as unfavourable: 1, 2, 3, 11, 14, 21, 31, 37, 39, 48, 51, 53, 54, 56, 57, and 70.

\# The formal intervention withdrawn was 30.
All other decisions to the formal interventions were favourable. The numbers refer to the formal interventions in Appendix 1.

unfavourable decision lumps together decisions where some of the major arguments and issues put forward by the Bureau of Competition Policy were accepted, but on overall balance the decision was unfavourable.

The table above indicates that from the total of 70 formal interventions, 45 (or 65.2 percent) were favourable, 8 (or 11.6 percent) were partially favourable and 16 (or 23.2 percent) were unfavourable. One intervention was withdrawn during the course of the proceedings. If one excludes, the withdrawn intervention and one gives partially favourable decisions a weight of fifty percent 49 (or 71 percent) of the interventions can be considered favourable. On a sectoral basis transport interventions have been more effective than interventions in the communications sector, this does not take into consideration that interventions in communications initially may have been more complex. Interventions in air transport have been mainly responsible for the effectiveness of the interventions in the transport sector. It should also be pointed that many of the unfavourable or partially favourable decisons were with regard to the initial interventions* or initial interventions in a particular sector**, indicating that the Bureau of Competition Policy's success and effectiveness grew with its experience. It has also been observed that interventions opposing mergers*** were not effective.

On an overall basis one can conclude that the Bureau of Competition Policy's formal interventions have been generally **effective** . Consequently it has so far succeeded in fulfilling the Minister's intention in the creation of the Regulated Branch, and the reason for the 1976 amendment to the Combines Investigation Act.

Before concluding this report, perhaps mention should be made of the anticipated future developments requiring intervention. Government involvement in the regulated sector in Canada has basically taken the form of a. entry control, b. rate control, c. crown corporation activities, and d. subsidization. Consequently, with the completion of regulatory reform pertaining to entry and rate control one can anticipate future developments in Transport, and Communications requiring interventions as:

---

* Of the first 12 interventions, 8 decisions fell into the partially favourable and unfavourable category.

** Of the first 4 interventions in trucking and busing, 3 decisions were unfavourable.

*** Of the 8 merger interventions, 5 interventions were against the merger application of which five decisions were unfavourable or partially favourable.

1. Transport:
   - Regulations to the new National Transportation Act, 1987, e.g. Interswitching regulations in rail, regulations pertaining to courier operations, regulations pertaining to coasting trade, etc.
   - Provincial Trucking Legislation under review.
   - Subsectors in transport not deregulated, e.g. international markets, northern Canada, etc.
   - Privatization of Corwn corporations, e.g. Air Canada, CNR, etc.
   - Subsidization/Cost Recovery e.g. Airports, seaway authority, ports, etc.
   - Free trade.

2. Communications:
   - Regulations pertaining to the Reorganization of the Bell Canada Act, and the amended CRTC Act, the Broadcasting and Radio Act
   - Department of Communications Policy Review
   - Rate balancing, System Interconnection, Terminal Attachment, Interexchange Competition (IX) Case, Cost Inquiry for setting price levels, Costing Metholodogy to prevent cross subsidization, etc.
   - Privatization, e.g. Teleglobe.

Apart from these transitory events caused by the Regulatory reform programme, interventions will, apart from being in accordance with the statute, be in areas that are not deregulated and where substantial monopoly power exists. In addition, interventions will depend upon the importance of the sector, inefficiency of the existing situation, the ability to influence the industrial sector via policy, its impact, political and other considerations, complaints, etc.

Annex 1

EFFECTIVENESS OF REPRESENTATIONS BY THE BUREAU OF COMPETITION POLICY

DECISIONS OF THE REGULATORY AGENCIES IN INFORMAL REPRESENTATIONS 1976-1986

SECTOR		FAVOURABLE	PARTIALLY FAVOURABLE	UNFAVOURABLE	WITHDRAWN
Transport	14	6	4	2	2
Communication	14	5	4	2	3
Other	20	10	3	6	1
TOTAL	48	21	11*	10**	6#

The decision of the regulatory body have been classified as 1. favourable, 2. partially favourable, and 3. unfavourable. The partially unfavourable decision lumps together decisions where some of the major arguments and issues put forward by the Bureau of Competition Policy were accepted, but on overall balance the decision was unfavourable.

The table indicates that from the total of 48 representations 21 or 43.7 percent were favourable, 11 or 22.9 percent were partially favourable and 10 or 20.8 percent were unfavourable. Six interventions were grouped together as withdrawn not submitted and interventions to which decisions have not been rendered. Excluding this last

---

* The decisions to the following representations were classified as partially unfavourable: 4, 12, 21, 25, 27, 28, 29, 32, 34, 39 and 47.

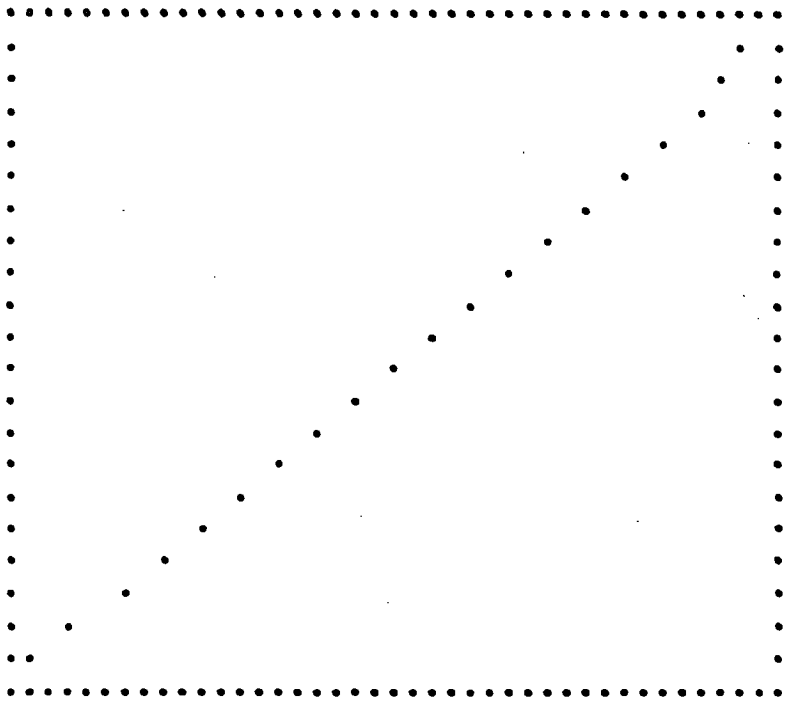
** The decisions to the following representations were classified as unfavourable: 1, 2, 13, 16, 17, 19, 22, 23, 24, and 33.

\# The following representations were withdrawn, not submitted, and decisions which are pending: 10 and 18; 14 ; and 40, 42, and 46. All other decisions to the representations were favourable. The numbers refer to the representation in Appendix 1.

category and giving a 50 percent weight to partially favourable decisions 63 percent of the decisions can be considered to be favourable.

Though the overall success of formal interventions are higher than informal interventions, these latter representations can also be considered to be generally effective .

Appendix 1



Appendix 1

Formal Representations under section 27.1 of the C.I.A.*

1976-1977

1. Canadian Transport Commission.
2. Telesat Canada, Proposed Agreement with Trans-Canada Telephone System.
3. Bell Canada Rate Application, April 1977.[x]

1977-1978

4. Air Canada proposed acquisition of Nordair Ltd.
5. Bell Rate Application, 1978.
6. CNCP Telecommunications application for Access to Bell Canada System for Telecommunication Traffic.[¢].
7. Challenge Communications Ltd. vs. Bell Canada.
8. Colins Inc. vs. Bell Canada.[#].

1979-1980

9. Bell Canada and British Columbia Telephone Company Applications for Approval of Increases in Rates for Services Provided by the Members of the Trans-Canada Telephone System (TCTS).
10. Bell Canada, Connection of Customer Provided Terminal Devices.
11. British Columbia Telephone Company Proposed Acquisition of GTE Automatic Electric (Canada) Limited and Microtel Pacific Research Limited.

1980-1981

12. Bell Canada, General Rate Increase, 1981.
13. Bell Canada, General Increase in Rates, 1980: Northern Telecom Price Comparisons Tests.
14. Tariff Board Reference 159 - Modification of the Value for Duty Provisions of the Customs Act.[¢].
15. National Farm Products Marketing Council, consideration of a proposal to establish a Potato Marketing Agency for Eastern Canada.
16. Tariff Board 158 - General Preferential Tariff Extensions and Reductions.[¢]

1981-1982

17. Canadian Transport Commission-Shipping Conference Exemption Act.[c]
18. Pay Television.
19. CRTC Telecom Cost Inquiry - Phase III - Costing of Existing Services.
20. Tariff Board Reference 157 - Tariff Items Covering Goods Made/Not Made in Canada, Phase 1.

1982-1983

21. Legan Bus Lines, Edmonton.[#]
22. Radio Common Carrier Interconnection with Federally Regulated Telephone Companies.
23. Bell Canada Corporate Reorganization.

1983-1984

24. Federal Express - Application to Amend its Commercial Air Services Licence.[¢]
25. Air Ontario Ltd. - Application for Scheduled Passenger Service, Sudbury and North Bay, Ontario.
26. Air Ontario Ltd. - Application for Scheduled Passenger Servce, Hartford, Connecticut.
27. Voyageur Airways - Application for Scheduled Passenger service between Toronto Island Airport and Windsor, Ontario.
28. Kelowana Flightcraft Air Charter Limited - Application for Scheduled Passenger Service.
29. Review of proposed Canadian National Acquisition of an Interest in Cast Container Group.[¢]
30. Review of Canadian National's payments of Rebates to the Cast Container Group.
31. Canada Southern Railway.
32. Regulations affecting Freight Interswitching between Canadian Railways.[$]
33. Pay Television.
34. Telesat Canada - Final Rates for 14/12 GHz Service: Resale and Sharing.
35. Enhanced services.
36. Services Using Vertical Blanking Interval or Subsidiary Communication Multiplex Operation.

37. Tiering of Cable Services and Universal pay Television.
38. National Energy Board Hearings on Heavy Fuel Oil.
39. Establishment of a National Agency for Broiler Type Chicken Hatching Eggs.

1984-1985

40. Austin Airways Intervention
41. Pacific Western Airlines - Application to Consolidate Licences.
42. Kelowna Flightcraft - Application to Amend its Commercial Air Services Licence.
43. Nordair - Application to serve Sudbury, Timmins and North Bay, Ontario.
44. Voyageur Airways Ltd. - Application to Consolidate Licences.
45. Eastern Provincial Airways - Application to Consolidate Licences.
46. Quebec Aviation Ltd. - Application to Consolidate Licences.
47. Staggers Rail Act of 1980. -I
48. R. McCargar Trucking Ltd. - Operating Authority Application before the Manitoba Motor Transport Board.[x]
49. Kleysen Transport.[x]
50. V.O.T. Transport Ltd.[x]
51. Hillside Auto Carrier Limited.[x]
52. Multimodal Integration.
53. Restructuring of Pay Television Industry.
54. Interexchange Competition and Related Issues.
55. British Columbia Telephone Company 1984 CRTC Construction Program Review.
56. Cable Television Rate Indexing.
57. Structural Separation of Multiline and Data Terminal Equipment.
58. National Energy Board Hearings - Review of Toll Design and Methodology of Trans Canada Pipelines Limited.$
59. Anti-dumping Tribunal - Refined Sugar.
60. Foot-wear Inquiry Intervention - The Canadian Import Tribunal.[c]

1985-1986

61. Nordair Inc. - Application to Consolidate Licences
62. Soundair Corporation (Commuter Express), Mississauga - Request to Operate Toronto to Cleveland.
63. Air Atlantic Ltd. - Application to Operate a Commercial Air Service.
64. Wardair Canada Inc. - Application to Operate Scheduled Commercial Air Service.

65. Roadway Express Ltd. - Intervention before the Ontario Highway Transport Board.[x]
66. Telesat Canada / Telecom Canada Connecting Agreement.
67. British Columbia Telephone Company - Purchasing Policy.
68. Resale of Primary Exchange Service.
69. National Energy Board - Review of the Tariffs of Interprovincial Pipe Line Limited relating to the apportionment of space among shippers on its pipeline system.
70. Canadian Import Tribunal - Surgical Tapes.

* SOURCE: Annual Reports, Director of Investigation and Research, Combines Investigation Act, March 31, 1977 - March 11, 1984, CCA, Minister of Supply and Services Canada.
&
Various Transcripts/Submissions.

\# Not recorded in Annual Report.

Note: The number of formal representations listed in each year may marginally differ from those reported in the Annual Report, Director of Investigation and Research, Combines Investigation Act, March 31, 1985, p. 15, because the basis of classification here, is the year in which the representation is reported in the annual report[¢], omissions[c] differences in opinion whether the representation is formal or not[x] and additional submissions made in the following years.$

Other Representations to Bodies dealing with Regulatory Changes*

1976-1977

1. Ontario Securities Commission.

1977-1978

2. The Professional Organizations of Ontario.[c]

1978-1979

3. Maritime Telegraph and Telephone Company Limited Application for Tariff Approval of a Voice Page Service.
4. New Brunswick Telephone Company, Limited Application for Network Extension Telephone Service.

1979-1980

5. Garden of the Gulf Motel Application for Connection of COAM PABX to Island Telephone Company Limited System.

1980-1981

6. Domestic Advance Booking Charters[x]

1981-1982

7. Standing Committee on Transportation - Domestic Air Carrier Policy.[c]
8. Domestic Air Carrier Policy, 1981.
9. Draft General Rules of the Canadian Transport Commission.
10. Ontario Telephone Service Commission (O.T.S.C.).
11. Régie des services publics du Québec (Règie).
12. Alberta Government Telephones - Terminal Attachment.
13. Newfoundland Government Telephone Company Limited - Mobile Radio and Paging Services.
14. DOC / Microwave Licensing.[##]
15. Ontario Securities Commission Hearings on Competitive Rates.
16. House of Commons Sub-Committee on Import Policy.

1982-1983

17. CTC Public Hearing into "Deep Discount" Domestic Air Fare Rules.[c]
18. New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of its General Tariff.
19. Alberta Government Telephones - Selector Level Access Rates.[##]
20. Role of Telesat Review.[##]
21. Fact Finding Inquiry into Egg Production Costs.
22. Régie des marchés agricoles du Québec - Controls on the Wholesale and Retail Prices of Milk.
23. Régie des marchés agricoles du Québec - Submission on the establishment of a marketing board for maple syrup.

1983-1984

24. CTC Review of the Economic Regulation of Commercial Air Services Using Rotary Wing Aircraft.[¢]
25. Alberta - Review of Intercity Bus and Trucking Regulation.
26. Domestic Air Fare Policy Review.[x]
27. Manitoba Review of Motor Carrier Regulations.
28. Alberta Government Telephones - 1983 Rate Application.
29. Interconnection in the Telecommunications Industry in New Brunswick.
30. Attachment of Customer-owned Terminal Equipment to the Public Switched Network in Nova Scotia.
31. Ontario Securities Commission - Review of the Role of Financial Institutions in the Brokerage Industry.
32. Ontario Energy Board Hearings Concerning Ontario Industries using Natural Gas a Feedstock.
33. Professional Engineers Act and Architects Act - Province of Ontario.

1984-1985

34. Regional Taxicab Licensing - Lower Mainland of British Columbia.[c]
35. Financial Markets: Ontario Security Policy Review.
36. Regulation of Financial Markets.
37. Section 41(4) of the Patent Act and the Government Policy in the Pharmaceutical industry.[c]
38. Royal Commission on the Economic Union and Development Prospects for Canada (MacDonald Commission).[c]

1985-1986

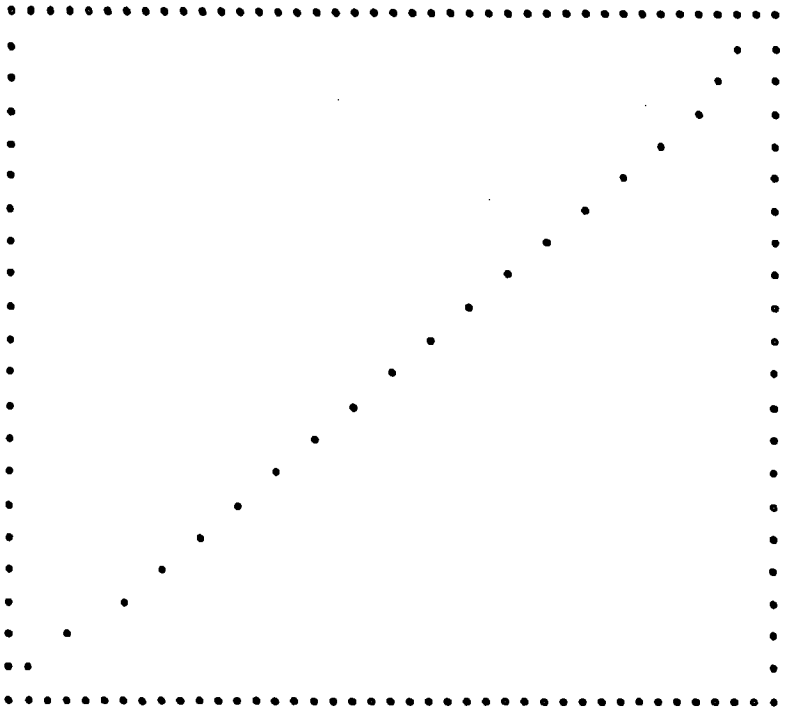
39. Prairie Provinces Joint Hearing-Trucking.
40. Proposed Regionalization of General Freight Carriers - Manitoba.
41. Freedom to Move - House of Commons Standing Committee on Transport.[x]
42. Airport Management Task Force.
43. Parliamentary Committee Hearing Concerning the Regulation of Canadian Financial Institutions.[x]
44. Regulation of Financial Markets.
45. Office des professions du Québec.
46. Corporate Defensive Tactics.
47. Revisions to Canadian Copyright Law.[x]
48. Senate - Financial Markets.

** SOURCE: Annual Reports, Director of Investigation and Research, Combines Investigation Act, March 31, 1977 - March 31, 1984, CCA, Minister of Supply and Services Canada.
&
Various Transcripts/Submissions.

Not recorded in Annual Report.

Note: The number of other representations listed in each year may marginally differ from those reported in the Annual Report, Director of Investigation and Research, Combines Investigation Act, March 31, 1985, p. 15, because the basis of classification here, is the year in which the representaton is reported in the annual report,[¢] omissions,[c] and differences in opinion whether the representation is formal or not.[x]

Appendix 2



Appendix 2*
List of Ongoing Formal Interventions and Other Representations **

1986-1987

1. House of Commons SCOT - Review of Bill C-18 and C-19.
2. Bell Canada Revenue Requirement.
3. Cellular Radio.
4. CNCP Application for Regulatory Exemption.
5. Tarrif Board - Sweetner Policy.
6. National Farm Products Marketing Council - In the Matter of an Inquiry into the Merits of Establishing a National Agency for Potatoes.
7. National Farm Products Marketing Council - Seminar on Consumer Levy.
8. National Energy Board Hearings - Pipeline Review Panel.
9. Scowan Committee.
10. Populaire Express Inc.
11. Manitoba Private Truck Hearing.
12. Newfoundland Telephone Company Ltd. - Terminal Attachment.
13. Saskatchewan Telecommunications' 1985 Net Income Study and Financial Targets.
14. Ontario Energy Board - Contract Carriage.
15. Manitoba Public Utility Board Hearings - Cost Pass Through.
16. Ontario Health Professions Legislation Review.
17. Ontario Standing Committee on Finance and Economic Affairs.

1987-1988

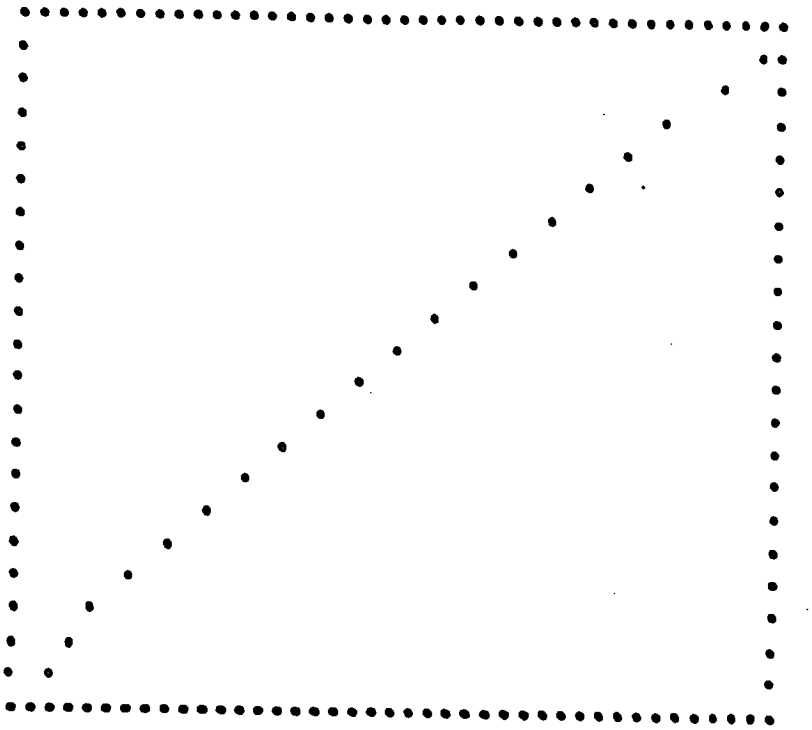
18. Canadian Import Tribunal - Hyundai Motor Company.
19. CRTC - Rate Rebalancing.
20. CNCP request to Bell Canada for Interconnection to Private Line Services.
21. Régie des services publics du Québec.
22. La Régie de l'Electricité et du Gaz - Contract Carriage.
23. National Energy Board - Distributor Self-displacement.

---

* SOURCE: Annual Reports, Director of Investigation and Research, Competition Act, March 31, 1987 - March 31, 1988, CCA, Minister of Supply and Services Canada.

** Preliminary.

Appendix 3



ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT SECTORAL STUDY ON COMPETITION POLICY AND DEREGULATION/PRIVATIZATION: TELECOMMUNICATIONS @

A. DEREGULATION

1. Introduction. Definition and concepts of deregulation.

Regulation, in the general sense, is defined as the imposition of rules by the state, backed by the threat of sanctions, with the objective of modifying or controlling economic behaviour. Logically, deregulation would be defined as the complete removal of a rule or rules from a particular economic activity. In reality, however, deregulation is commonly restricted to the reduction of economic regulation; that is, the reduced control by government or its agencies of such critical factors as prices, conditions of entry and exit and other competitive or market-related issues.

2. Description of involved sectors.

The current market configuration can be divided into seven catagories of service suppliers. They are; (i) regional and local telephone companies; (ii) CNCP Telecommunications; (iii) Telesat Canada; (iv) Teleglobe Canada; (v) cable companies; (vi) radio common carriers; and (vii) cellular common carriers. The first four catagories are included in Table 1 which identifies telecommunications carriers by territorial market base and ownership classification.

(i) Regional and Local Telephone Companies.

This category of service supplier includes the nine major regional telephone companies and more than 150 smaller systems in Canada. The nine major regional carriers are: British Columbia Telephone Co.; Alberta Government Telephones; Saskatchewan Telecommunications; Manitoba Telephone System; Bell Canada; New Brunswick Telephone Co. Ltd., Maritime Telegraph and Telephone Co.; Island Telephone Co. Ltd.; and Newfoundland Telephone Company Ltd. Examples of smaller systems include 'edmonton telephones', the Thunder Bay Telephone System, Télébec Ltée, Northwestel and Terra Nova Telecommunications. Most of these companies are majority owned by private Canadian investors except for the principal telephone companies in these Prairie provinces which are owned by the respective provincial governments.

@ Prepared by Mr. F. Ian Scott.

Table 1

MAJOR CANADIAN TELEPHONES AND TELECOMMUNICATIONS CARRIERS OWNERSHIP AND TERRITORY.

Company	Ownership	Territory
*Newfoundland Tel.Co. Ltd.	Private	Newfoundland
Terra Nova Telecommunications	Federal Crown Corporation (CNR)	Newfoundland
*Island Telephone Co. Ltd.	Private	P.E.I.
*New Brunswick Tel. Co. Ltd.	Private	New Brunswick
*Maritime Telegraph & Tel.	Private	Nova Scotia
*Bell Canada	Private	Quebec, Ontario and Eastern N.W.T.
Québec-Téléphone	Private	Quebec
Télébec Ltée	Private	Quebec
Northern Telephone Ltd.	Private	Ontario
*Manitoba Telephone Systems	Provincial Crown Corp.	Manitoba
*Saskatchewan Tel.	Provincial Crown Corp.	Saskatchewan
*Alberta Government Tel.	Provincial Crown Corp.	Alberta
'edmonton telephones'	Public (municipal Corporation)	Edmonton
*British Columbia Tel. Co.	Private	B.C.
NorthwesTel	Federal Crown Corporation (CNR)	N.W.T. Yukon and Northern B.C.
CNCP Tel.	Private/ Public(CNR)	Canada
*Telesat Canada	Private/ Public **	Canada
Teleglobe	Federal Crown Corporation	International Overseas

Notes: * A member of Telecom Canada
** An incorporated company owned jointly by the Government of Canada and the member companies of Telecom Canada.

Source: CNCP Telecommunications, "The Crisis in Canadian Telecommunications Policy and Regulation" (Toronto: CNCP) p.20.

Telecom Canada, an unincorporated association of the largest telephone company in each province, was formed in 1928. Telesat became a member in 1969. One of two national telecommunications systems, Telecom Canada offers voice and data services across Canada through its member companies. Together with CNCP Telecommunications it accounts for over half the current $10 billion telecommunications carriage market. Telecom Canada's stated objective is to develop and maintain a Canadian transcontinental network. It owns no facilities and has no permanent employees, but relies on member companies for both. Telecom Canada also serves to allocate, among its members, revenues generated by long distance services through the Revenue Settlement Plan. It is also worth noting that all decisions pertaining to Telecom Cacnada operations require the unanimous consent of all members. Although it remains an unregulated entity, many of Telecom Canada services are regulated through member companies' respective regulators.

Bell Canada, which operates in Quebec and Ontario, is the largest member of Telecom Canada, with 58 per cent of the telephones in Canada. (See Figure 1). It is a vertically integrated subsidiary of Bell Canada Enterprises (BCE) which, in turn, is owned by a large number of mainly Canadian shareholders. BCE has significant direct and indirect equity interests in the principle telephone companies in each of the Atlantic provinces - New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland. The British Columbia Telephone Co. (BCTel), the second largest telephone company in the country with approximately 11 per cent of the telephones, is indirectly owned (51 percent) and controlled by the U.S.-based General Telephone and Electronics (GTE) Corporation. The regional distribution of main telephones is illustrated in Figure 2.

In addition to the Telecom Canada member companies, there are over 150 other smaller telephone systems. The largest of the non-member companies are 'edmonton telephones' and the Thunder Bay Telephone System, both municipally owned; Télébec Ltée, a subsidiary of Bell Canada; Québec Téléphone, indirectly owned and controlled by the GTE Corporation; and NorthwesTel and Terra Nova Telecommunications, both owned by Canadian National Railways (CNR), a federal Crown corporation. All other members of Telecom Canada, except Telesat, are privately owned. Table 2 provides a breakdown of operating revenues and market share by carrier. Table 3 provides a detailed account of the number of employees for each of the major carriers.

FIGURE 1

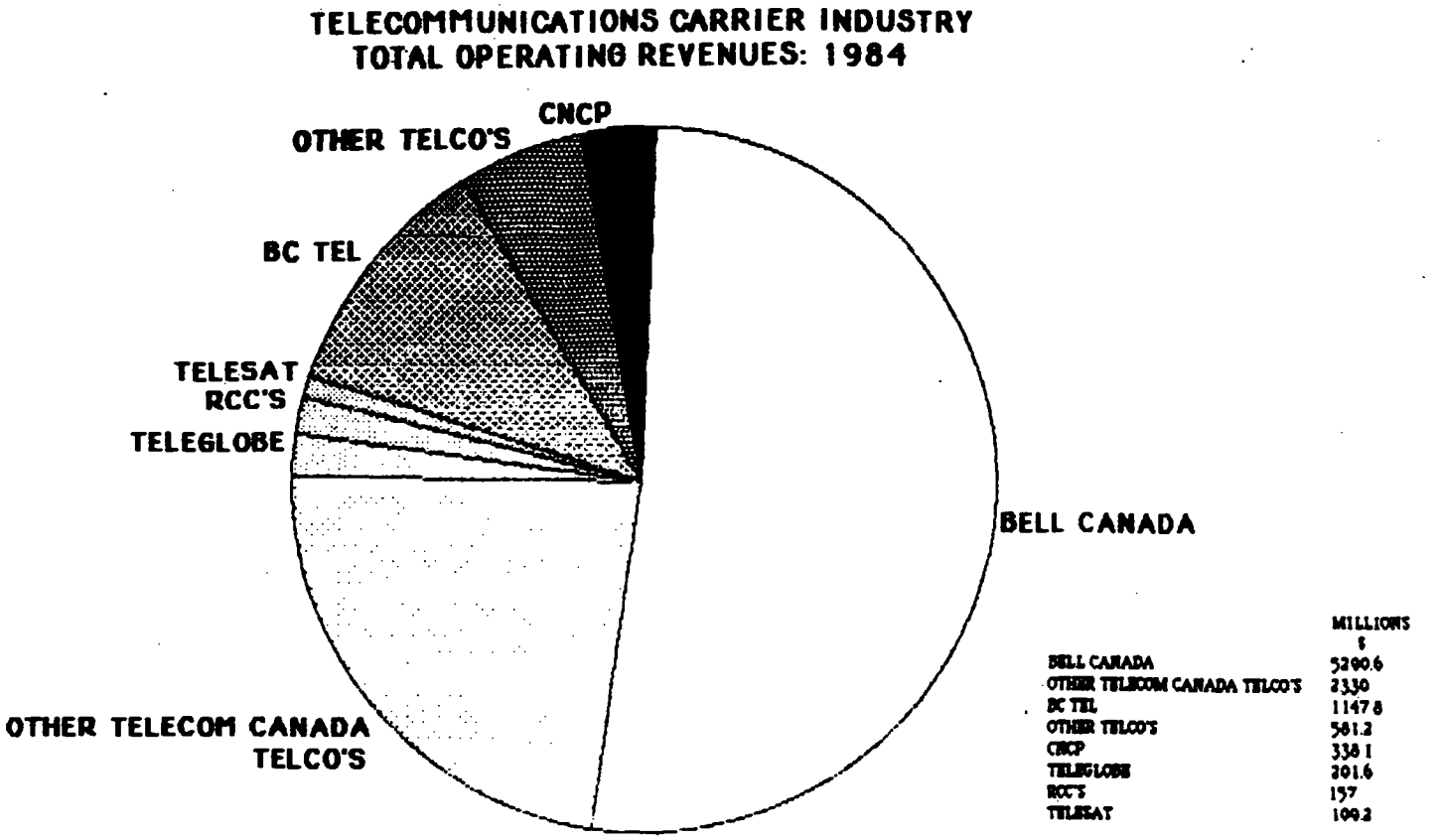


FIGURE 2

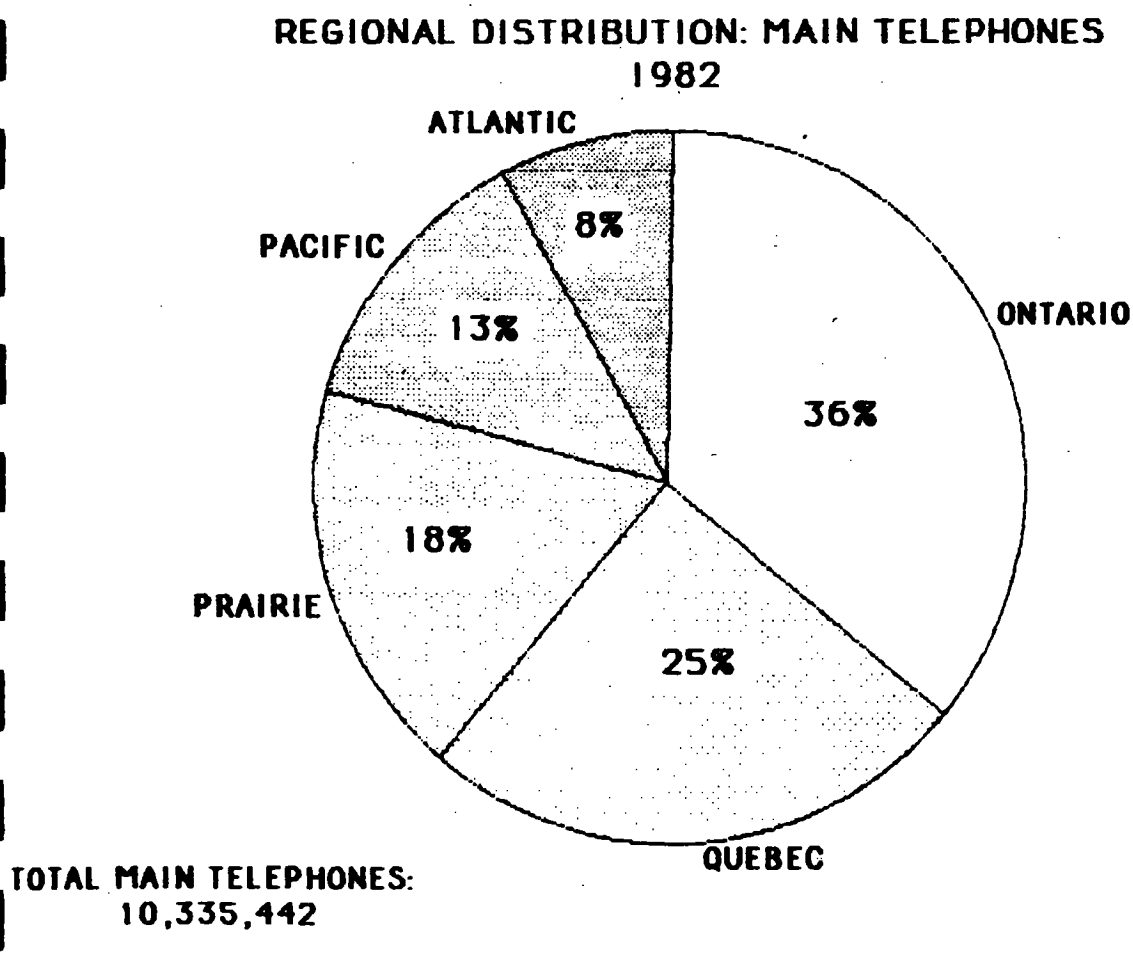


TABLE 2

SELECTED FINANCIAL SATISTICS OF FEDERALLY REGULATED AND OTHER CARRIERS
1985

	CRTC REGULATED CARRIERS								OTHER CARRIERS		
	Bell Canada	B.C. Tel.	CNCP	Telesat	North-wesTel	Terra Nova	Total of CRTC regulated carriers	% of total carriers	Total other carriers	% of total carriers	TOTAL
Operating revenues	5,291	1,148	338	109	56	38	6,980	70.1	2,982	29.9	9,962
Operating expenses	3,808	851	291	76	41	28	5,095	70.2	2,161	29.6	7,256
Operating income	1,483	297	47	33	15	10	1,885	69.7	820	30.3	2,705
Net income	627	103	19	17	6	3	775	78.4	214	21.6	898
Gross plant	14,210	3,609	671	543	169	143	19,345	68.0	9,124	32.0	28,469
Total assets	11,375	2,923	412	393	133	97	15,333	68.3	7,121	31.7	22,454

Source: CRTC Annual Reports (1983-84).

TABLE 3

EMPLOYMENT STATISTICS FOR CANADIAN CARRIERS (1983)

	Alberta Govt. Tel	Bell Canada	British Columbia Tel.	Edmonton Tel. Co.	Manitoba Tel. system	Maritime Tel and Tel	New Brunswick Tel. Co.
1. Number of Telephones	1,219,168	9,318,000	1,361,000	485,928	457,148	550,044	422, 530
2, Number of Employees	11,916	54,423	13,477	1,797	4,499	3,332	2,477

	Newfound-Land Tel. Co.	Northern Tel.	Quebec-Tel.	Sask. Tel.	Island Tel.	Telebec Ltee	Total All Companies
1. Number of Telephones	214,475	76,793	290,713	695,964	75,249	170,511	15,337,623
2. Number of Employees	1,260	313	2,023	4,400	289	1,028	101,234

Source: Statistics canada - Telephone Statistics (1984)

(ii) CNCP Telecommunications.

CNCP Telecommunications is a partnership of government owned Canadian National Railways (CNR) and privately owned Canadian Pacific Limited which utilizes the assets owned by each partner to provide selected telecommunications services across Canada. During the 1950's it established a nation-wide microwave network to offer private line voice and data communications services to major business users. Today it has emerged as a national teleecommunications carrier in direct competition with the Telecom Canada network in federally regulated areas.

(iii) Telesat Canada.

Telesat Canada, by an Act of Parliament, was created to establish, own and operate the space and earth segments of a single domestic satellite system. Created in 1969, it is jointly owned by the federal government, Telecom Canada members, Québec Téléphone, Ontario Northland Transportation Commission, CNR, and Canadian Pacific Ltd. Telesat Canada has traditionally served as a carrier's carrier leasing satellite capacity to CRTC approved carriers and licensed broadcasting undertakings. A recent decision by the CRTC, however, allows all users of satellite servics to deal directly with Telesat.

(iv) Teleglobe Canada.

Teleglobe Canada provides Canada with its overseas telecommunications services with the exception of the United States and Mexico. A federal Crown corporation established in 1949 as the Canadian Overseas Telecommunication Corporation, Teleglobe provides facilities or otherwise arranges for telecommunications services between Canada and points overseas, including the provision of private switched networks and leased circuits. Teleglobe also serves as Canada's representative in international telecommunications organizations such as the Commonwealth Telecommunications Organization, the International Telecommunications Satellite Organziation (INTELSAT), the International Maritime Satellite Organization (INMARSAT), and the International Telecommunications Union (ITU).

(v) Cable Companies.

Cable television systems operate extensively in Canada: cable service is available to approximately 79 per cent of the country's households, with about 59 per cent of households currently subscribing. In 1984, there were 892 cable systems licensed by the CRTC; of these, 145 were under various stages of development and not operating. There are

164 licensed systems in Quebec, 141 in Ontario, 110 in British Columbia and 390 in the rest of Canada. These systems are controlled by 370 business organizations which are either individually owned or incorporated. The 747 operational cable companies had revenues of $594.9 million in 1984 with a net profit before taxes of $70.2 million. Although the main business of these companies is the distribution of television and radio programming, they are also beginning to compete with telecommunications carriers, to a limited extent, in the provision of special services, such as the monitoring of fire and burglar alarms.

(vi) Radio Common Carriers.

In addition to the foregoing telecommunications carriers, there are more than 200 radio common carriers in Canada, which have combined annual revenues of about $75 million. These carriers provide various mobile radio and radio-paging services across the country, primarily in urban areas, in competition with telephone companies. Although market entry and rates are not regulated, interconnection of radio common carriers services with telephone networks falls under the jurisdiction of the respective telephone company regulatory agencies. Radio common carriers are also regulated through licensing by the federal Department of Communications (DOC) with respect to spectrum allocation.

(vii) Cellular Common Carriers.

In addition to radio common crriers, the federal DOC has licensed cellular radio systems across Canada on a competitive basis. Two cellular radio licences, one to the local telephone company and one to an independent operator, have been granted in twenty-three metropolitan cities. Cantel Cellular Radio Group Inc. was selected by DOC as the national cellular service company. To ensure a competitive environment, DOC indicated that regional and local telephone companies would be guaranteed an operating licence in its territory only if they guaranteed Cantel equal access to the public telephone network (PTN). Federally regulated telephone companies have been instructed by the CRTC to permit the interconnection of Cantel's facilities with the PTN. To date, cellular radio services are operative in three provinces, Quebec, Ontario and British Columbia.

The Canadian telecommunications carriage industry has close links with a strong domestic telecommunications manufacturing and research capability. Northern Telecom is by far the largest telecommunications supplier in Canada, with sales of $5.8 billion in 1985, approximately half of which is produced in Canada. Mitel at $370 million and Microtel at $200 million are the next largest companies.

The industry is primarily Canadian-owned with the major exceptions of Microtel Inc., an wholly owned subsidiary of BC Tel and Mitel, recently acquired by British Telecom.

3. Description of existing regulation

N.B. It should be noted that the organizational components: (a) subject of the regulation; (b) kind of regulation; and (c) control machinery related to the regulation, are integrated in the following section.

Telecommunications regulatory jurisdictions in Canada have evolved to the present structure whereby carriers are regulated on their entire operations by either the federal regulatory agency, the Canadian Radio-television and Telecommunications Commission (CRTC), a provincial government public utilities board, or in some cases a municipal council. Table 4 provides a description of the major telecommunications carriers and their respective regulators.

The basis for this complex regulatory pattern lies in the division of federal/provincial powers in the British North America (BNA) Act. Obviously, neither the telephone nor radio communication devices had been invented at the time of Confederation, so the reference was to "telegraphs".

The specific constitutional basis is derived from Sections 91 and 92 of the BNA Act, which apportion to the Federal Parliament and the Provincial Legislatures the authority to enact laws whose content relate to matters falling within the prescribed catagories: Section 92, "Exclusive Powers of Provincial Legislation", contains a number of exceptions including sub-section 92(10), legislative authority over "Local Works and Undertakings" - other than the following classes;

a) Lines of Steam and Other Ships, Railways, canals, Telegraphs, and other Works and Undertakings connecting the Provinces, or extending beyond the Limits of the Province;

b) Lines of Steam Ships between the Province and any British or Foreign Country;

c) Such Works as, although wholly situated within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

Table 4

MAJOR CANADIAN CARRIERS AND THEIR REGULATORY AGENCIES

CARRIER	REGULATORY/AGENCY
Bell Canada	CRTC
British Columbia Telephone Co.	CRTC
CNCP Telecommunications	CRTC
Telesat Canada	CRTC
NorthwesTel	CRTC
Terra Nova Telecommunications	CRTC
Alberta Government Telephones	Alberta Public Utilities Board
Saskatchewan Telecommunications	Saskatchewan Public Utilities Review Commission
Manitoba Telephone System	Manitoba Public Utilities Board
New Brunswick Telephone Co.	New Brunswick Public Utilities Board
Maritime Telegraph and Telephone Co.	Nova Scotia Public Utilities Board
Island Telephone Company	P.E.I. Public Utilities Commission
Newfoundland Telephone Co.	Newfoundland Public Utilities Board
'edmonton telephones'	City of Edmonton
Northern Telephone Limited	Ontario Telephone Service Commission
Québec Téléphone	Régie des services publics du Québec
Télébec Ltée	Régie des services publics du Québec
Teleglobe Canada	*
Thunder Bay Telephone System	Ontario Telephone Service Commission

* Teleglobe Canada, a federal Crown Corporation, is not regulated by an independent regulatory agency but is subject to control by the federal government. It is anticipated that a privatized Teleglobe Canada would be regulated by the CRTC.

The Federal Parliament is also empowered in the introductory clause of Section 91 to:

> make laws for the Peace, Order and Good Government of Canada, in relation to all matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures.

This has been judicially interpreted to relate to such areas as:

- in the case of national emergency;
- when the matters go beyond local or provincial concern, assume national dimensions; and
- in a limited number of cases where the matters may be regarded as coming within the residue of legislative power.

Jurisdiction over CNCP Telecommunications is a logical extention of the railways' telegraph systems, even though the system extended far beyond traditional telegraphy. Both Bell Canada and B.C.Tel were constituted by federal legislation and each was declared by Parliament to be a work "for the advantage of Canada" as provided for in Section 92(10)(c) of the BNA Act.

a) Federal Regulatory Authority.

i) Canadian Radio-television and Telecommunications Commission.

Telecommunications carrier regulation has, since 1906, been assigned to a federal regulatory agency which has exercised its authority primarily under the Railway Act. From 1906 to 1976, this responsibility rested with the federal transportation regulatory agency which went through three stages:

1906 - 1938	The Board of Railway Commissioners for Canada
1938 - 1967	The Board of Transport Commissioners for Canada
1967 - 1976	Canadian Transport Commission (CTC)

There was no specialized federal forum for telecommunications carrier regulation until 1972 when the Telecommunication Committee of the CTC was established.

In 1976, responsibility for the regulation of federal telecommunications carriers was transferred to a new agency, the Canadian Radio-television and Telecommunications Commission (CRTC). This agency also inherited the responsibility of regulating the field of broadcasting from its predecessor, the Canadian Radio-Television Commission, which had existed since 1968 when it was created to replace the Board of Broadcast Governors. Insofar as telecommunications carrier regulation is concerned, the CRTC, in common with its predecessor agencies, is responsible for telecommunications carriers falling within the legislative authority of the Parliament of Canada.

The Commission's principal regulatory responsibility is the determination of just and reasonable rates for the services provided by the telecommunications carriers under its jurisdiction, as well as the approval of any agreements entered into by carriers with respect to the interchange of traffic or limitation of liability. In discharging these functions, the Commission holds public hearings and issues Telecommunications Orders or Decisions approving, denying, or otherwise disposing of applications before it.

The rules of procedure governing the hearing process are quite different for broadcasting and telecommunications matters. In general, the former are dealt with in a less formal manner than those affecting telecommunications. The latter are frequently technical with testimony given under oath and witnesses may be cross-examined. Telecommunications decisions may be appealed to the Commission itself and, beyond that, to the courts. Appeals of broadcasting decisions go to the courts on questions of law or jurisdiction. All CRTC decisions may also be appealed to Cabinet.

The current legislation does not provide policy principles to govern CRTC decisions, nor are there general supervisory powers granted to ensure that policy principles are implemented.

(b) Provincial Regulatory Authorities.

(i) Newfoundland Board of Commissioners of Public Utilities.

An Act to Amend and Consolidate the Law Relating to Public Utilities, more commonly known as The Public Utilities Act, was passed in 1949 with the first Board being appointed shortly thereafter. The Act in its present form is the governing statute of the Board, although the Board also regulates under the jurisdiction of several other Acts.

Under the jurisdiction of The Public Utilities Act, the Board regulates telephone, telegraph, electrical and other power, water and sewage utilities. Companies regulated include Bowater Power Co. Ltd., Newfoundland Light & Power Co. Limited, Labrador Telephone Co., and Newfoundland Telephone Company Limited. The other major telephone company in the province, Terra Nova Telecommunications Inc., is under the jurisdiction of the CRTC.

Functions of the Board fall into three categories - legislative, judicial and administrative. The Board acts in a legislative capacity when it prescribes the rates which a public utility may charge the public for its services, and when it prescribes rules and regulations for the purpose of implementing the legislation under which it operates. It acts judicially when making decisions concerning the reasonableness of existing and proposed rates of public utilities, when hearing service complaints from customers, and when hearing evidence at formal public hearings. Finally, the Board acts in an administrative capacity in discharging its duty to enforce the provisions of The Public Utilities Act, in seeing that its decisions and orders are carried out, and in receiving and studying regular reports from the utilities under its jurisdiction.

As with other Public Utilities Boards, its mandate consists of the general supervision of public utilities; it is to make all necessary examinations and enquiries and keep itself informed as to the compliance by the utilities with the provisions of law. It has the power to enforce the provisions of the Act as well as other laws relating to public utilities. The Board may make regulations which, when approved by the Lieutenant-Governor in Council, have the force of law. To comply with the provisions of law, utilities must furnish reasonably safe and adequate services and facilities which are, in all respects, just and reasonable. The Board may, with or without notice, test for this by way of compliance.

ii) New Brunswick Board of Commissioners of Public Utililities

The New Brunswick Board of Commissioners of Public Utilities was established in 1910 by the Public Utilities Act. The current Act and its amendments define its present powers and jurisdiction.

It has jurisdiction over all public utilities in the province including New Brunswick Telephone, with the exception of the New Brunswick Electric Power Commission. A public utility is defined by the Act as being a person owning, operating, managing or controlling any plant or

equipment for the conveyance of telephone messages or for the production, transmission, delivery or furnishing of heat, light, water, gas or power for the public.

The Board has responsibility for the general supervision of all public utilities. It must ensure that utilities comply with the provisions of the Act, the prime requirement being to furnish reasonably adequate service and facilities at reasonable and just charges. Upon written complaint or on its own motion, the Board may investigate rates that appear unreasonable, insufficient or unjustly discriminatory and may order such rates modified. Before the order of such a revision, however, the Board is obliged to first hold a public hearing or enquiry. In determing what it considers to be reasonable rates, the Board must consider the reasonableness of the rate of return to the public utility on its investment.

Subject to the approval of the Lieutenant-Governor in Council, the Board has the power to prohibit unfair or unreasonable commercial practices and marketing conditions and to prescribe marketing conditions it deems to be in the interest of the industry and the general public. The Board may make rules and regulations which, when approved by the Lieutenant-Governor in Council, have the force of law.

iii) Nova Scotia Board of Commissioners of Public Utilities

Legislation regarding telecommunications in Nova Scotia was first enacted in 1909, with the present legislation being the Public Utilities Act. This Act gives the Board jurisdiction over public utilities, defined by the Act as being persons owning, operating, managing or controlling tramways, trolley bus or other public transit, power utilities, gas utilities, water utilities, or plant or equipment for the conveyance of telephone messages.

As recently as 1973, there were over sixty telecommunications companies operating in the province. Today, however, Maritime Telegraph and Telephone Company, Limited is a monopoly and therefore is the only telecommunications company regulated by the Board. The Board also has jurisdiction over the Nova Scotia Power Commission.

The Board has responsibility for the general supervision of all public utilities and may make all necessary examinations and enquiries to ensure the compliance of public utilities with the law, the basic requirement being the furnishing of reasonably safe and adequate service and facilities which are in all respects just and reasonable.

Forms of books, accounts, papers and records to be kept by public utilities may be prescribed by the Board which may also provide for the examination and audit of all accounts. The Board may make rules and regulations concerning the construction of telephone plant and the depreciation thereon and must approve capital expenditures of greater than $5000. A separate rate base for each type of service furnished by a public utility is determined by the Board which also determines a just and reasonably rate of return on this base. All rates, tolls and charges of a public utility must be approved by the Board. If any rates, tools or charges are found to be unjust, unreasonable, insufficient or unjustly discriminatory, the Board has the power to cancel such rates, tolls and charges and substitute rates, tolls and charges that are just and reasonable.

iv) The Public Utilities Commission of Prince Edward Island

The governing statute of the Public Utilities Commission of Prince Edward Island is The Public Utilities Commission Act. This Act gives the Commission jurisdiction over telephone utilities, electrical utilities and any other entity the Lieutenant Governor in Council may proclaim to be a public utility. In addition, other statutes also confer power on the Commission.

Currently, the Commission regulates electric power and telephone service, matters pertaining to The Petroleum Products Act and The Water and Sewerage Act, the administration of motor carriers and the issuance of building moving permits (relative to the cutting or raising of electric and/or telephone wires to allow passage of buildings from one location to another). Although there are numerous utilities regulated by the Commission, the only telephone company regulated is The Island Telephone Company Limited, the sole telephone company in the province.

The mandate of the Commission is very broad. It has general responsibility for the supervision of all public utilities and is required to make all necessary examinations and enquiries to ensure the conformance of such public utilities with the Act. Typical matters with which the Commission would be concerned regarding telephone service include approval of: expenditures by Island Tel relative to their expansion and development program, the placement of buried plant and aerial cable, the issuance of bonds, the upgrading of service, permission to connect customer-owned telephone equipment to the network facilities of Island Tel, and revisions to the General Tariff.

v) La Régie des Services Publics

La Régie des services publics was created in 1909 for the purpose of overseeing the telephone industry. Its sphere of influence has expanded to encompass all of what is defined by La Loi sur la Régie des services publics as being "public service", i.e. any service the object of which is the broadcast, transmission or reception of sound, images, signs, signals, data or messages by wire, cable, waves or any electric, electronic, magnetic, electromagnetic or optical means. At the present time, twenty-one utilities in Quebec are regulated by La Régie, the largest being Télébec Ltée and Québec-Téléphone.

La Régie's mandate consists of coordinating the development of telecommunications in Quebec and ensuring that the population is able to benefit from the necessary services in its social, cultural and economic expansion. To this end, it must also ensure that telecommunications companies have the financial resources required to offer such services at a fair and reasonable cost.

In the execution of its mandate, La Régie assumes four functions - that of a tribunal of administrative law, that of an organization of supervision and control, that of an instrument and source of regulation, and that of an advisor to the provincial Minister of Communications, who is responsible for carrying out the Act. The Act entrusts La Régie with the power of investigation, as well as the rights of access, intervention and prosecution. La Régie may make regulations concerning quality of service, equipment, apparatus, extension of systems, messsage routes, reports, rates and other matters. It has the power to rule on the exclusive territory of systems under its jurisdiction and it may order, when in the pubic interest, the partition of existing systems into several public utilities. Litigation between a telecommunications carrier and its subscribers may be arbitrated by La Régie. Either on its own initiative or at the request of any interested party, La Régie may amend the rates of a public utility should it find them not fair and reasonable.

vi) Ontario Telephone Service Commission

The Ontario Telephone Service Commission (OTSC) is a body corporate, whose governing statute is The Telephone Act. It regulates thirty-one telephone systems in Ontario, the largest being Thunder Bay Telecommunications and Northern Telephone Limited. These two systems account for over 65% of the total telephones regulated by the OTSC.

Ontario telephone legislation first began in 1893 with the advent of The Municipal Amendment Act. In 1908, The Local Municipal Telephone Act empowered the Lieutenant Governor in Council to authorize an officer to oversee the carrying out of the Act. The Ontario Telephone Act of 1912 gave the Ontario Railway and Municipal Board jurisdiction to regulate certain aspects of telephone systems; The Ontario Telephone Act of 1918 was the first Act to contain most of the provisions found in the present-day Act. In 1954, The Telephone Act replaced The Ontario Telephone Act and estabished the Ontario Telephone Authority, giving it regulatory powers previously vested in the Ontario Municipal Board. The Telephone Act was re-enacted in 1960 and the Ontario Telephone Authority became known as the Ontario Telephone Service Commission. In December 1983, The Telephone Act was amended to give the provincial cabinet authority for ongoing input to the OTSC. These amendments address a few key areas giving the cabinet legal authority to issue policy directives to the Commission and change related regulations, largely in response to the growth of new technology.

Basically, the Commission is responsible for ensuring that the public receives efficient and adequate telephone service. Any customer who is not satisfied with the service provided by a telephone system may lodge a complaint with the Commission. More generally, the Commission has the jurisdiction and power to hear and determine all applications made, proceedings instituted and matters brought before it under The Telephone Act. It has the exclusive jurisdiction to hear and determine any differences that arise between two or more telephone systems or municipalities in respect of the establishment, extension, operation or maintenance of a telephone system. The Commission may enquire whether the rates charged for telephone service are sufficient to cover a system's financial obligations and also give a reasonable return on capital. If it does not find that rates are appropriate, the Commission may then order the rates to be revised, either upwards or downwards, as it deems appropriate.

vii) Manitoba Public Utilities Board

The Public Utilities Board is an independent quasi-judicial body, operating under the authority of the Manitoba Legislature, whose governing statute is The Public Utilities Board Act. This Act confers on the Board jurisdiction over all public utilities, owned either privately or by municipal or provincial government, in the province of Manitoba. Public utilities are defined by the Act as being any system, works, plant, pipeline, equipment or service for the transmission of telegraph or telephone messages, for public

transit, or for the production, transmission, delivery, or furnishing of gas, oil, water, heat, light or power. In addition the Board may declare any such systems to be a public utility.

The Board has general responsibility for the supervision of all public utilities. It may investigate any matter concerning any public utility, appraise and value the property of any public utility, and require every public utility to file with it schedules of every classification and of all tolls, rates and charges. The Board may fix just and reasonable rates wherever it determines that any existing rate, toll, charge or schedule is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential. It may also fix just and reasonable standards, classifications, regulations, practices, measurements and service.

The Board may fix just and reasonable rates wherever it determines that any existing rate, toll, charge or schedule is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential. It may also fix just and reasonable standards, classifications, regulations, practices, measurements and service. The Board may require every owner of a public utility to comply with applicable laws; to furnish safe, adequate, and proper service; to establish, construct, maintain and operate any reasonable extension of its existing facilities; to keep proper books, records, and accounts and, if prescribed by the Board, to adopt a uniform system of accounts; to furnish a detailed report of finances and operations; and to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the Board may prescribe. No change in existing rates, tolls, charges or schedules or establishment of new rates, tolls, charges or schedules may occur without the approval of the Board.

viii) Saskatchewan Public Utilities Review Commission

Prior to 1982, no regulatory body existed in Saskatchewan. Saskatchewan Telecommunications (SaskTel) was responsible only to a member of the Executive Council designated by the Lieutenant Governor in Council. The Saskatchewan Telecommunications Act conferred upon SaskTel the right to establish their own charges, rates, terms of conditions, although final approval for general rate increases rested with Cabinet. On July 6, 1982, however, the Public Utilities Review Commission was created with the passing in the Legislative Assembly of Saskatchewan of Bill No. 17, The Pubic Utilities Review Commission Act. The Act was fully proclaimed in force on December 6, 1982. Those corporations coming under the jurisdiction of the Commission include SaskTel, Saskatchewan Power Corporation, North-Sask Electric

Ltd., Saskatchewan Government Insurance as insurer under The Automobile Accident Insurancec Act, and any other corporation selling electrical energy or gas within Saskatchewan.

With regard to SaskTel, the Act states that those offerings to be regulated are non-competitive telephone services within Saskatchewan. The decision as to whether any data, computer, or television service is included will depend on the definition of "telephone". Similarly, as yet, it is unclear as to whether Telecom Canada or adjacent member rates will be regulated.

The Commission is basically concerned with the regulation of rates. The Act makes no specific provision for such matters as depreciation rates and methods, accounting policies and procedures, forms of books, reports or accounts, the approval of capital expenditures, the approval of debt financing, or the permitted rate of return on capital investment. The Commission has the fundamental powers required to arbitrate a rate application, i.e. the power to hold hearings, to make interim orders, to allow or disallow any part of an application, and to grant further relief in addition to or substitution for that applied for. When determining whether proposed new rates are reasonable and justified, the Commission must consider the cost of providing the particular service, the overall revenue requirements with respect to all regulated services, and the earnings necessary to "ensure the financial health of the corporation". The Commission must also ensure that rates are not discriminatory.

ix) Alberta Public Utilities Board

The Legislature of the Province of Alberta first created a Board of Public Utilities Commissioners by statute in 1915. The current Public Utilities Board Act delineates the present Board's jurisdiction.

The Board is an independent quasi-judicial tribunal with, within its own jurisdiction, the same powers, rights, privileges and immunities as the Supreme Court of Alberta. It is responsible for the regulation of investor-owned public utilities serving within Alberta in such fields as electricity, gas, water and sewer, telecommunications, railway transportation, and oil and gas common carrier pipelines. The Board also regulates certain government-owned utilities, such as Alberta Government Telephones (AGT), and some municipally-owned gas utilities.

The functions of the Board are primarily quasi-judicial including rate regulation, general supervision, and other duties. Its prime responsibility is to ensure that the customers of regulated utilities receive safe and adequate services at rates which are just and reasonable to both the customers and investors of those utilities. It is of interest to note that the Board has the authority to deregulate the provision of public utility services.

The Board is responsible for reviewing the affairs, earnings and accounts of each owner of a public utility within three years of fixing the rates, tolls or charges for such utilities. It is also entrusted with exercising "general supervision" over all public utilities and ensuring their compliance with the law.

(c) Additional Measures to Support Regulation

With regard to the Canadian telecommunications carriage industry there are no additional governmental measures designed to support regulation.

(d) Reasons for the Regulation

The natural monpoly characteristic of telecommunications has been the most important rationale for the regulation of the industry, though not the only one. As reflected in the various regulators' enabling legislation, described above, the major objective has been to ensure that efficiency gains that are achieved are reasonably distributed between producers and consumers, and among consumers, through "just and reasonable" rates. Another objective has been the development of satisfactory communications links within and between all parts of Canada, including the more remote and sparsely populated sectors. To help achieve this goal of universal access a pricing system characterized by value-of-service and system-wide price averaging has emerged. This system is characterized by an elaborate system of income redistribution, with business users, urban communities and long-distance toll charges making larger contributions to common telecommunications costs than do residential users, rural residents and local rates. Although this pricing system has helped expand the size of the public telephone network, it has also resulted in an expanded role for the regulators of the industry, thus inhibiting deregulatory efforts.

4. Role of Competition Laws and Competition Authorities.

The purpose of the Combines Investigation Act is to assist in maintaining effective competition as a prime stimulus to the achievement of efficient production, distribution and

employment in a mixed system of public and private enterprise. To this end, the legislation seeks to eliminate certain practices in restraint of trade, and to overcome the negative effects of concentration, both of which tend to prevent the economic resources of Canada from being used most effectively to the advantage of all.

However, most areas of the telecommunications industry are subject to regulation under federal, provincial or municipal legislation. In Canada, the application of the Combines Investigation Act in situations where government regulation is in effect is governed by the exemption of regulated activities. This exemption, established by jurisprudence, dictates that the Act does not apply in situations where a firm's conduct, which might lead to prosecution under the Act, is effectively regulated by a legally established regulatory body. Accordingly, the application of the competition laws to the telecommunications industry is restricted to situations where regulation is not present or a particular economic activity has been deregulated.

In order to ensure that effective competition forces work to the greatest extent possible within a regulated environment, the Director of Investigation and Research has the authority to intervene before federal regulatory tribunals. Section 27.1 of the Act provides that:

> The Director, at the request of any federal board, commission or other tribunal or upon his own initiative, may, and upon direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever such representations or evidence are or is relevant to a matter before the board, commission or other tribunal is entitled to take into consideration in determining such matter.

With its permission or at its request, the Director of Investigation and Research may also intervene before provincial regulatory authorities. Although the basis for such interventions is under dispute before the Supreme Court of Canada, the new Competition Act will explicitly establish the Director's freedom to appear before provincial regulatory boards with the regulator's approval.

Since 1976, the Director of Investigation and Research has made numerous interventions before the federal telecommunicaitons regulator, the CRTC, as well as the provincial regulatory authorities of New Brunswick, Quebec, Newfoundland, Nova Scotia, Alberta and Ontario. These interventions have dealt with a broad range of issues including systems and terminal interconnection and the effect on competition of acquisitions and joint ventures in the telecommunications industry. Through interventions, the Director has encouraged the elimination of unnecessary regulations and placing greater reliance on competition and the discipline of the market so as to attain greater efficiency, reduce costs to the Canadian economy of direct government regulation, and improve the quality of regulatory administration. Details of the Director's appearances before regulatory authorities in the case of the telecommunications carriage industry may be found in the Annual Reports of the Director of Investigation and Research, Combines Investigation Act, in the Chapter entitled "Regulated Sector Branch".

5. Deregulation realized or intended to be realized in the near future

As indicated below, wholesale deregulation in the telecommunications carriage industry has not taken place to date, nor is it likely to in the near future. Accordingly, the organizational components of the OECD suggested outline do not apply. In their place two sections have been substituted: one providing general background information; the other outlining significant developments in the telecommunications carriage industry.

(a) General Background

In February 1986 the Federal Government announced its new regulatory strategy which stressed the reform rather than the elimination of regulation. Included in the government's reform strategy was the appointment of a specific minister with responsibility for regulatory affairs who announced a series of regulatory program reform initiatives based on the work and recommendations of the Ministerial Task Force Review which had been set up to review government regulatory programs.

The recommendations relevant to telecommunications include:

(1) The Minister of Communications is to continue to develop, through intensive consultations with the provinces, a national consensus on the role of competition in the provision of telecommunications services.

(2) The Canadian Radio-television and Telecommunications Commission and provincial telecommunications regulatory bodies are to conduct a joint study to examine the appropriate pricing structure for telecommunications services.

(3) The Minister of Communications, in preparing the proposed Consultation Paper on Telecommunications Policy, is to ensure that it adequately addresses the following issues (in addition to the issues of maintaining universal service at affordable prices, rate restructuring, and phasing in further network services competition):

i) the appropriate legislative and ownership framework for Telesat Canada as a provider of competitive telecommunication services;

ii) a plan to more carefully define the scope and manner of CRTC regulation as competition develops;

iii) measures to allow for direct participation of provincial telecommunication regulators in CRTC decisions which have significant spillover effects on provincially regulated telecommunication carriers.

(4) The Minister of Consumer and Corporate Affairs is to:

a) give the highest priority to speedy passage of significant reforms to the Combines Investigation Act, which make it clearer, easier to enforce, and relevant to the current economic environment;

b) develop a comprehensive and pro-active public education program on the benefits of the maintenance of competition on economic development, job creation, viability of small and medium sized enterprises and entrepreneurial initiative;

c) reiterate and reinforce the government's commitment to the concept of an independent voice for competition before federal regulatory tribunals.

(b) Revelant Developments.

Although it would be inaccurate to describe the issues cited below as being strictly related to the deregulation of the telecommunications carriage industry, the following list represents some of the more important developments shaping and giving direction to telecommunications policy in Canada.

a) Judicial Developments.

. Alberta Government Telephone (AGT) Decision.

The Federal Court of Canada has ruled that AGT, a provincially owned and regulated telephone company is subject to federal jurisdiction. The Federal Court of Appeal then ruled that the telephone companies, that are members of Telecom Canada, even if they are provincial Crown corporations, are constitutionally under federal jurisdiction. Leave to appeal this decision to the Supreme Court of Canada is presently being sought by AGT.

b) Policy and Federal Legislative Developments.

. Department of Communications (DOC) Policy Review. The Federal DOC is currently reviewing telecommunications policy generally and is considering such qustions as the appropriate degree of competition for Canada, jurisdictional, and other regulatory issues.

. Bill C-19 - An Act Respecting the Re-Organization of Bell Canada. One clause of the proposed Bill C-19 contains provisions designed to maintain a clear separation between monopoly and competitive activities within the Bell group of companies and to allow the CRTC to decide whether particular telecommunications activities within the Bell group should be carried out on a regulated or unregulated basis. Other provisions of the bill preclude Bell or its affiliates from operating broadcasting services and from owning manufacturing or R&D companies that it did not already own prior to 1968. On March 20, 1986 the CRTC issued a decision against structural separation.

. Bill C-20 - An Act to Amend the CRTC Act, the Broadcasting Act and the Radio Act. Bill C-20 would allow Cabinet to issue policy directions to the CRTC on any matter coming within the jurisdiction of the Commission. A recent amendment would broaden this power, giving Cabinet the right to intervene in rate hearings and other financial issues before the Commission.

c) Regulatory Developments

. System Interconnection. There has, naturally, been system interconnection between adjacent telephone companies for many years. A significant regulatory development, however, was the CRTC decision in 1979 to permit CNCP Telecommunications to interconnect its facilities with Bell Canada's PTN. A similar decision in 1981 permitted CNCP to interconnect its facilities with those of B.C.Tel. These decisions have allowed CNCP Telecommunications' customers to access its competitive data and private voice services via the local telephone networks of Bell Canada and B.C.Tel.

. Terminal Attachment. Although the attachment of network non-addressing devices (NNAD's), such as computer terminals and answering machines has been permitted for some time in most jurisdictions in Canada, it was not until 1980 that the CRTC permitted the attachment of network-addressing devices such as telephones and P(A)BX's. A final decision on this matter was rendered by the CRTC in November 1982 extending the terminal attachment policy to all common carriers operating under the jurisdiction of the CRTC. Although this policy is not in effect in all jurisdictions across Canada, there is a definite national trend toward liberalizing terminal attachment regulations.

. Interexchange Competition (IX) Case. Regarding CNCP Telecommunications' 1983 Application for authority to correct its system to those of Bell and B.C.Tel for the provision of public long distance telephone service, five separate issues were dealt with by the CRTC: 1) CNCP was not given permission to compete in long distance voice traffic services; 2) CRTC denied Bell's and B.C. Tel's request for rate rebalancing until it could review rate structures to determine the appropriate levels for long distance rates. Rebalancing has come to be defined as a procedure

which increases local rates and reduces long distance rates in order to make those rates more reflective of their underlying costs; 3) CRTC allowed resale and sharing of telecommunications services generally except for long distance voice telephone service and primary local telephone service; 4) CRTC allowed the connection to the public telephone network of private local systems and public non-voice systems and; 5) B.C. Rail was permitted to interconnect its long distance facilities to the local facilities of B.C. Tel for private line services.

. Rate Rebalancing. As part of its decision in the Interexchange Competition Decision, the CRTC determined that it would study the rate rebalancing issue. Bell and B.C. Tel maintain that since local service is subsidized by long distance service, competition in long distance would threaten the subsidy to local service and therefore it would be necessary to increase (rebalance) local rates.

. Cost Inquiry. Began by the CRTC in 1972, the purpose of the Cost Inquiry was to establish the information and procedures necessary for setting appropriate price levels for the products and services offered by the carriers. Phase III of the Cost Inquiry concerned itself with the problems created by increased competition in telecommunications by focussing of the development of a costing methodology which would allow for fair competition between telephone companies and their competitors. The Report of the Inquiry Officer,released in April 1984, rejected cost approaches advocated by Bell and BC Tel. The Cost Inquiry Officer recommended instead that the CRTC direct Bell and BC Tel to develop a revenue settlement plan (RSP) - based costing method using specified costing and revenue categories. There has recently been a decision to adopt a modified Revenue Settlement Plan.

. Discount Long Distance Telephone Service. Currently, Cam-Net provides discount long distance telephone service, including message toll service and wide area telephone service from the Vancouver area to any point in the U.S. for as little as half of the rates charted by BC Tel. BC Tel responded by applying to the CRTC for changes in its long distance rates for calls between

Canada and the U.S. in order to put itself in a better position to compete with the resellers. On April 4, 1985, the Commission allowed BC Tel to restructure its long distance rates after having shown that its revenues were being eroded by competitors. (This decision led some observers to believe that the CRTC was in favour of rate rebalancing given that it appeared to want to protect BC Tel's revenue from competition). The decision allowed BC Tel to raise the access charge to its lines going to the Canada-U.S. border, paid by customers who use the competitors services. (The decision also permitted BC Tel to lower its long-haul rates). With their customers having to pay higher rates for the Canadian portion of their service, the competitors were forced to further reduce the rates charged for the U.S. portion of the service in order to match BC Tel's new rates.

. Structural Separation of Multiline and Data Terminal Equipment. The CRTC recently completed hearings to determine whether it would be in the public interest to have certain Bell and B.C. Tel activities conducted at arms-length. As a result the Commission imposed costing restrictions on Bell and BC Tel which would prevent them from using profits from their monopolies to limit competition in the sale and leasing of multi-line terminal and data equipment. The decision relies on costing and accounting techniques to prevent the two telephone companies from using their profits to keep prices down for terminal equipment sold to business users.

6. Means to Protect or Promote Competition after Deregulation

Should extensive deregulation of the telecommunications carriage industry take place, the existing regulated industries exemption may no longer provide a possible defence for actions taken by a firm contravening the provisions of the existing competition laws. The current Combines Investigation Act provides for control over private monopolies and dominant market positions by providing that every person who is a party to or privy to or knowingly assists in the formation of a monopoly or a merger is guilty of an indictable offence and is liable to imprisonment for two years. The notion of "dominant market" is not present in the existing Act, but is provided for in proposed amendments to the Act currently before Parliament. The proposed amendments also suggest that the new Act be binding on federal and provincial Crown corporations which are

agents of the Crown in respect of their commercial activities that are in competition with other firms. This amendment would force Crown corporations to compete fairly with private enterprises.

B. Privatization

In addition to the present government's commitment to the rationalization of existing regulatory processes, it has also announced plans to rationalize and privatize federal Crown corporations and other federal assets. By rationalization, the government means reorganizing, streamlining, winding up or absorbing into other government departments services and programs considered to be redundant. Alternatively, privatization involves the outright transfer of the government's assets to the private sector.

The privatization of commercial public corporations has emerged as an important economic policy option for improving economic efficiency through the promotion of market competition and the more efficient allocation of resources. The Government has recognized this potential and has indicated that all commercial "Schedule C" Crown corporations listed in the Financial Administration Act are potential candidates for review under the privatization program. The government has adopted the approach that a Crown corporation or other equity investment should be sold unless it is fulfilling a public policy goal. To this end, a special Ministerial Task Force has been created under the chairmanship of the President of the Treasury Board. Supported by the Privatization Secretariat, the Task Force is charged with developing a privatization plan for those companies where no such public policy goal exists.

The Government's Budget Speech of May 1985 outlined the basic principles the government is to follow while carrying out its privatization initiative. They are:

1. The government will be sensitive to the concerns of management and employees of corporations that may be considered candidates for sale. While recognizing that negotiations must be conducted confidentially, every effort will be made to keep these groups informed of significant developments and to ensure that their legitimate interests are not jeopardized.

2. The type of market competition and the impact on consumers that is likely to develop after a sale will be an important consideration for each divestiture.

3. Provincial governments will be consulted to ensure that provincial and federal privatization programs do not conflict.

4. Crown corporations will not be sold at distress prices merely to transfer them quickly to the private sector. A large deficit and normal fiscal prudence dictate that the privatization program should proceed at a measured pace with careful consideration of all the issues, not the least of which is the receipt of a fair and reasonable price for each asset.

5. The divestiture of large corporations may need to be accomplished in stages, in which case there will be periods of mixed, private and public ownership. In these situations the government will consider the nature of its participation and provide assurances to private sector investors that government will be guided in exercising its ownership rights by the same commercial objectives that guide the corporation's private sector shareholders.

6. In recognition of the diverse nature of the various corporate holdings, issues such as the method of sale, eligible purchasers, foreign and domestic ownership restrictions, purchaser commitments and government obligations and commitments, will be examined on a case-by-case basis, rather than being subject to a general approach.

With regard to the telecommunications holdings of the federal government, to date only one corporation has been affected. On October 30, 1984, the Minister of Regional Industrial Expansion announced the government's intention to sell federal assets owned or managed by the Canada Development Investment Corporation (CDIC), including Teleglobe Canada. Conditions of sale for Teleglobe Canada will be presented to acceptable potential purchasers in the near future; at that time final bids for the purchase of Teleglobe Canada will be accepted.

To date there has been no indication of the government's intentions with regard to other federally owned assets in telecommunications undertakings.

FOOTNOTES

1. Economic Council of Canada, Interim Report on Competition Policy, July 1969, The Queen's Printer, p. 160.

2. Annual Report, Director of Investigation and Research, Combines Investigation Act, March 31, 1981.

3. House of Commons, Commons Debates, Supply and Services Canada, June 29, 1971, p. 7434.

4. House of Commons, Commons Debates, Supply and Services Canada, November 5, 1973, p. 7505.

5. CCA, proposals for a New Competition Policy for Canada, First Stage, November 1973, p. 64.

6. Minister of Supply and Services Canada, Office Consolidation, Combines Investigation Act, R.S.C. C-23. Section 27.1 reads:
27.1 (1) The Director, at the request of any federal board, commission or other tribunal or upon his own initiative, may, and upon direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever such representations or evidence are or is relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining such matter.
(2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person who is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product and includes an ad hoc commission of inquiry charged with any such responsibility but does not include a court. 1974-75-76,c.76,s.9.

7. House of Commons, Commons Debates, Supply and Services Canada, March, 11, 1974, p. 348.

8. House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs, Issue No. 9, April 30, 1974, pp. 4-5.

9. House of Commons, Commons Debates, Supply and Services Canada, October 2, 1974, p. 27.

10. House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs, Issue No. 41, April 29, 1975 and Issue February 2, 1975.

11. CCA, Proposals for a New Competition Policy for Canada, Second Stage, March 1977, pp. 102-104.

12. House of Commons, Commons Debates, Supply and Services Canada, March 16, 1977, p. 4039.

13. Bill C-42, An Act to Amend the Combines Investigation Act and to amend the Bank Act and other Acts in relation thereto or in consequence thereof, First Reading, 1977, pp. 21-23.

14. House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Finance Trade and Economic Affairs, Issues, 49, 52A, 53A, 57, and 70, June 1, 1977, June 7, 1977, June 8, 1977, June 14, 1977 and August 4, 1977 respectively.
Senate Debates, Competition Policy Interim Report of the Standing Senate Committee on Banking, Trade and Commerce on the Subject Matter of Bill C-42, An Act to amend the Combines Investigation Act and to amend the Bank Act and other Acts in relation thereto or in consequence thereof.
Senate Debates, Competition Policy, Report of the Standing Committee on Banking, Trade and Commerce on the Subject Matter of Bill C-13, An Act to amend the Combines Investigation Act and to amend the Bank Act and other Acts in Relation thereto or in consequence thereof, June 29, 1978.

15. House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs, Issue 70, August 4, 1977, p. 27. Also see recommendation in subsection 4.6(2).

16. Norman Cafik, Proposals for Change, Fourteenth Report of the Standing Committee on Finance, Trade and Economic Affairs Respecting Stage II Competition Policy, August 5th, 1977 Second Session Thritieth Parliament, D.S.S., 1977, pp. 35-36.

17. House of Commons, Commons Debates, Supply and Services Canada, November 18, 1977, p. 1030.

18. Bill C-29, An Act to amend the Combines Investigation Act and the Bank Act and other Acts in Consequence thereof, First Reading, April 2, 1984, p. 6.

19. House of Commons, Commons Debates, Supply and Services Canada, April 2, 1984, p. 2627.

20. CCA, News Release, Consumer Minister tables new competition law proposals, NR-85-30, p. 2.

21. House of Commons, Commons Debates, Supply and Services Canada, December 17, 1985, p. 9534.

22. House of Commons, Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-91, Issue No.7, May 12,1986, pp. 50-51.

23. House of Commons, Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-91, Issue No.10, May 20, 1986, p. 31 and Issue No.11, May 21, 1986, pp. 9,16.

24. House of Commons, Common Debates, Supply and Services Canada, May 27, 1986, p. 13651.

25. Bill C-91, An Act to establish The Competition Tribunal and to amend The Combines Investigation Act and The Bank Act and other Acts in consequence thereof, Reprinted as amended and reported May 27, 1986 by a Legislative Committee, p. 78.

26. House of Commons, Commons Debates, Supply and Services, Canada, June 5, 1986, pp. 14026-14029. Bill C-91 was tabled and read in the Senate for the first, second and third time on June 10, 11, and 17 respectively, and finally passed. Sections 97 and 98 were not referred to in the readings. See Senate Debates, Hansard, June 10, 11, and 17, 1986, pp. 2565, 2577-2581, 2617-2620, respectively.

27. House of Commons, Common Debates, Supply and Services Canada, June 17, 1986, p. 14558.

28. Transcript of the Motor Transport Board Hearing held in Room 202, 301 Weston Street, Winnipeg, Manitoba on Wednesday, April 11 and April 12, 1984. Docket 11742 R. McCargar Trucking Ltd., Edmonton, Alberta, pp. 14-15.
The words in the transcript should be manu-tenere rather than man-tan-and tenere.

29. House of Commons Minutes of Proceedings and Evidence of the Standing Committee on: Finance Trade and Economic Affairs, Issue no. 41, April 29, 1985, p. 10.

30. CTC, Railway Transport Committee, In the Matter of the National Transportation Act, CN Europe and Cast Containers S.A., Transcript of Proceedings, July 19, 1983, p. 35.

31. The Maritime Telegraph and Telephone Company Limited v. Board of Commissioners of Public Utilities and Air-Page Communications Ltd. (1981), 1L5 D.L.R., (3d) 252, p. 2.

32. Director under the Combines Investigation Act v. Board of Public Utilities for the Province of New Brunswick Telephone Company Limited, (1984), in the Court of Appeal of New Brunswick, p. 5.

33. Between Newfoundland Telephone Company and Tas Communications Systems Limited and Director of Investigation and Research Under the Combines Investigation Act and Board of Commissioners of Public Utilities, (1982), No,. 121, p. 8.

34. Supreme Court of Canada, Director of Investigation and Research under the Combines Investigation Act v. Newfoundland Telephone Company Limited, and Newfoundland Board of Commissioners of Public Utilities.

35. Ibid. p. 11.

36. Ibid. pp. 16-17.

37. Ibid. p. 18.

38. Leonard J. Ryan, Canada Statute Annotations, R.S.C. 1970 ed. Canada Law Book Limited 1976, pp. 352-353.

39. Canada Law Booking Inc., The Canada Statute Citator, October 1982, pp. 126-2.
The Supreme Court in National Freight Inc. v. Motor Transport Board held that...Inside the province the extra-provincial undertaking must,...hold a licence from a local board sitting as a federally authorized agency... Gerald Sanagan and Butterworths Legal Editorial Staff, The Supreme Court of Canada Reports Service, 1980 Case, Digest 730, Service Issue 33-7/80, p. 5139. In a recent decision regarding the Motor Transport Board of Manitoba v. Purolator Courier Limited, the Supreme Court of Canada held that... the Provincial board when it sits has both provincial and federal jurisdiction...Gerald Sanagan and Butterworths Legal Editorial Staff, The Supreme court of Canada Reports Service, 1981 Cases, Digest 840, Service Issue 39 -1/82, p. 5413.

40. In the Matter of an Appeal from the Competition Tribunal between American Airlines, Inc. v. Canada (Competition Tribunal) the Federal Court of Appeal stated...It seems to me that permitting interveners to play a wider role than simply presenting argument is also a fairer way of treating them. Although the Director is supporting the wider interpretation before us,...American Airlines Inc. v. Competition Tribunal, et al. p. 10.