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ELECTRIC LARGE LAMPS



RESTRICTIVE TRADE PRACTICES COMMISSION
DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS
CANADA

Canada

RESTRICTIVE TRADE PRACTICES COMMISSION



ELECTRIC LARGE LAMPS

Report in the Matter of an Inquiry Relating to the
Production, Manufacture, Sale and Supply of
Electric Lamps and Related Products

Ottawa

1971

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RESTRICTIVE TRADE PRACTICES COMMISSION

L.-A. Couture, Q.C.	Acting Chairman
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RESTRICTIVE TRADE PRACTICES COMMISSION

Ottawa

January 14, 1971.


The Honourable Ron Basford, P.C., M.P.,
Minister of Consumer and Corporate Affairs,
Ottawa, Ontario.

Sir:

I have the honour to transmit to you the French and English texts of a report by the Restrictive Trade Practices Commission entitled "Electric Large Lamps".

This report follows from an inquiry carried out under the Combines Investigation Act relating to the production, manufacture, sale and supply of electric lamps and related products.

Yours very truly,



L.-A. Couture, Q.C.
Acting Chairman

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER I - THE ELECTRIC LAMP INDUSTRY.....	1
CHAPTER II - MARKET CONDITIONS PRIOR TO ESTABLISHMENT OF CGE LARGE LAMP SALES PLAN IN 1959.....	6
1. Position of Canadian General Electric.....	6
2. Situation Prior to 1959.....	7
3. Preparation of Sales Plan by Canadian General Electric..	8
CHAPTER III - THE LARGE LAMP SALES PLAN OF 1959...	12
1. Canadian General Electric Puts 1959 Large Lamp Sales Plan into Effect.....	12
2. Marketing of Large Lamps under the 1959 Sales Plan.....	17
3. Control of Prices under the 1959 Large Lamp Sales Plan.....	19
4. Difficulties in Maintaining Price Uniformity under the 1959 Large Lamp Sales Plan.....	23
CHAPTER IV - THE LARGE LAMP SALES PLAN OF 1961....	31
1. Development of Methods to Control Competition of Independent Distributors and Dealings with Electrical Contrac- tors.....	31
2. Distribution and Prices of Lamps under the 1961 Sales Plan...	35
3. Revisions in 1961 Large Lamp Sales Plan of Canadian General Electric.....	39

	<u>Page</u>
CHAPTER V - MAINTENANCE OF CONDITIONS AND PRICES UNDER SALES PLANS BY THE THREE MANUFACTURERS.....	41
1. Attitude of the Three Manu- facturers toward Observance of Sales Plans.....	41
2. Discussions between Representa- tives of the Three Manufacturers on the Operation of the Sales Plans.....	46
3. Attempts at Resale Price Maintenance.....	55
CHAPTER VI - CONCLUSIONS.....	60
1. Allegations of the Practice of Resale Price Maintenance...	61
2. Allegations of an Agreement or Arrangement to Prevent or Lessen Competition Unduly..	62
3. Allegations of a Monopoly.....	65
4. Detrimental Effects of the Monopoly and Agreement of Canadian General Electric, Canadian Westinghouse and Sylvania.....	68
5. Remedies.....	74
6. Summary of Conclusions and Recommendations.....	77
APPENDIX A - Sales of Electric Lamps, by Types...	79
APPENDIX B - Imports of Electric Lamps into Canada 1959 - 1969.....	80
APPENDIX C - Prices to Wholesalers of C.G.E. Lamps in Canada, G.E. Lamps in the United States and Import Cost of G.E. Lamps (1959 = 100)..	81

Page

APPENDIX D -	Witnesses Examined in this Inquiry and Appearances.....	84
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CHAPTER I

THE ELECTRIC LAMP INDUSTRY

The electric lamp industry in Canada appears to have had its origins some time prior to 1892 when the Edison Electric Company set up a plant at Hamilton, Ontario. This plant was acquired by Canadian General Electric Company Limited in 1895 and the operations transferred to Peterborough, Ontario where Canadian General Electric had established manufacturing facilities in 1892 for the production of the bamboo filament lamp. Two years later carbon lamps were produced and these and arc lamps were the types produced for almost twenty years. In 1912, the production of tungsten lamps was begun and this incandescent type lamp with various improvements and modifications remains one of the most important classes. Mercury vapour lamps were introduced in 1938 and production of fluorescent lamps started in 1939. These three types, incandescent, fluorescent and mercury vapour lamps constitute the principal types of electric lamps for lighting purposes.

This inquiry is concerned with what are known in the industry as electric large lamps as distinguished from miniature electric lamps. The distinction is not based entirely on size and the classification is in part functional in that lamps used for residential, commercial, industrial, street or highway lighting purposes are considered as large lamps even though some in this class may be small in size and have a voltage as low as 6 volts. Miniature lamps are used for less general purposes such as automobile headlights, flashlights, surgical instruments, vending machines and toys. Certain types of photographic lamps are included in the large lamp class.

In the electrical trade large lamps are considered, from the viewpoint of distribution, as falling into two classes, those used for household purposes and those supplied for commercial and industrial purposes. In some instances the latter is designated the "C & I" group.

Brief descriptions of the three principal manufacturers of electric lamps in Canada are given below. The names in parentheses are those by which the companies will generally be referred to in this report.

Canadian General Electric Company Limited
(Canadian General Electric or CGE)

The company is a subsidiary of General Electric Company, 570 Lexington Avenue, New York City, which owns approximately 92 per cent of the voting stock. The company was incorporated on July 15, 1892, under the laws of Canada. Over the years the company acquired lamp plants from other companies, including the Hamilton, Ontario plant of Edison Electric Company in 1895; the Toronto, Ontario plant of the National Electric Lamp Association (Cleveland) in 1911 (this plant had been established originally at St. Catharines, Ontario in 1903 by Sunbeam Incandescent Lamp Company and moved to Toronto in 1908 and acquired by the National Electric Lamp Association in 1910); the Montreal, Quebec plant of the Royal Electric Company in 1912; the Montreal Solex plant in 1954.

The head office of the company is at 214 King Street West, Toronto. Lamps are manufactured in plants at Toronto, Oakville and Montreal.

Canadian Westinghouse Company Limited (Canadian Westinghouse)

This company is a subsidiary of Westinghouse Electric Corporation, 3 Gateway Centre, Pittsburgh, Pa., U.S.A., which owns approximately 71 per cent of the voting stock. The company was incorporated on July 9, 1903 under the laws of Canada. It entered the electric lamp business at Hamilton, Ontario in 1922. In 1950 a new plant was started at Trois-Rivières, Quebec, and between 1951 and 1957 all electric lamp operations were moved to the latter plant. Its head office is at 286 Sanford Avenue North, Hamilton, Ontario.

Sylvania Electric (Canada) Ltd. (Sylvania)

The company is now a wholly-owned subsidiary of General Telephone & Electronics International Incorporated, 730 Third Avenue, New York City. It was incorporated on April 6, 1949 under the laws of Canada and was formerly a subsidiary of Sylvania Electric Products Inc. Its head office is at 6233 Côte de Liesse Road, St. Laurent, Quebec. It manufactures electric lamps at Drummondville, Quebec.

In March 1970 it was reported in the press that the Philips company of Holland had become associated with Service Lamp Co. Limited, London, Ontario, that the operations of the latter would be integrated with those of the Philips company and that a new plant for the manufacture of lamps would be constructed at London, Ontario. Brief descriptions of the two companies are given below.

N.V. Philips Gloeilampenfabrieken (Philips)

The company of Eindhoven, Holland is the parent company of a number of subsidiary or related companies in various countries. There have been several Canadian subsidiaries including Philips Industries Limited, Philips Electronic Industries and Philips Appliances Ltd. Certain types of electric large lamps manufactured by Philips in the United Kingdom or elsewhere have been imported into Canada but prior to 1970 Philips had not manufactured such lamps in Canada.

The Service Lamp Co. Limited (Service)

The company is located at 196 York Street, London, Ontario where it manufactures incandescent large lamps and miniature automotive lamps but not fluorescent or mercury large lamps. The company purchases most of the parts for the electric lamps it manufactures and also purchases some types of electric large lamps for resale from Canadian General Electric. Some types of lamps are also imported for resale by the company.

Electric lamps are made in a very great variety of shapes, sizes and types. An employee of Canadian General Electric informed the Commission that he believed his company listed somewhere around three to four thousand different lamp types. The total would include large lamps and lamps in other classes. Although the average home does not require many varieties of large lamps, many types of lamps are needed to meet the requirements of industrial and commercial users and the special needs of public authorities.

The distribution of electric large lamps is made, in some cases, directly by the manufacturer to large users and through specialized wholesale distribution firms as well as through distributors not specializing in electrical products. At the retail level the ordinary householder buys the more common types of light bulbs from a great variety of retail outlets.

Sales of electric lamps, as reported by the Dominion Bureau of Statistics, show an uninterrupted rise during the past decade while imports have had no consistent trend. The figures for sales and imports are given in Appendices A and B.

A part of the imports of electric lamps consists of lamps imported by Canadian manufacturers for resale. Presumably such importations are made when it is not economical to manufacture a particular type of lamp in Canada. It is not possible, therefore, to make a precise estimate of the proportion of the Canadian market which is supplied by importers other than the three large Canadian lamp manufacturers.

When Mr. Harry W.G. Johnson, Merchandising Manager, Commercial and Industrial Lamp Division, Canadian General Electric, was asked whether he could make any estimate of the large lamp business in Canada accounted for by imports he made the following reply:

"A. No, sir, I can't. For one thing, the data that is available is pretty sketchy on the evaluation of imports, especially from the United States. If I recall the data, the reports, it is difficult to identify which are imports from the United States made by domestic manufacturers, for example, Sylvania, Westinghouse or ourselves, or those brought in by importers. It is also difficult to evaluate it in terms of our total market measurements which are arranged for us by the Dominion Bureau of Statistics, since they are bringing in, in most cases, more units for less dollars, and it is difficult to evaluate which dollars they are bringing in, as defined by D.B.S. I have attempted to evaluate this, to try to get a fix on what kind of penetration these people were doing, but there is insufficient data."

The evidence in the inquiry indicates that imports from sources outside the domestic manufacturers supply a small part of the Canadian market. It was represented to the Commission by the large Canadian manufacturers that the potential competition of imports is a much more significant factor.

Customs duties on electric lamps are set out in tariff items 44504-1 (incandescent lamps) and 44524-1 (infra red, ultra violet and mercury vapour lamps). Rates of duty under these items have been as follows:

<u>Tariff Item</u>	<u>Goods Subject to Duty and Free Goods</u>	<u>British Preferential Tariff</u>	<u>Most Favoured Nation Tariff</u>	<u>General Tariff</u>	<u>Effective Date</u> <u>No. of Memo</u>
44504-1	Electric arc lamps and incandescent electric light lamps, n.o.p. ...	20 p.c.	30 p.c.	30 p.c.	17-9-30, 352-A
	GATT.....		25 p.c.		1/1/48, D48-28 & S.1
		15 p.c.	20 p.c.		4/6/69
44524-1	Electric apparatus and complete parts thereof, n.o.p.	15 p.c.	25 p.c.	30 p.c.	2/5/36, D33-A
	GATT.....		22 1/2 p.c.		1/1/48, D48-28 & S.1
			17 1/2 p.c.		4/6/69

CHAPTER II

MARKET CONDITIONS PRIOR TO ESTABLISH- MENT OF CGE LARGE LAMP SALES PLAN IN 1959

1. Position of Canadian General Electric

The position of Canadian General Electric as the largest manufacturer and the price leader in the electric lamp market in Canada had long been recognized in the industry.

Mr. Harry W.G. Johnson of Canadian General Electric summed up the situation as follows:

"A. We have considered ourselves the cost leader or the leader of production in the marketplace, and we have considered ourselves as price leaders in the marketplace."

Mr. Gordon H. Wheatley, Manager, Western Sales Region and formerly Merchandising Manager of the Commercial and Industrial Lamp Division of Canadian General Electric gave the following testimony:

"A. CGE historically has been the largest manufacturer of lamps in Canada and we have always felt that we had the cost leadership.

Q. What do you mean by that?

A. It means the lowest cost of manufacture, which meant then that we also had pricing leadership within the market, or I should say, the best prices within the market. On this basis over the years, we have taken price leadership action in the market which at times has been followed by our competition and at other times has not, as determined primarily by market conditions.

Q. When you speak that they followed you or did not follow you, was that an absolute practice without exception?

- A. No, there have always been exceptions. The degree of followership seems to have depended on conditions within the marketplace."

With minor exceptions, prices of large lamps appearing in the price schedules of Canadian General Electric, Canadian Westinghouse and Sylvania over the years have been the same.

2. Situation Prior to 1959

The practice of the three lamp manufacturers had been to sell large lamps at list prices with discounts to different classes of customers. Intermediate distributors were expected to sell at lower discounts to retailers. The list prices were regarded as retail prices. Mr. Wheatley of Canadian General Electric testified that in 1958:

- "A. . . . they [Canadian Westinghouse and Sylvania] published the same prices as we did and published the same discounts, but pricing in the marketplace was in total chaos and really no one was following anybody or leading anybody."

The testimony of witnesses in the inquiry is to the effect that the disturbed conditions in the distribution of electric large lamps became particularly significant during the years 1956, 1957 and 1958. Traditionally electrical supply firms specializing in the sale of electric large lamps had been the principal channel through which lamp manufacturers distributed their products. In the post-war period corporate food chains, voluntary chains, department stores and other large-scale retailers played increasingly larger roles in the distribution of many lines of goods, including electric large lamps. The favourable terms on which the newer and expanding types of merchandising concerns could purchase electric large lamps enabled them to enter the traditional electrical wholesaler field and even, in some instances, to submit bids for the supply of lamps to public authorities. Such incursions disturbed electrical wholesalers and led them to voice objections to the lamp manufacturers about the inroads being made into what they regarded as their traditional business.

3. Preparation of Sales Plan by Canadian General Electric

During the latter part of 1958 Canadian General Electric worked out a sales plan for electric large lamps which was put into effect early in 1959. Canadian Westinghouse also worked on a new sales plan but abandoned its efforts when the CGE plan appeared and adopted a system of distribution embodying the features of the 1959 CGE plan. A similar plan was also put into effect by Sylvania.

The purpose of the 1959 sales plan was described by Mr. E.H. Lindsay of Canadian General Electric at a meeting of the company's large lamp distributors in February 1959. In his address Mr. Lindsay described the rise in costs experienced by manufacturers and distributors and then went on:

" . . .

What have the lamp manufacturers and distributors been doing to offset these increasing costs and to assure the profitability that is essential to the health of any business? In my opinion the exact opposite of what we should be doing. All of us have been contributing to lamp marketing conditions that are chaotic in almost every respect; where price cutting has largely replaced selling; where the growth and the breadth of our individual markets are being limited by runaway discounts, and where none of us is making the legitimate profits to which we are entitled.

It is a condition that is hurting all of us. We as manufacturers, you as our agents, and also competitive lamp manufacturers and their distributors. Size is no protection against this disease of disappearing profits resulting from increasing costs and ridiculous price cutting. The larger you are and the wider your markets the more your profits may have been hit; or you may have simply lost the growth you should expect, by letting someone else take the business at unprofitable prices."

Mr. Lindsay mentioned in his address that list prices of lamps had been raised to provide some relief.

This had increased prices to retail consumers but other users were getting better prices than formerly because of the larger discounts being given.

Mr. Lindsay continued:

". . .

Some of you have asked us, as the principal factor in the lamp industry, to take steps towards stabilizing discounts by publishing and enforcing a workable sales plan. Two years ago when you first requested this we felt that many elements of the market were not yet ready to settle down and support such a plan. Now we think the time is right. We believe we are all, including our competitors, thoroughly fed up with eroding our profits and seeing part after part of the market slip away from us because of almost universal price cutting.

We are, therefore, ready to move with a plan primarily designed to help put some profits back into your pockets. Its success, however, will depend entirely upon the support that you give it. If there is stalling or hedging, if there is fence sitting while you wait for the other guy to move first, or if there are price concessions made openly or under the table to 'safeguard' against loss of business on other lines, then this plan will fail and all of us will be guilty of continuing to ruin the economic health of a basic segment of the electrical industry.

Certainly there are risks in the plan. Any kind of dynamic action involves risk. There is danger of temporary loss of business while our competitors make up their minds whether to follow us or while our customers are deciding whether we are in earnest or not. Competitive manufacturers or their distributors may even choose not to follow our lead at any time. If this should happen we will have to admit that we are not leaders because we have no followers and it will be necessary to withdraw the plan and probably substitute one based on 'prices upon application.'"

It is apparent that the endeavour of Canadian General Electric to stabilize discounts by introducing a sales plan for large lamps which would be strictly enforced was based on its assumption of the effects of its action on the policies of other lamp manufacturers in Canada. Some of the basic assumptions held by the Lamp Department of Canadian General Electric were set out in the minutes of meetings held on October 7 and 13, 1959. Among those which are most directly relevant to a vigorously enforced sales plan are the following:

"Price stability is necessary for maximizing the long range health of the industry and its components.

. . .

Lamps should sell at same price in all areas. i.e. price and transportation is equalized over Canada.

. . .

The largest component of the industry can provide price leadership (regulate price, discount and terms)."

The testimony of Mr. Lindsay contains the following comments on the leadership of Canadian General Electric in the industry:

"Q. You say:

'Gentlemen, I believe there is only one answer. It is high time that we faced up to the fact that we must sell our goods and services at a legitimate profit and the only way we can do it is by taking the leadership in putting stability into the price structure.'

How were you proposing to take the leadership in putting stability into the price structure?

A. First, by getting out this plan whereby they would know what the practices and policies that we wanted pursued by our

agents. Secondly, in starting to try to enforce them to live up to their agency agreement. We were the largest factor in the lamp business, and consequently if we took the leadership that these competitors might or might not follow, but they certainly would not be following anything unless we took some leadership.

. . .

Q. Was it your expectation at that time that your competitors would follow such a proposal?

A. No.

Q. Nothing but hopes?

A. No.

Q. In fact, did you find that they did come out with similar plans?

A. Yes, I believe they did. I have not seen their plans, but I believe they came out with them.

Q. Would it have been possible for you to maintain your own plan in the market if they had not done so?

A. Not for very long, not without serious deterioration in our share of the market."

The success of the 1959 sales plan of Canadian General Electric was clearly dependent upon parallel action by Canadian Westinghouse and Sylvania.

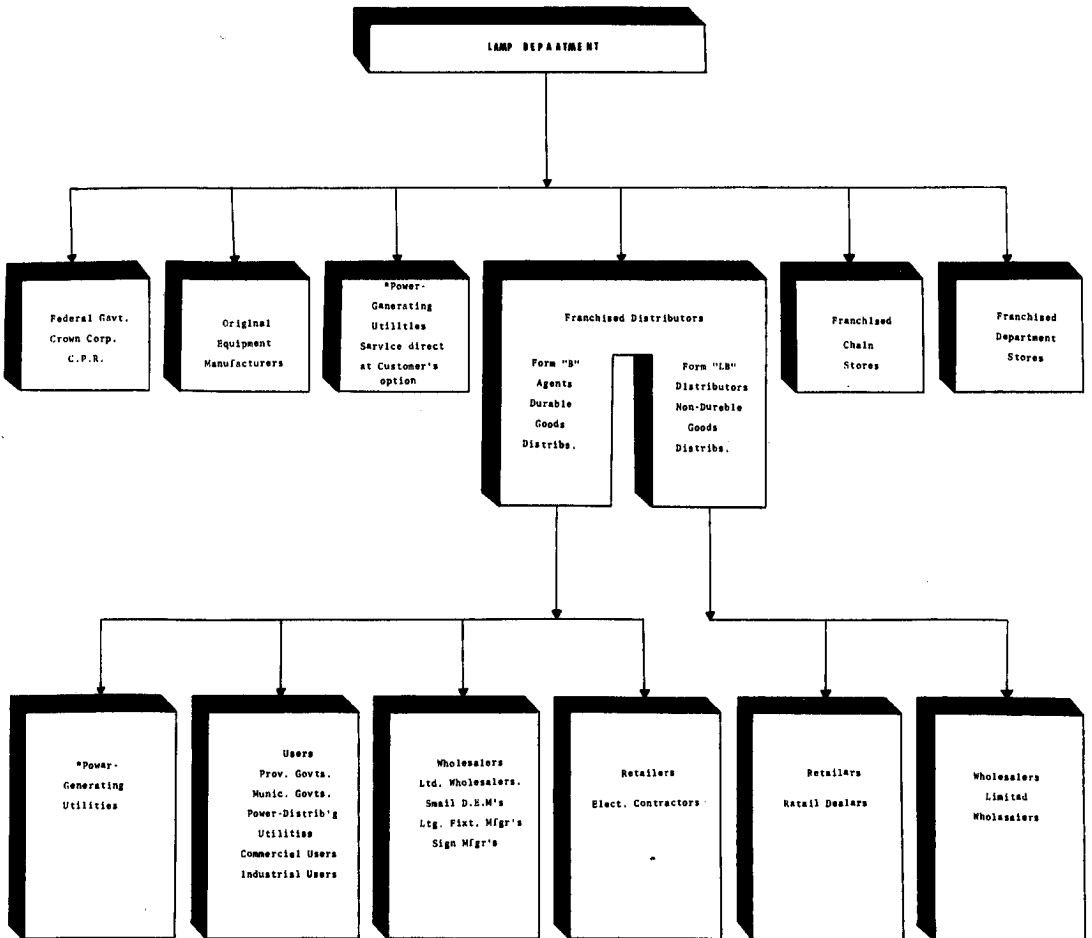
CHAPTER III

THE LARGE LAMP SALES PLAN OF 1959

1. Canadian General Electric Puts 1959 Large Lamp Sales Plan into Effect

The plan of Canadian General Electric to stabilize the prices of large lamps at the various stages of distribution involved the detailed description of each type of distributor and user of electric lamps and the development of a complex system of discounts to establish prices for each category and for different sizes of orders. The sales plan, sent to all its distributors and agents by Canadian General Electric by January 5, 1959, was to be effective on February 1, 1959 "on all new business, including tenders" and on April 1, 1959 "on all present business". The Large Lamp Sales Plan, as issued by Canadian General Electric, consisted of a printed document of 34 pages containing directions, detailed descriptions and the scale of prices for the many classes of customers and situations described. Some idea of the complexity of the sales plan can be derived from a schematic representation of distribution and schedules of discounts which are set out below:

SCHEMATIC DISTRIBUTION-GENERAL ELECTRIC LARGE LAMPS



* Except: H.E.P.C. of Ont. will be served direct by Lamp Dept. only.

The rates of discount for different types of customers and modes of distribution as provided for in the 1959 Large Lamp Sales Plan are summarized below:

SCHEDULE OF "MAXIMUM" DISCOUNTS
GENERAL ELECTRIC
Incandescent, Fluorescent, and
Mercury Lamps
EFFECTIVE FEBRUARY 1, 1959

FRANCHISED CHAIN STORES*
Served Direct

Warehouse Delivery..... 48%

Store Delivery..... 42%

Maintenance - Store Deliv.
- original installation
or complete relamping
only..... 48%

- other Maintenance..... 42%

FEDERAL GOVT***
Served Direct

Maximum Discount..... 50%

ORIGINAL EQUIPMENT*
MANUFACTURERS
Served Direct

Over \$10,000
List/Year..... 48%

POWER-GENERATING*†
UTILITIES

Service through franchised
distributors, except Service
Direct at customer's option

Maximum Discount..... 42%

FRANCHISED DEPARTMENT STORES*
Served Direct

Franchise Discount..... 48%

FRANCHISED "R" AGENTS**
DURABLE GOODS DISTRIBUTORS
Served Direct

List Value/yr.	Compensation
LT \$50,000.....	48%
Over 50,000.....	49%
Over 100,000.....	50%
C.G.F. Wholesale.....	50%

FRANCHISED "LRC" DISTRIBUTORS
NON-DURABLE GOODS DISTRIBUTORS
Served Direct

List Value/yr.	Discount
LT \$200,000.....	48%
Over 200,000.....	49%

RETAILERS****
ELECTRICAL CONTRACTORS ††

Service through Franch. Distributors

1 order of LT 1 std. case..... 25%

1 order incl. 1 std. case..... 35%

1 order incl. 5 std. case..... 40%

LIMITED WHOLESALEPS
SMALL ORIG. EQUIP. MGRS.
LIGHTING FIXTURE & SIGN DEPTS.

Service through Franch. Distributors

1 order of LT 1 std. case..... 40%

1 order incl. 1 std. case..... 40%

1 order incl. 10 std. case..... 45%

COMMERCIAL & INDUSTRIAL USERS,
POWER-DISTRIBUTING UTILITIES &
PROVINCIAL & MUNICIPAL
GOVERNMENTS

Service through Franch. Distributors

1 order of LT 1 std. case..... 20%

1 order incl. 1 std. case..... 35%

1 order incl. 10 std. case..... 40%

Subject to change without prior notice.

CASH TERMS: Will in all cases be shown separately,
and will not exceed 2%.

- * Cash Terms - 2% 10, Net 30
- ** Prompt Reporting - 2%
15th Following
- *** Cash Terms - 2% 30 days
- **** Retailers over \$10,000 list/yr. should
contact Lamp Dept. District Manager for
discount.
- † Except: H.E.P.C. of Ont. will be served
direct by Lamp Dept. only
- †† Elect. Contractors on 1 order which
includes 50 or more std. case -
45%

One of the purposes of the Large Lamp Sales Plan was to reduce the competition from department stores and other non-electrical distributors in the commercial and industrial market. Mr. G.H. Wheatley of Canadian General Electric was asked how the 1959 Plan accomplished this purpose:

"MR. SOUTHEY:

- Q. . . . Would you just point out, Mr. Wheatley, how this problem of having department stores sell to users was intended to be regulated or corrected by the 1959 Sales Plan?
- A. On page 3 of the Schematic Distribution, we put Franchised Chain Stores at the same buying level as our agents. This would not control this problem beyond a certain degree, it would certainly improve the situation, because prior to 1959 department stores were buying at a price, or at a discount 3 to 4% better than many 'B' agents, which meant they had more margin to cut from in order to price into the market. Here we put them at the same purchase price level."

"B" agents of Canadian General Electric usually handled electric lamps on a consignment basis and thus their compensation would be fixed by Canadian General Electric. The following schedule sets out the gross compensation of "B" agents at certain volumes of business and size of order:

GROSS COMPENSATION TABLES - GENERAL ELECTRIC
LARGE LAMPS

FEBRUARY 1, 1959

"B" AGENTS' GROSS COMPENSATION IN PER CENT OF
NET RECEIPTS ON SALES AT MAXIMUM DISCOUNTS

SERVED PURCHASERS		GROSS COMPENSATION		
Basis	Maximum Discount	Annual List Volume of "B" Agents		
		LT \$50,000	\$50,000	\$100,000
RETAILERS, ELECT. CONTRACTORS	%	%	%	%
1 order of LT std. case	25	30.7	32.0	33.3
1 order incl. 1 std. case	35	20.0	21.5	23.1
1 order incl. 5 std. case	40	13.3	15.0	16.7
LIMITED WHOLESALERS, SMALL ORIG. EQUIP. MFRS. SIGN MANUFACTURERS, LIGHTING FIXTURE MFRS.				
1 order of LT 1 std. case	30	25.7	27.1	28.6
1 order incl. 1 std. case	40	13.3	15.0	16.7
1 order incl. 10 std. case	45	5.5	7.3	9.1
COMMERCIAL & INDUSTRIAL USERS, POWER-DISTRIBUTING UTILITIES, PROVINCIAL GOVERNMENTS, & MUNICIPAL GOVERNMENTS				
1 order of LT 1 std. case	20	35.0	36.3	37.5
1 order incl. 1 std. case	35	20.0	21.5	23.1
1 order incl. 10 std. case	40	13.3	15.0	16.7
POWER-GENERATING UTILI- TIES	42 1/2	9.6	11.3	13.0

An examination of the complex system of distribution and rates of discount embodied in the 1959 Large Lamp Sales Plan of Canadian General Electric leads to the following conclusions:

1. Canadian General Electric had confidence that it had such a position in the market that its leadership would be followed even with a plan of such complexity.

2. Canadian General Electric was reasonably assured that its plan would be adopted as an industry plan, which turned out to be the case.

Canadian Westinghouse and Sylvania secured copies of the 1959 Large Lamp Sales Plan of Canadian General Electric soon after it was issued and adopted similar plans with effective dates to meet those set by Canadian General Electric.

2. Marketing of Large Lamps under the 1959 Sales Plan

From the 1920's Canadian General Electric had distributed a large part of its output of electrical lamps by placing stocks of lamps on consignment with wholesale firms and other distributors who were referred to as "agents". The handling of electric lamps usually formed only one part of the business of such firms. With the rise of chain stores and other types of merchandisers the distribution of CGE lamps became divided more significantly between the "agents" holding consignment stocks and other merchandisers. The freedom of the latter to quote prices lower than those fixed for consignment stocks has already been mentioned as one of the factors leading Canadian General Electric to introduce the Large Lamp Sales Plan in 1959.

In December 1958 Canadian General Electric was supplying lamps to 185 recognized merchandising accounts. These were divided as follows:

Consigned Agents	114
Consigned Distributors	<u>40</u>
Total, consigned	154
Other Distributors	<u>31</u>
Total	185

As the design of the 1959 Sales Plan was to enable the manufacturer to exercise greater control over the supply of lamps to commercial and industrial accounts as distinguished from the supply of lamps for household use and as the channel for distribution for commercial and industrial purposes was the agency handling CGE lamps on consignment, Canadian General Electric proceeded to increase the number of consigned agents and to eliminate other distributors on consignment. The progress made by Canadian General Electric in achieving these objectives is shown in the table below. The number of consigned agents was increased by 10 per cent in 1959 over 1958 and the number was further increased in each year until 1967. The number of consigned distributors was reduced to five in 1959 and to zero by 1961. The number of distributors not on consignment increased in each year, except 1962, in the period 1960 to 1968.

AGENTS AND DISTRIBUTORS

FRANCHISED BY

THE LAMP DEPARTMENT

<u>YEAR</u>	<u>CONSIGNED AGENTS</u>	<u>CONSIGNED DISTRIBUTORS</u>	<u>DISTRIBUTORS</u>	<u>NUMBER CONSIGNED</u>	<u>NUMBER OF DISTRIBUTORS</u>	<u>TOTAL NUMBER</u>
December						
1958	114	40	31	154	71	185
1959	125	5	59	130	64	189
1960	131	1	70	132	71	202
1961	137	0	78	137	78	215
1962	148	0	71	148	71	219
1963	162	0	87	162	87	249
1964	164	0	94	164	94	258
1965	183	0	114	183	114	297
1966	186	0	116	186	116	302
1967	197	0	123	197	123	320
1968	186	0	130	186	130	316
1969	194	0	128	194	128	322
1970	193	0	128	193	128	321

Similar data for Canadian Westinghouse and Sylvania are not available. Canadian Westinghouse had some of its wholesale customers on a consignment basis prior to 1959 and proceeded to extend this arrangement to other distributors serving the commercial and industrial market. The company appears to have accomplished this objective by the middle of 1962.

Sylvania had employed a marketing plan under which it did not require payment for lamps shipped to its distributors up to 90 days after date of shipment depending on the size of the order. This arrangement enabled its distributors, to a very large extent, to dispose of the lamps before making payment to Sylvania and thus they were in somewhat the same position as wholesalers carrying consignment stocks for one of the other manufacturers. However, in 1963 Sylvania adopted the consignment arrangement for the distribution of lamps.

3. Control of Prices under the 1959 Large Lamp Sales Plan

As has already been indicated, Canadian General Electric developed the 1959 Large Lamp Sales Plan to regulate the prices at which its products were supplied to commercial and industrial users. In order to achieve this objective it was necessary to eliminate competition in price between its agents who served this market. A necessary condition for the achievement of the objective of Canadian General Electric was that Canadian Westinghouse and Sylvania should adopt the same prices and system of distribution as Canadian General Electric and that they would see that their distributors did not compete in price with CGE agents.

Canadian Westinghouse enlarged its number of agents on consignment and having adopted the CGE Large Lamp Sales Plan could use the same means to control prices. Sylvania, not having a consignment plan in 1959, used its best efforts to have its distributors follow suggested maximum prices which matched prices in the CGE Plan.

Sylvania anticipated an opportunity to improve resale prices in 1959 as early as December 5, 1958 when Mr. F.W. Fulle of Sylvania sent a report to Mr. R.E. Niedringhaus, President of the company, which contained the following:

"Competitive conditions, as previously indicated, are extremely intense from our two large lamp manufacturers. This reflects through distributor activities and is leading to highly competitive conditions between distributors - resale discounts are not only not being contained, but in certain areas on certain types of accounts, are being increased. The electrical distributor across Canada is extremely unhappy with his margin on lamps and we therefore, believe that we are in the last stage of this price cutting era and that early next year there will be an opportunity to support distributor desires to improve their profit position."

Mr. R.K. Owen, Product Manager, Lamp Division, Canadian Westinghouse, wrote to company sales managers and salesmen on February 23, 1959 and stated:

"As of this moment there is no such thing as a Westinghouse Large Lamp Sales Plan. However, we have picked up copies of a competitive plan and the instructions have been issued that we are following the policies of this competitive plan until further notice. We do not know whether all salesmen have copies of the competitive plan or not. However, this is not too important in that no new arrangements with new customers can be made without the approval of the District Distributor Sales Managers. Thus the controls should be established.

Now we can announce that we will have our own Sales Plan. The complete plan in every detail will be delivered to us by our printer February 26th. . . ."

On March 11, 1959 Mr. Fulle of Sylvania wrote to the President of the company. His letter reads, in part, as follows:

"The new Large Lamp Sales Plan of our competitor, the C.G.E. Company, is getting into full swing and will apply to all new business April 1st. Reports from the field indicate that it is not only well excepted [sic] [accepted], but being carried out by many of their distributors to the letter.

Sylvania's plan to meet this condition has been completed and will be given to the District Sales Managers at the meeting March 11th to 14th.

Canadian Westinghouse have issued a similar plan which we understand is now being explained to the field by their Sales Manager on a trip Coast to Coast."

In a marketing newsletter of March 20, 1959 Mr. G.H. Wheatley of Canadian General Electric made the following comments:

"Westinghouse and Sylvania both now have Large Lamp Sales and Discount Plans in the field similar to ours. It would appear, therefore, that they intend to follow our lead April 1st."

One of the distributors of Sylvania lamps was the Northern Electric Company, Limited which has branches across Canada. In April 1959 the Vancouver branch of Northern Electric Company, Limited quoted on a tender called by the Vancouver School Board and made an error in the case of one type of lamp which affected the total quotation by the amount of \$60.00.

Mr. K. Wilkinson of Sylvania's Vancouver office wrote a letter of explanation to Mr. F.W. Fulle on May 15, 1959 which concluded as follows:

"It was felt that before the tender was let to either one supplier or many that our competition should be informed of the error which had been made with the least possible delay. This has been done with our largest competitor and will be done with the other on Tuesday morning. At the moment there is nothing more can be done and it is my sincere hope that for the benefit of Northern and ourselves that the order when placed is split among a number of suppliers. This should serve to offset any inquiries that might be made if the order were to go entirely to Northern.

Jack Milburn is very upset over the fact an error was made and I believe will take stronger measures in the future to ensure that a recurrence of this type of thing will not happen again.

I am passing this along to you in the event you should receive complaints from our competition at head office level."

Mr. R.R. Anderson of Sylvania made a report to the President of the company under date of July 6, 1959 in which the writer commented on his attendance at a convention of the Canadian Electrical Distributors Association as follows:

"While in attendance at the Canadian Electrical Distributors Association Convention held in Banff, we received excellent comments from the many distributors present regarding the sales plan as set forth in previous reports. For once these distributors are making a profit and all have an equal chance at tendering for business at a similar price. They suggested a few refinements which we are presently considering. It might be necessary to issue a revised sales plan later on this year or during the first few months of 1960. Northern Electric feel the same as our Independent Distributors towards this new profit picture. As so ably put by CEDA members - 'we have been living in a profitless prosperity - this new large lamp plan has helped to change all of this.'"

It will be noted that Mr. Anderson described the then current situation as enabling distributors to tender for business "at a similar price".

The fact that Northern Electric Company, Limited distributed Sylvania lamps across Canada made any actions on its part which might differ from those of its competitors, of great significance. In 1960, Northern Electric became concerned that the Large Lamp Sales Plan did not operate in a manner entirely beneficial to Northern Electric and so indicated to Sylvania. Mr. F.W. Fulle of Sylvania wrote to Mr. A.G.V. Smith of Northern Electric on November 10, 1960 as follows:

"I have held your letter written under date of November 1st in order to give it some careful thought before reply.

I am fully aware of the conditions that your Sales Representatives have found to exist in the field, particularly in regard to the sale of lamps to electrical contractors. I am also aware that your Company has followed the suggested resale discounts and, in doing so, has increased your profit margin.

I can only repeat what I have said before that if Northern Electric were to follow another schedule of resale discounts, it would create a new price in the market and could only have the effect of reducing the profit margin to your good Company.

I am therefore going to request that you withhold taking any action on any other resale schedule than that suggested in our sales plan until you and I have had an opportunity to discuss this situation further."

In summary, the 1959 Large Lamp Sales Plan of Canadian General Electric was endorsed and supported by Canadian Westinghouse and Sylvania. The varying scales of prices established under the 1959 Plan and the classifications of direct and secondary customers of the lamp manufacturers, combined with the method of calculating prices by varying discounts from list prices, created opportunities for price differences between competing suppliers. The differences, in some cases, resulted from different interpretations of the price schedules and, in others, from merchandisers using the opportunity to secure business by giving the purchaser an advantage in price. The situation is reviewed in the next section.

4. Difficulties in Maintaining Price Uniformity under the 1959 Large Lamp Sales Plan

It has already been mentioned that the detailed classification of merchandising outlets and types of customers under the 1959 Large Lamp Sales Plan as well as the varying discounts for size of order and volume of purchases resulted in situations, either of error or intent, for variations in selling prices.

An undated review of the 1959 Sales Plan prepared by Canadian General Electric about mid-1960 sets out the objectives of the Plan as follows:

"I OBJECTIVES TO BE ACHIEVED

- A. To increase Lamp Department's profits from the sale of incandescent, fluorescent, slimline, and mercury lamps in both the C. & I. user, and retail markets.
- B. To increase our present market share of these lamps at least in accordance with our long range market share forecast.
- C. To develop and publish sales plans which will be in accord with Canadian law and Company policy.
- D. To develop and publish sales plans which will enhance the prestige of the Lamp Department in the eyes of its customers, as a result of the plan's equity, fairness, completeness, and usefulness in the sale and/or resale of lamps.
- E. To develop pricing and compensation techniques which will allow for maximum flexibility in meeting, and quickly combating, the importation of foreign lamps.
- F. To develop a sales plan for the industrial and commercial user market, which will strengthen the existing agency plan, and increase the Lamp Department's control over agents' resale prices."

The results considered to have been achieved are described under the heading "The Current Situation":

"II THE CURRENT SITUATION

The Large Lamp Sales Plan has been in effect since April 1, 1959. It is still in force after 15 months except for some minor exceptions. During this period, the following results have been accomplished:

1. The Lamp Department has increased its profits by:
 - (a) reducing discounts to customers at the primary levels and,
 - (b) because it has not been necessary to increase primary discounts above 1958 levels.
2. The Lamp Department has increased its C. & I. market share, year to date, in comparison with the same period last year, from 43% of industry sales to 50%, largely through its independent distributors, including the smaller distributors.
3. Price stability in the market place has been achieved to a remarkable degree.
4. C.G.E. distributors have been able to compete successfully for C. & I. sales heretofore denied to them because of price, and are making improved gross margins on lamp sales.
5. The Lamp Department has increased its prestige with its distributors because of their increased sales and profits in 1959-60.
6. The Wholesale Department market share has declined from 15.6% to 14.4%.

All in all, as far as we have gone, the results are favourable. However, we must solve some fundamental problems inherent in the Large Lamp Sales Plan if we are to

continue to enjoy its benefits. In view of the magnitude of some of these problems, they must be solved in the last quarter of 1960. A new plan or plans must be published not later than 15 November, 1960, to become effective 1 January, 1961."

The review then describes the problems which had arisen under the 1959 Sales Plan. In the commercial and industrial market the position of the electrical contractor and the entry of non-electrical distributors are seen as the principal factors:

"A. C. & I. Market

1. Inequality, discrimination and general confusion in the electrical contractor compensation schedule resulting from:
 - (a) the overbearing importance of electrical contractor business in the Wholesale Department.
 - (b) Ineffective selling job done on the Sales Plan by Wholesale to the electrical contractors a year ago when the Large Lamp Sales Plan was introduced.
 - (c) Lack of a clear-cut definition on the role of the electrical contractor in the C. & I. lamp business.
 - (d) The extensively varied nature of the electrical contractor's business function.
2. Contractors, LB's and Department Stores entering the C. & I. market, properly belonging to the 'B' Agent, and signing business at extended discounts as a result of their 'high' purchase discounts with no corresponding obligation to maintain published resale discounts.
3. Leeway for 'error' on public tenders resulting from a pseudo-complicated three-step and clause discount system.

4. The natural tendency of any discount system to over-emphasize 'discount' without full appreciation of the actual extent of the concession of extended discount.
5. The 'angle' of quoting municipalities with generating plants at the Power Generating Utility discount instead of the proper Municipal Government discount.
6. Foreign competition - O.E.M.'s - Imports.

Specific Objectives

1. Establish on a long range basis, the role of the electrical contractor in the C. & I. lamp business and set up a suitable compensation plan in accordance with this role.
2. Eliminate, insofar as possible, the complexities of pricing on public tenders so as to minimize 'mistakes'.
3. Examine a Service Compensation Plan based on 'no performance - no pay', in order to improve stock control, collections, and volume compensation.
4. Allow sufficient lead time on the introduction of any new Sales Plan to allow complete familiarization and selling time to our Districts to put it over at all levels of our distribution."

In the above excerpt, "LB's" designates distributors who are not on consignment, such as wholesale grocers, other non-electrical wholesalers, chain stores, etc. "O.E.M.'s" is an abbreviation for "Original Equipment Manufacturers".

A section in the review entitled "Retail Market" describes problems which had arisen in the supply of lamps to retail stores which could make purchases from a variety of wholesalers:

"B. Retail Market

1. Discrimination between the B and the LB customer wherein we control the selling price of the B to the retail outlet, and we exercise no control on the LB who is usually a cost plus operator, which in effect does two things:
 - (a) Removes legitimate distributor business on their own home grounds, that is, the hardware and country general stores.
 - (b) Incites the B agent to go off agency and lose the benefits accruing to him in serving the C. & I. market under this plan.
2. We have not made the LB a legitimate distributor, and hence due to his not being on consignment and his cost plus operation, he has been cutting prices and causing considerable disturbance in the C. & I. market (e.g. Hudson's Bay, Wholesale, City of Calgary, National Grocers and various school boards of the Niagara Peninsula).
3. Present technique of using discounts from list, although a simple technique for internal accounting, makes the product highly subject to price cutting in a market where net prices or case prices prevail, that is, in the retail market.
4. Our current practice of discounts from list 'tends to over-emphasize the concept of discounts without full appreciation of the actual extent of the concession of extended discount': G.H. Wheatley. This is particularly true in the retail market.
5. Chain operations are purchasing lamps for use in their own premises at discounts far in excess of those being paid and allowed to similar large style users, such

as the oil and steel companies, due to our current practice of allowing the same discount they receive on resale lamps."

The examples given in paragraph 2 in the above excerpt apparently refer to distributors bidding on contracts for municipalities and school boards in competition with agents on consignment.

The three manufacturers, Canadian General Electric, Canadian Westinghouse and Sylvania, received reports from field representatives and agents that the discount schedules were not being observed. Mr. G.R. Nettleton of Canadian Westinghouse wrote to Mr. D.J. Moodie of the same company on October 22, 1959 that hardware stores in the Montreal area were being supplied at prices not in accordance with the Canadian Westinghouse sales plan. His letter included the following:

"I know for a fact that True-Lite Management have advised their sales people to meet any discount. I also believe that this policy has the sanction of their supplier Sylvania. Added to this information, B.L. Vranckx has been able to verify discounts that are in existence, that are contrary to our Sales Plan; ie. 40% across the board, rebates at the end of the month via credit notes, 40 and 5%."

On February 24, 1960, Mr. E.N. MacKay of Canadian Westinghouse wrote to Mr. G.R. Nettleton about the situation at that time. He reported:

". . .

We are finding great difficulty in obtaining business at the retail level, on a three step basis. What we have found is that the maximum discount of 40% is being given on all orders, regardless of quantity. We have had orders and had to cancel them, from many hardware stores, on the basis of not giving them 40%.

We have not found that the maximum discounts, as indicated in the sales plan are being exceeded. In other words, I don't think 40% is being exceeded at the retail level, I don't think that

many electrical contractors are buying at better than 40% regularly nor are they buying at better than 45% in 50 case lots.

. . ."

The competition in prices of electric lamps which developed between different types of distributors and out of the varying scales of discount for quantity purchases and for different classes of outlets and customers led the three lamp manufacturers, Canadian General Electric, Canadian Westinghouse and Sylvania to study means of securing greater uniformity in prices. The preparations for changes in the 1959 Sales Plan will be described in the next chapter but it may be mentioned here that implicit in the consideration given to modifications by the three companies individually was the firm assumption that whatever changes were made by one company would be adopted by the other two so that the result would continue to be an industry plan for the distribution of electric large lamps.

CHAPTER IV

THE LARGE LAMP SALES PLAN OF 1961

1. Development of Methods to Control Competition of Independent Distributors and Dealings with Electrical Contractors

As already indicated competitive situations which arose under the 1959 Large Lamp Sales Plan were reported in similar fashion by the three lamp manufacturers, Canadian General Electric, Canadian Westinghouse and Sylvania. The thinking of officials in the three companies about methods of controlling competition also went along similar lines. Long before Canadian General Electric announced changes in its Large Lamp Sales Plan internal communications in Canadian Westinghouse mentioned possible changes of the kind which were made in 1961.

On August 2, 1960, Mr. D.J. Moodie of Canadian Westinghouse wrote to Mr. E.N. MacKay of the same company. His letter contained the following:

"We are continuing to give close study to the Large Lamp discount to retailers in view of the problem outlined in your letter of July 20th. We are hoping for a conclusion this Fall which would result in an amendment to this portion."

More specific indication of the nature of the changes in the Sales Plan which were being considered was given in a letter of October 7, 1960 from Mr. G.R. Nettleton of Canadian Westinghouse to Mr. W.E. Dugal and Mr. F. Aubin of the same company:

"The information you have submitted to me in your letter of October 5th, 1960, is typical of what has happened and is happening in the Grocery field nationally. We are taking a very close look at this situation with the idea in mind of revising our Sales Plan in order to counteract this situation."

I believe that sometime in the very near future, we will be able to show you a new Sales Plan Policy that will clear up this problem we are presently being faced with. The new approach, will undoubtedly, reduce the discount structure of the Non Durable Good Wholesaler, whereby any Durable Good Wholesaler can meet their retail discounts profitably.

Certain other measures are contemplated, that we hope will clear up some of the confusion that has developed, due to the various discount steps in the present policy. There are numerous ways of approaching and solving some of these current problems. We feel that we have learned a good deal about the failings in our present policy. We believe we will soon be in a position to not only take corrective measures to improve this policy, but also improve the Wholesalers' profits.

We thank you for bringing this matter to our attention and assure you that we will certainly look into your present problem regarding Martineau Electric competition.

. . .

Flo:

You know what to do Flo. Actually, there is a new Plan under consideration, but when we will break with it, is anybody's guess. The thinking is to reduce discounts to Non Durables, but rather than use actual discount, we may go to net price lists for Non Durable Jobbers. This way they would probably buy bread and butter types at, say 45% or less. But Fluorescent and high wattage Incandescent would be at net prices of, say 38% or so. Get the idea.

Also, the qualifications for a direct deal would be changed and the three step discount system altered to one step and so on. You might discuss this with Mr. Dugal, suggesting that these are the type of solutions we are looking at."

The Canadian General Electric review of the 1959 Sales Plan, which was cited in the preceding chapter and

which was prepared in mid-1960, outlined the following objectives in making changes in the Sales Plan:

"Specific Objectives

1. Establish a selling system at the primary level of distribution that allows for very little price discrimination between the B. and LB selling to the retail market.
2. Eliminate the LB from the C. & I. market by placing on all but approximately 20 retail lamp types, net prices equal to those received by any large user.
3. Develop a technique, preferably through compensation to the primary distribution level, that allows for tight central control on the part of the manufacturer for performance in accordance with the Company's agency plan.
4. Increase the selling price on retail lamps to chain operations to bring their selling price to the consumer gross margin more realistically into line with other packaged goods.
5. Simplify the number of list prices on the major twenty lamp types.
6. Move the chain price on lamps for commercial use, somewhere between the distributor price and the large user price so as to:
 - (a) Bring the price of the lamps more into line with other large users.
 - (b) Make it unprofitable for B agents to serve this market.
 - (c) Go off discounts and commence to sell the retail market on a per unit and/or per case basis only.
 - (d) Have the B agent suggest the LB distributor sell to the dealer at trade net only --- no discounts but at one price, no matter what the quantity.

- (e) Examine the possibility of allowing 24-pack under ordering code in our complete line distribution.

- 7. Introduction of any new sales plan should be made either by October 1 or by January 1, 1961, allowing sufficient lead time on the introduction for complete familiarization both to our own personnel and personnel involved in our distribution system."

At a convention of the Canadian Electrical Distributors Association held in Quebec City in April 1961 a panel discussion was held on the marketing of electric lamps. It had been planned that representatives of manufacturers and distributors would constitute the panel but when the discussion was held only distributors were on the panel. Representatives of manufacturers did attend the convention.

Mr. F.W. Fulle of Sylvania gave the following account of the convention in his monthly report to the President of the company:

"The Canadian Electrical Distributors Association at their annual meeting in Quebec City, which was extremely well attended including very good representation from Western Canada. We met with our important Independent Distributors in that area and without exception, they appeared to be happy with the Sylvania product and service.

At this meeting a new sales policy applying to the sale of large lamps was announced by C.G.E. in general terms. Their statement in open meeting indicated that they will revert to net prices at four different levels and eliminate discounts entirely. There will be many lamp types removed from the list and other features of the sales policy should favour distributors' operation and profit.

As aforementioned, the suggested resale discounts incorporated in the sales plan that has been in effect since April 1959, have seriously disintegrated in the last 90 days and while we cannot, at this time comment on the sales plan that is to be announced in June, we do consider it necessary to institute a new policy for the guidance of our Distributors."

Although it was anticipated in the trade that Canadian General Electric would announce a new sales plan not later than the summer of 1961 officials of Canadian General Electric found that the problems involved in preparing and distributing the new types of price lists delayed the effective date to September 1, 1961. In a letter dated May 8, 1961, Mr. G.S. MacDonell of Canadian General Electric wrote to Mr. L.R. McCowan of the same company explaining why price lists under the new sales plan would not be ready before July. He then referred to reports of price cutting by competitors and went on:

"General Electric consignment agents will be expected to sell our product in accordance with the Large Lamp Sales Plan, and there will be no deviation yet in the face of price cutting on the part of our competitors.

Another point is, if we can introduce this new Large Lamp Sales Plan as it stands and maintain our present volume of business, we should increase our profits something like \$300,000.00 annually. These are big stakes and I am sure you will agree, well worth taking some short term risks for.

However, I assure you that we will watch the price situation from day to day, and take whatever action is necessary if price cutting becomes wide-spread throughout the industry, and not just confined to the few tenders that will be coming up between now and September 1st."

2. Distribution and Prices of Lamps under the 1961 Sales Plan

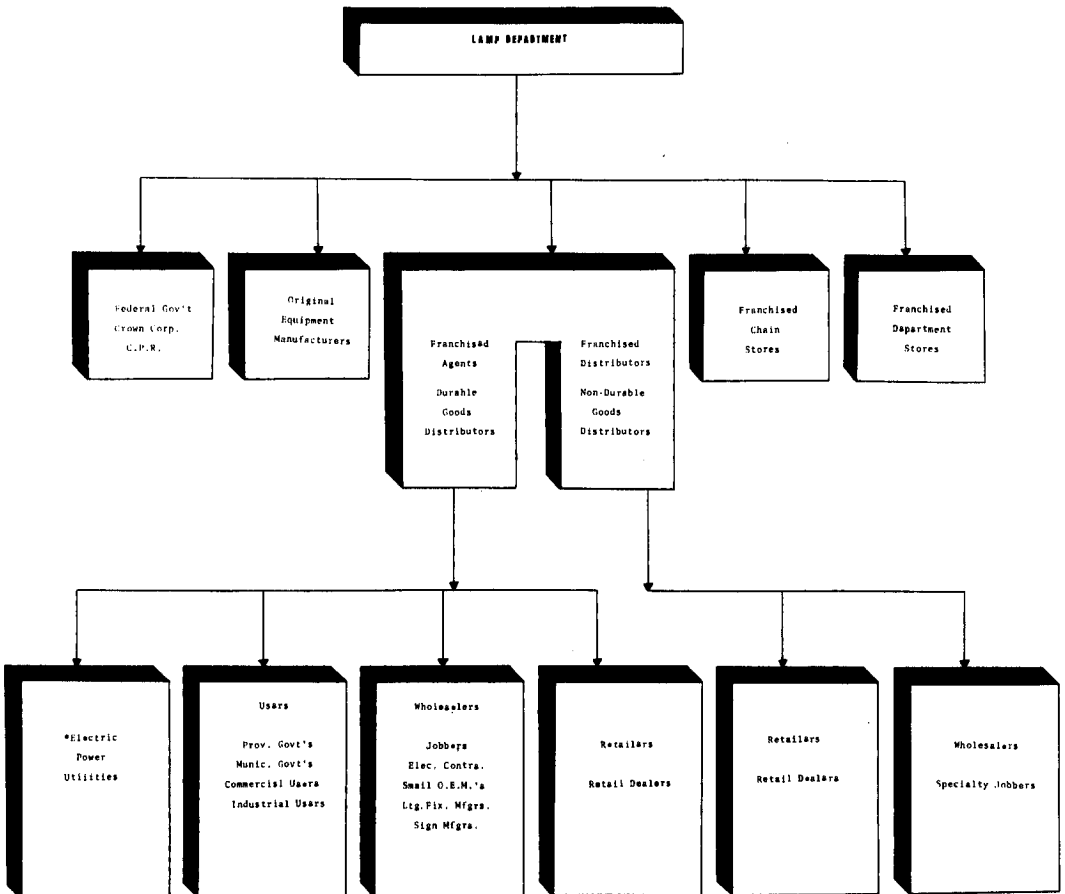
Canadian General Electric issued its price lists under its 1961 Sales Plan in July 1961 to take effect September 1, 1961. Canadian Westinghouse and Sylvania took steps to formulate sales plans which were virtually identical with that of Canadian General Electric and which also became effective on September 1, 1961.

The major changes made in the 1961 Sales Plan were the discontinuance of discounts from list prices in sales to the trade and users and the adoption of a hierarchy of net prices and, secondly, the separation of classes of lamps supplied on the most favourable terms to

all franchised merchants from other classes of lamps which were supplied on the most favourable terms only to franchised agents.

The chart below shows the categories of customers of the manufacturers supplied directly which gives some indication of the classes of users and secondary purchasers who would be supplied by dealers:

SCHEMATIC DISTRIBUTION-GENERAL ELECTRIC LARGE LAMPS



* Except: M.R.P.C. of Ont. will be served direct by Lamp Dept. only.

The various scales of prices under the 1961 Sales Plan and the customers to which each applied are shown in the schedule below:

SCHEMATIC PRICE SCHEDULE
GENERAL ELECTRIC
Incandescent, Fluorescent, Mercury and Christmas Lamps
EFFECTIVE SEPTEMBER 1, 1961

<u>FRANCHISE PRICE</u>	<u>O.E.M. PRICE</u>	<u>JOBBER PRICE</u>	<u>TRADE PRICE</u>
FEDERAL GOVT. CROWN CORP. C.P.R.	ORIGINAL EQUIPMENT MANUFACTURERS	ELECTRIC POWER UTILITIES	RETAILERS
FRANCHISED AGENTS		WHOLESALEERS Jobbers Elec. Contractors Small O.E.M.'s Ltg. Fixt. Mfgs. Sign Mfgs.	+USERS Commercial Users Industrial Users
FRANCHISED CHAIN STORES		PRIME USERS Provincial Govts. Municipal Govts. *Commercial Users *Industrial Users	
FRANCHISED DEPARTMENT STORES		FRANCHISED DISTRIBUTORS Commercial & Industrial Lamp Types	
FRANCHISED DISTRIBUTORS Household Lamp Types		FRANCHISED CHAINS - Store Delivery LARGE RETAILER	
		DEPARTMENT & CHAIN STORES Commercial & Industrial Lamp Types For Resale	

* Users who maintain their own electrical staff.

+ Users without their own electrical staff.

It will be noted that Electrical Contractors are grouped with Wholesale Jobbers. As a net price replaced the former method of a scale of discounts for this class of buyer, it appears that the problems which arose under the 1959 Plan were hoped to be alleviated or removed by this change. It will also be noted that Franchised Distributors, Chain and Department Stores were to buy household type lamps at the Franchise Price but were to be sold at the Jobber Price for Commercial and Industrial Lamp Types when purchased for resale. Mr. G.S. MacDonell of Canadian General Electric gave the following testimony in regard to this change:

"A. Oh, I know one that was important. We sold the grocery wholesaler on a split basis, that is, we sold him his eighty-three or eighty-six types of retail lamps at the franchise price so that he could be competitive in that market and we sold his industrial lamps at the jobber price. He bought at an excellent price for his own use so that he, in effect, bought as a reseller and as a user. That was, I think, quite a significant change in the way of doing business.

Q. What was the reason for that change?

A. Well, I think the basic reason for that was to minimize some of the conflicts which I referred to earlier. Since he was primarily a user we gave him the user price and he didn't have the opportunity then to sell into the agents' channel where they were selling and this was one of the ways of reducing conflicts between the two types of businesses.

I should amend that slightly. It sticks in my memory that we gave him the best or lowest price on lamps that we knew from their type he used in his own premises, so that we did not discriminate against him and his competitor, the franchised department store. Now, I would have to check that. I am not sure but it seems to me that of those lamps which he would normally put in his ceiling that we could identify, we gave him the same price.

Q. That is the franchise price?

A. Yes. . . ."

Mr. G.H. Wheatley of Canadian General Electric told the Commission that the primary purpose in changing to net prices under the 1961 Sales Plan was to give the company a more flexible weapon with which to fight competition. He said:

"A. Because we could match competitive situations with a greater degree of flexibility on a net price basis. This gave us the ability to adjust margins, it gave us the ability to fight our competition on the basis of one lamp type, without having to take margins away from distribution or add margins in to the distribution system across the board, as is required pretty well with a list and discount system. Net prices have very inherent advantages in the way of flexibility in fighting a competitive situation."

Mr. Wheatley also gave the Commission the following example of the use of the net price system to control price cutting by an agent:

". . . In this particular instance, I recall we narrowed the agent's margin, which tightened down the whole pricing span and held him more in line, gave him less opportunity to price cut if he chose to do so. This is our own agents. It tightened down his margin, it made price cutting even less attractive to him. In other instances, we could absorb the whole loss ourselves and retain the margin of the agent."

3. Revisions in 1961 Large Lamp Sales Plan of Canadian General Electric

The subsequent history of the Sales Plan of Canadian General Electric was not traced in detail in the inquiry but the information available indicates that the three manufacturers, Canadian General Electric, Canadian Westinghouse and Sylvania continued to have similar sales plans for large lamps. Changes in the prices of individual lamp types were made on occasion. The change made in price by one manufacturer, whether up or down, would be adopted

by the two other manufacturers so that general uniformity in distribution plans and prices was maintained.

Canadian General Electric revised and reprinted the Large Lamp Sales Plan and made the changes effective October 1, 1964. The major change was the creation of a lower price level for utilities and provincial and municipal governments. In 1965 Canadian General Electric established a separate sales plan for franchised retail distributors, previously classed as non-durable goods distributors, and in 1966 for franchised chain stores and franchised department stores.

CHAPTER V

MAINTENANCE OF CONDITIONS AND PRICES UNDER SALES PLANS BY THE THREE MANUFACTURERS

1. Attitude of the Three Manufacturers toward Observance of Sales Plans

It has already been shown that among the objectives which Canadian General Electric sought in establishing the 1959 and 1961 Sales Plans were the control of prices offered by consigned agents and the diminution of competition in the commercial and industrial market on the part of independent distributors and other merchandisers. It is clear, therefore, that the policy of Canadian General Electric was to secure as full observance as possible of the conditions and prices set out in the Sales Plans. The manner in which the policy was applied is shown in some detail in a report dated April 9, 1962 prepared by Mr. R.M. Fauteux of Canadian General Electric and entitled "Quebec Business District Review". Mr. Fauteux deals at some length with departures from the Sales Plan by suppliers other than CGE agents. At one point, Mr. Fauteux wrote:

"What impact has the new sales plan had on Our Competition? They are now equipped more fully than ever with an intimate knowledge of our pricing policies and of our rigid adherence to the sales plan. This was expected and in fact was the aim of widely publicizing the sales plan. However, instead of creating stability it has given competition a level at which to sell just sufficiently lower to obtain the business. This is found to be more the case with Westinghouse agents than others. There would seem to be little or no direction given by Westinghouse itself in this matter. . . ."

Mr. Fauteux concluded:

"In conclusion, I would say that I do not believe we have lost in any way in sales ability - our salesmen of to-day are better lamp salesmen than they were formerly - our contacts are good and our sales staff is trying hard. However, circumstances have piled

up against us and the sales plan has hurt us as I have described. I do not advocate abandonment of the attempt at market stability. Obviously, we must always keep on trying.

We need support from our Lamp Department by positive action on their part with Sales Plan Offenders. I believe the time is soon approaching when they must indicate to competition and more specifically to Westinghouse that we are deadly serious about this sales plan. When this is done Quebec District Lamp Sales curve may then be bent back upwards once again."

Canadian Westinghouse regarded the 1959 Sales Plan of Canadian General Electric as a means of stopping price erosion and decided to follow the same sales plan. Mr. D.J. Moodie of Canadian Westinghouse gave the following testimony:

- "Q. Would you say that generally speaking, Westinghouse follows CGE's lead with respect to sales plans and prices?
- A. Yes. They have a much larger share of the market.
- Q. A larger share of the market than Westinghouse?
- A. Than Westinghouse, that is correct.
- Q. Are you speaking of large lamps now?
- A. Yes.
- Q. Is that the reason you follow them?
- A. Yes, I think -- well, it was common sense that they could stop this price erosion.
- Q. Are you speaking now of the period prior to 1959?
- A. Yes.
- Q. Did you regard the 1959 plan as a means of stopping price erosion?
- A. Yes, I did.
- Q. What effect would it have on Westinghouse's merchandising large lamps should, for example, Sylvania not choose to follow whatever plan or

prices CGE might have in effect at the time?

A. Well, as soon as our field reports indicated that they were on a different track than Westinghouse, it would become necessary to decide what move we would make. Either we would have to follow them --- depending on the circumstances.

Q. But, initially, your move would be to follow CGE; is that right?

A. In the main, CGE have led with price changes and sales practices."

Departures from the sales plan by Canadian Westinghouse agents were regarded seriously by the company. In a letter of March 5, 1962 Mr. R.K. Owen of Canadian Westinghouse made the following comments to Mr. T.B. Lounsbury of the same company:

"(2) Recent Mercury Tender to D.O.H.

I am fully aware of all the circumstances concerning misdemeanors by Westinghouse distributors on recent tenders. I have reported in detail to D.J. Moodie on each of these situations and he fully supports the action we have taken. I feel confident that we will have no further incidents if I can depend on assurances received from the guilty parties."

Mr. R.K. Owen testified that two distributors of Canadian Westinghouse were involved and that he visited both. Mr. Owen described his visits as follows:

"A. Well, in each case we reviewed what had happened. I asked him to produce copies of the quotes for me, which they did, and we determined exactly what had happened, whether it was a typographical error or somebody had accidentally put in a wrong price or whether either of them had actually submitted the price they did submit, whether they had done it on purpose. I can't say what developed in each case, I can't recall exactly why it happened, but the main point of my visit, aside from the fact that I wanted the details of what, in fact, did happen, was that I was after them for their specific support of our sales

policies, a declaration of their support, personally.

Q. Did you get that declaration of support?

A. I did."

On May 9, 1962, Mr. G.R. Nettleton of Canadian Westinghouse sent a letter to district offices from Halifax to Ottawa. The letter was headed "Large Lamp Sales Rules" and read as follows:

"You have all by now received a letter from Mr. D.J.Moodie dated May 4th 1962 on the above subject.

Frankly, his letter was very kind indeed in placing the blame from coast to coast rather than letting the cards fall where they may. In my opinion, our District has had more infractions than any other District in the Lamp Division. Consequently, we must immediately take strong steps to clear up this situation which if allowed to continue, could mean the end of the Sales Plan and back to the rat race.

I, therefore, direct each of you to contact each of your respective accounts and point out to them the seriousness of the situation in the industry today and demand their full support.

For those accounts that have deliberately from time to time digressed from the published price, you will no doubt have them reiterate to you that they only did this because of similar actions on the part of other jobbers in their trading area. This is the way it usually happens. However, these same people must remember that everyone is being looked upon for leadership and that before they ever break our price policy, they better make darn sure that they have received authorization from you personally. The jobber that breaks price without prior approval, is on the way out of the lamp business. My personal attitude will be to refrain from doing business with this account and I know I have the complete support of Trois-Rivières Management in this respect.

Make certain you treat this situation as one of great importance, not only to the Westinghouse Company but to the overall good of the lamp industry in Canada. Rehash the complete Sales Plan with each of your lamp agents in order that you will

have a clear conscience when the day arrives that you may have to tell him that he has lost his Franchise."

Sylvania did not have its agents on a consignment basis until August 1963 and thus, up to this date, had to use other than contractual obligations to secure observance of its suggested resale prices. Mr. R.E. Niedringhaus of Sylvania referred to the problems in a report dated February 12, 1963 to the President of Sylvania's parent company:

"We are now in our fifth year of Firm Sales Policy and this year will be of great importance in this respect. We must by all means hold as well as possible these wholesalers in line and frankly it is getting to be a policing job. In the last thirty days, we have had two wholesalers jump out of the traces to the point where it became most difficult to handle such as a Tender to the Quebec-Hydro where one of our jobbers offered 3%10 instead of the regular 2%10 and of course all of the other jobbers called in here complaining. We were successful in having the wholesaler retrieve his tender and at the moment things are normal. This plan has been effective both to the Manufacturer and Wholesaler and of course to the 'end-user', and it has been profitable to all concerned. We hope to continue to hold these discounts if at all possible and if not this writer is thinking seriously of perhaps having to go to consigned stocks to the wholesaler. After having sold lamps for twenty-five years on an outright sales basis - this would really be a turnaround for this Company."

The fact that a consignment method of selling would permit Sylvania to instruct agents as to the prices at which they could sell lamps was mentioned by Mr. E.S. Wilson, Vice-President of Sylvania, as one of the purposes in changing to a consignment plan in 1963. He testified as follows:

"Q. Can you tell us what the purpose of the plan was?

A. I would say that it was threefold. We had requests from our distributors to go out on a consignment plan. We felt that it would reduce their investment and thus help them increase their inventory which we didn't think they were carrying enough of and would also permit us to instruct our agents as to what price they could sell lamps at."

As in other matters the attitudes of the three manufacturers toward maintenance of the conditions and prices under the sales plans were much the same and all made sustained efforts to secure observance of the plans by their agents.

2. Discussions between Representatives
of the Three Manufacturers on the
Operation of the Sales Plans

The documentary evidence and oral testimony in the inquiry establish that from time to time senior officials of Canadian General Electric, Canadian Westinghouse and Sylvania would have discussions with representatives of one or both of the other two manufacturers about prices quoted for a particular piece of business.

Mr. G.H. Wheatley, of Canadian General Electric, testified before the Commission concerning discussions he had had with representatives of Canadian Westinghouse and Sylvania. His testimony included the following:

- "Q. To what extent, if any, Mr. Wheatley, did you discuss with representatives of Sylvania or Westinghouse prices which you were going to charge for lamps or the awarding of tenders for lamps?
- A. I discussed it after the fact quite a number of times, never before the fact.
- Q. Would you just explain what you mean by that?
- A. Any pricing that I ever discussed with my competition was at a point in time when such information was available as public knowledge. In other words, after the fact. I never discussed pricing in any way with any of my competition prior to an action taking place, a tender or what have you.

THE CHAIRMAN:

After the publication of the Sales Plan? Did you say you discussed these new prices after the fact? Do you mean to say after, for example, the 1959 Sales Plan was out and after the 1961 Sales Plan was out?

THE WITNESS:

I don't believe I ever discussed details of

the Sales Plan. It was just a few instances where, for example, one of our agents would report to our districts that a certain tender had gone at a certain price to one /of/ our competitors' distributors, and in such instances I recall /would call/, for example, Mr. Fulle, and say, 'Is this the case, is this your policy?', and he would simply say, 'Yes' or 'No'. This is after the fact.

MR. SOUTHEY:

Q. That is after the particular tender had been awarded?

A. After the particular tender had been awarded.

. . .

MR. SOUTHEY:

Q. Mr. Wheatley, can you give me any idea of the frequency which these communications regarding the prices at which tenders had been awarded took place during the time that you were Merchandising Manager in Toronto?

A. I would say no more than four to six times a year."

Mr. G.W. Hutchinson, who became Manager, Sales, Central Sales Region of the Lamp Department of Canadian General Electric in March 1965 after serving with the company for many years, gave the following testimony:

"Q. Now, during the time that you have been employed with Canadian General Electric and in particular during the period from 1959 forward, to what extent, if any, have you discussed with representatives of Sylvania Electric or Canadian Westinghouse, prices for lamps, or the awarding of tenders for lamps?

A. Well, subsequent to the position, to being appointed to the position I now hold, I had periodically, at the behest of our agents, checked with both representatives of Sylvania and of Canadian Westinghouse periodically to determine what their agents or distributors had charged on a certain tender or tenders.

Q. Have you ever made an inquiry of a competitor

regarding a tender that had not at the time of your inquiry been awarded?

A. No, I have not.

Q. Did you receive similar inquiries after the fact from representatives of Canadian Westinghouse and Sylvania?

A. Yes, on occasion I did receive such inquiries.

Q. Could you give the Commission some idea of the frequency which either you inquired of them or they inquired of you?

A. It would be relatively infrequently. I would think that possibly on the basis of three or four times in a year, something of that order."

At an earlier stage of the inquiry Mr. W.J. McCormick of Sylvania testified concerning discussions he had had with representatives of Canadian General Electric and Canadian Westinghouse. His testimony included the following:

"Q. In the course of your duties with Sylvania have you had occasion to meet with representatives of Canadian General Electric or Westinghouse in any other connection other than the 1961 sales plan?

. . . .

A. I have had occasion to meet with representatives of Canadian Westinghouse and the Canadian General Electric on such activities as CEDA, various trade shows, IES functions where I have served in various capacities in either Montreal or the regional activities - regional being the Canadian region.

. . . .

Q. What other sort of discussions did you have with them concerning large lamps?

A. Discussions of Northern Electric representing Sylvania in some areas of Canada for quotations to federal government or crown corporations.

Q. Why did you discuss that with the representatives of CGE and Westinghouse?

- A. Their questions were under what basis of our policy was Northern Electric representing us to the federal government or crown corporations.

. . .

- Q. Any why did you discuss this relationship with Northern Electric with representatives of CGE and Westinghouse?

- A. They were asking for an interpretation of our sales policy."

Mr. R.K. Owen of Canadian Westinghouse testified as follows concerning discussions he had had with Mr. K. Wilkinson of Sylvania:

- "Q. Did you ever talk to Mr. Wilkinson about prices quoted by distributors that were not in accordance with prices of the sales plan?

- A. I do, from time to time, yes.

- Q. What is the purpose of that?

- A. Usually I want some clarification on some report that has come to my attention relative to some business that may have been placed or some quotations that may have been published.

- Q. Why are you seeking this information from him?

- A. Well, first of all, I am responsible to a lot of people, not so many within my own organization but I am responsible to my distributors, for one thing, and I suppose probably the best explanation is that I have to be particularly concerned with field intelligence generally.

- Q. What do you mean by 'field intelligence'?

- A. I have to contribute various pieces of information that I pick up in the field relative to competitive moves which I feel will have some importance, some meaning to our management, who are looking at a national picture.

- Q. Had Mr. Wilkinson ever gotten in touch with you about quotations made by Westinghouse distributors on particular jobs?

A. He has, yes.

Q. What happens when he does that?

A. Usually it is the same thing in reverse: He will ask me a question about some piece of information he has picked up in the field and ask me whether or not does this mean we've changed our prices generally or have we changed our distribution. It depends on what it is.

Q. What do you tell him on these occasions?

A. You have got to watch yourself commercially on these things, because some information that leaks out into the field doesn't become unconfidential just because it leaks out, it is still confidential information. But, generally speaking, I have no objection to giving him the proper explanation, whether or not there is a basis for the report that he has."

In a letter dated May 15, 1959, Mr. K. Wilkinson of Sylvania told Mr. F.W. Fulle of the same company that Northern Electric, a Sylvania distributor, had made an error in the price of one lamp in a tender to the Vancouver School Board. Mr. Wilkinson reported that Northern Electric had tried to have the error corrected but the School Board would not permit it. Mr. Wilkinson wrote that he thought "our competition should be informed of the error which had been made with the least possible delay. This has been done with our largest competitor and will be done with the other on Tuesday morning." The two competitors referred to must have been Canadian General Electric and Canadian Westinghouse.

The 1961 Sales Plan was made effective September 1, 1961 by each of the three manufacturers. On September 5, 1961 Mr. W.J. McCormick of Sylvania sent a teletype message to Mr. H.E. Fry of the same company regarding discrepancies in the prices of mercury lamps. The prices of Sylvania and Canadian General Electric were apparently the same but those of Canadian Westinghouse differed in some respects. Mr. McCormick's message read:

"Re your telex 96 to Mr. Fulle on Westinghouse Mercury prices. Checking Westinghouse prices in comparison to ours and G.E.'s we notice a number of discrepancies at the various pricing levels and will have to properly evaluate these before taking any action if any. Propose that someone will be in touch with their friends up the river regarding

these differences and an understanding will be reached before any action is taken."

In explanation of his message, Mr. McCormick testified that by "someone" he meant Mr. Fulle of Sylvania and that he had proposed that Mr. Fulle get in touch with someone at Canadian Westinghouse to ask for an interpretation or comment.

On December 28, 1961 Mr. K. Wilkinson of Sylvania telephoned Mr. W.J. McCormick of the same company about a recent tender for mercury vapour lamps in which Canadian Westinghouse lamps were offered by distributors at a price lower than that provided under the sales plan. In this telephone conversation Mr. Wilkinson reported that he had talked to a representative of Canadian Westinghouse and had been informed that the latter couldn't control the prices distributors quote. Mr. Wilkinson also reported that he had talked to a representative of Canadian General Electric who had made no comments.

The actions of Mr. R.K. Owen of Canadian Westinghouse in regard to price reductions on mercury vapour lamps by certain Canadian Westinghouse agents have already been mentioned. He received assurances that the agents would observe the prices set out in the sales plan.

In a letter of January 4, 1962 Mr. W.J. McCormick of Sylvania reported to Mr. J. Ricard of the same company a discussion he had had with Mr. Keith Wood of Canadian General Electric. His letter contained the following:

"During a recent discussion with Mr. Keith Wood he brought to my attention that on a recent Hydro Quebec tender one of our distributors had quoted lower than the jobber price. He indicated that a price of 83¢ was submitted whereas the recommended jobber price is 88¢. He also knew that it was Auer Light and I advised him that we were aware of this quotation and that appropriate action had been taken by you to correct the situation. I also advised him that the distributor was not awarded any portion of the tender even though his pricing was favourable."

In January 1963 the Sylvania representative in Vancouver wrote to Mr. W.J. McCormick of the same company that Canadian General Electric was supplying one type of lamp to a particular dealer at less than the price under the sales plan. Mr. McCormick testified that before replying to the letter he had talked to Mr. Keith Wood of Canadian General Electric about the supply and

price of the particular lamp. Mr. McCormick sent a reply to Sylvania's Vancouver office on January 16, 1963, referring to Canadian General Electric as the "Monogram Company". His letter contained the following:

"Concerning the availability and the 22 cents price from the Monogram Company, I question this as being authentic information as I am sure their pricing will be the same as ours, viz 25, 30 and 33 cents. Also the quantity of one thousand lamps is not a realistic quantity for a special lamp from them unless they have old inventory and then availability will only be to the extent of their present inventory."

Under date of October 3, 1963 Mr. W.J. McCormick of Sylvania wrote a confidential document entitled "Revision of 750 Hour Incandescent Lamp Family". Mr. McCormick testified concerning one paragraph of this document as follows:

"Q. Look at the second paragraph on serial 903, and you say:

'If you will take the time to count the number of 750 hour lamps, you will notice that there are 21 types all told, ranging from the 100 to the 300 watt size, with two case sizes for two of the 150 watt I.F. types. Competition has indicated concern over the number of 750 hour lamps that Sylvania still offer to the C & I market.'

How had competition indicated concern over this matter?

A. It asked us if we intended to continue supplying such an extensive range of what was normally known as residential lamps to the C & I market.

Q. Who, specifically, had indicated this concern?

A. Mr. Wood, Canadian General Electric Company, Mr. Moodie of Canadian Westinghouse Company.

Q. You go on to say:

'You will note from the attached page the exact lamps that competition have available.' Would you look at 905, ASF 699 B. Is that a list of lamps that you refer to in 903?

A. Yes.

Q. You go on to say:

'Indications are that competition will add more 750 hour lamps if we continue to offer the existing entire family.'

Is that also referring to Mr. Wood and Mr. Moodie?

A. Yes.

Q. 'We are all in agreement that this would not be in keeping with our main objective of recent years to reduce the number and quantity of types that have to be supplied to the C & I market.'

Who were you referring to when you say, 'we are all in agreement'?

A. The three lamp manufacturers.

Q. Do you know how that agreement was reached?

A. No."

On November 21, 1963 Superior Electric Supply Company of Toronto Limited wrote to the Ontario Department of Highways stating that it was withdrawing a tender at the request of Canadian Westinghouse because the price tendered had not been authorized. On November 22, 1963 Mr. R.K. Owen of Canadian Westinghouse sent a note to Mr. D.J. Moodie of the same company referring to the withdrawal of the tender and concluding:

"Incidentally I know I have your personal support so I am not worried. However it irks me to think that our competitors make such a big to-do out of the point that they doubt that Westinghouse are really supporting the Sales Plan. This is really small potatoes and is no way to win a war."

Similar regard for competitors was shown in an incident involving Zenith Electric Supply Ltd., a Canadian General Electric agent, who submitted a tender to the Township of Scarborough offering a 5 per cent discount for cash instead of the 2 per cent specified in the sales plan. Canadian General Electric sought to have Zenith withdraw its bid but the Township had already accepted it. Canadian General Electric sent a letter to all the other tenderers on February 21, 1964 explaining the circumstances and stating that the Director of

Investigation and Research under the Combines Investigation Act had made inquiries when the matter became public. The letter concluded:

"As a consequence of the above events, the following issues were at stake.

1. Zenith Electric made an error on their quotation and wished to withdraw their original bid.
2. The Township of Scarborough legally accepted Zenith's offer and would not reverse their position and allow withdrawal of the original bid on G.E. lamps.
3. Canadian General Electric's position is at all times to follow our Large Lamp Sales Plan to the letter, that is, to do what we print and print what we do.
4. It is our policy and practice to completely conform to the requirements of the Combines Investigation Act.
5. It is Election Year in Scarborough!

As a result of the above, we have resolved action as follows:-

1. G.E. mercury lamps will be shipped to the Township of Scarborough as legally required.
2. Gross profit on this transaction, that is the difference between franchise price and selling price to the Township, will be donated to charity, on completion of shipment of the order.

Zenith Electric will realize no profit on this transaction. Should you wish to know the charities involved, we would be pleased to advise you.

Under the circumstances, we are of the opinion that our actions are the only fair solution to the problem.

Should you wish further information, please give me a call."

The weight of the evidence, both documentary and oral, relating to communications between the three manufacturers with respect to the sale of lamps is to

the effect that discussions were held to secure assurance that conditions and prices of the sales plan would be observed and with the expectation that each manufacturer would take such steps as he could to correct any situation involving departures from the sales plan.

3. Attempts at Resale Price Maintenance

The maintenance of prices established under the large lamp sales plans of Canadian General Electric, Canadian Westinghouse and Sylvania by wholesalers supplying lamps for the commercial and industrial market was one of the major problems dealt with by the manufacturers in carrying out their plans. The review given in the preceding parts of this report shows the nature of the efforts made to control prices.

It has been shown that in the case of Canadian General Electric the large majority of its agents and distributors were on a consignment basis prior to 1959 and that by 1960 the company had enlarged the number of consigned agents to embrace practically all those holding franchises to serve the commercial and industrial market. Canadian General Electric, in the case of these agents, had a specific contractual basis on which to enforce its rules governing the sale of lamps from consignment stocks.

At the time the 1959 Sales Plan became effective on February 1, 1959 Canadian Westinghouse had a large number of its dealers on consignment and most of those serving the commercial and industrial market were placed under consignment contract by the middle of 1962. In the period between February 1, 1959 and 1962 Canadian Westinghouse was faced with the problem of securing the maintenance of prices by some merchandisers with whom they had no consignment contracts. In this period there were some instances which related to the matter of resale price maintenance.

The period after February 1, 1959 in which Sylvania operated without consignment contracts was a longer one as the company did not change to the consignment system until August 1963. The problem of securing the maintenance of prices by Sylvania distributors was a difficult one as indicated in a Sylvania document, previously cited, in which Mr. R.E. Niedringhaus wrote:

"We must by all means hold as well as possible these wholesalers in line and frankly it is getting to be policing job. In the last thirty days, we have had two wholesalers jump out of the traces to the point where it became most difficult to handle . . ."

It is necessary, therefore, to examine the methods used by Sylvania in the period prior to August 1963 to secure the observance of resale prices listed in the company's sales plan.

The Statement of Evidence prepared by the Director of Investigation and Research presents documentary and oral evidence relating to a number of instances where Canadian Westinghouse and Sylvania took action because distributors did not observe the prices set out in their sales plans. It appears that in the majority of the instances reviewed the distributor had a consignment agreement with the manufacturer who thus had a contractual basis for insisting that its prices be followed. While these instances raise questions as to the use of the consignment system to control prices, they do not, in a strict sense, raise the question of resale price maintenance because the lamps on consignment remain the property of the manufacturer until they are sold.

The interaction of resale price maintenance and consignment selling is shown in the dealings of Canadian Westinghouse with Harwell Electric Supply Company Limited. The latter had signed an agreement with Canadian Westinghouse on April 1, 1959 but the supply of lamps on consignment had been discontinued at the request of Harwell Electric Supply. Canadian Westinghouse attempted to have Harwell Electric Supply accept a new agreement to handle lamps on consignment and when no agreement was secured Canadian Westinghouse cut off supplies of lamps to Harwell Electric Supply in March 1962 and did not resume supplies until later in the year when Harwell Electric Supply accepted a consignment agreement.

Mr. D.J. Moodie of Canadian Westinghouse testified concerning the situation in regard to Harwell Electric Supply. His testimony included the following:

"Q. And under what circumstances did they cease to be a Westinghouse agent?

A. Because they refused to follow the published prices that we required them to do.

. . . .

Q. And what ultimately happened with respect to Harwell?

A. We discontinued shipping them lamps.

Q. Do you know whether or not he subsequently got an appointment by CGE?

- A. No, he did not. He was reinstated as a Westinghouse agent.
- Q. When did that occur?
- A. I would say some six months later.
- Q. Why was he reinstated?
- A. Because of a change in his attitude.
- Q. What was the change in his attitude?
- A. He was agreeable to abide by our published sales rules.
- Q. Including the prices that are described in the sales rules?
- A. Yes."

Sylvania had accepted Merchants Paper Company (Windsor) Limited as a distributor under an agreement dated September 1, 1961. Merchants Paper Company supplied lamps to the City of Windsor on terms which resulted in a discount from the prices set out in Sylvania's sales plan. On February 12, 1962 Sylvania notified Merchants Paper Company that the distributor agreement was being cancelled effective March 15, 1962. The reason given for the cancellation was that Merchants Paper Company had not attained the required minimum volume of lamp sales established by the agreement. Mr. C. Cohen of Merchants Paper Company made representations to Mr. F.W. Fulle of Sylvania and after a visit from Mr. K. Wilkinson of Sylvania, Merchants Paper Company were again supplied with lamps. Mr. K. Wilkinson testified that at his meeting with Mr. Cohen he became satisfied that Merchants Paper Company would follow the sales policy of Sylvania, including terms for prompt payment.

In February 1963 the City of Windsor Board of Education received identical tenders for lamps from five firms and a sixth tender from Merchants Paper Company which was reported to be \$85.20 less than the other bids of \$8,573.60. Mr. D.J. Moodie of Canadian Westinghouse reported the results of the bidding in a letter dated February 27, 1963 to Mr. D.I.W. Bruce of the same company.

On May 1, 1963 Sylvania sent a letter to Merchants Paper Company that the distributor agreement was being terminated on thirty days notice pursuant to clause 19 of the agreement. Clause 19 provided that on notice being given Sylvania was not obliged to supply large

lamps. Merchants Paper Company had an order for lamps outstanding with Sylvania on May 28, 1963 which the manufacturer refused to ship on the ground that the supply of lamps as required by the distributor agreement had been fulfilled.

Mr. Cohen of Merchants Paper Company and the Manager, Mr. N.C. Soullière, testified that in conversations with representatives of Sylvania it was impressed upon them that the prices set out in Sylvania's sales plan should be observed. Mr. Cohen also testified that on Mr. Wilkinson's visit at the time supplies were first interrupted he gave assurance that Merchants Paper Company would follow the prices suggested by Sylvania. It would appear, therefore, that Sylvania's action in cancelling the distributor agreement with Merchants Paper Company was related to the failure of the latter to follow the prices listed in Sylvania's sales plan.

An incident involving the sale of light bulbs by a service club in Moncton, N.B., in the fall of 1963 as a means of raising funds indicates the close attention which was given by the three manufacturers to any departures, however slight in character, from their common price lists and the ready discussion between representatives of Canadian General Electric, Canadian Westinghouse and Sylvania about the way to deal with the situation.

The service club had apparently approached grocery wholesalers to secure a supply of electric lamps. Grocery wholesalers do not carry lamps on consignment and thus the manufacturers had not contractual basis to control their selling prices of lamps. One grocery wholesaler was apparently a distributor of Canadian General Electric lamps and another handled Canadian Westinghouse lamps. The Sylvania distributor interested in the business was a branch of Northern Electric which held stocks on consignment and thus was required to observe the prices established by the manufacturer.

The Sylvania representative in the Maritimes, Mr. G. Nako, informed Mr. W.J. McCormick of Sylvania, Montreal, of the concern of Northern Electric over not being able to compete in price for the sale of lamp bulbs to the service club. Mr. McCormick testified that after receiving the telephone call from Mr. Nako, he talked to Mr. Keith Wood of Canadian General Electric and according to a letter which Mr. McCormick sent to Mr. Nako on October 21, 1963 Mr. Wood informed him that the wholesaler handling Canadian General Electric lamps would be contacted immediately. Mr. McCormick testified that he told Mr. Wood that he would be calling Mr. G.R. Nettleton of Canadian Westinghouse on the same matter.

Mr. McCormick said that he learned from Mr. Nettleton that the wholesale grocery company handling Canadian Westinghouse lamps operated on a cost-plus basis and did not follow the supplier's suggested prices. In a telephone call to Mr. Nako on October 22, 1963 Mr. McCormick reported that Canadian General Electric could not have its distributor recall its price to the service club as the order had already been given.

The direct approach of Mr. McCormick of Sylvania to the representatives of Canadian General Electric and Canadian Westinghouse and their immediate responses must be taken as indicating a community of interests and of purposes which clearly rested on an understanding among the three manufacturers.

CHAPTER VI

CONCLUSIONS

In his Statement of Evidence, the Director of Investigation and Research alleged as follows:

"Canadian General Electric Company Limited, Canadian Westinghouse Company Limited, and Sylvania Electric (Canada) Ltd.

- (1) being persons who either substantially or completely control throughout Canada the class or species of business in which they are engaged, i.e. the manufacture, distribution, sale and supply of electric large lamps, have operated and are likely to operate such business to the detriment or against the interest of the public and are parties or privies to a monopoly within the meaning of section 2(f) of the Combines Investigation Act /Contrary to section 33 of the said Act/;
- (2) conspired, combined, agreed or arranged with each other to prevent, or lessen, unduly, competition in the manufacture, distribution, sale and supply of electric large lamps contrary to section 32(1)(c) of the Combines Investigation Act;
- (3) being dealers within the meaning of section 34 of the Combines Investigation Act, did each induce other persons to resell electric large lamps at prices specified by it or at discounts not greater than maximum discounts specified by it, contrary to section 34(2) of the said Act; and
- (4) being dealers within the meaning of the said Act, did each refuse to sell or supply electric large lamps to other persons for the reason that such other persons had resold or offered to resell electric large lamps at prices less than prices specified by it or at discounts greater than the discounts specified by it, contrary to section 34(3) of the said Act."

The period embraced in the allegations of the Director was stated to be from February 1, 1959 to August 25, 1967.

The allegations made by the Director may be considered in three parts, reversing the order in which they are presented in the Statement of Evidence. Firstly, are allegations of the practice of resale price maintenance; secondly, are allegations of an agreement or arrangement to prevent or lessen competition unduly and, thirdly, are allegations of a monopoly which has operated or is likely to operate to the detriment or against the interest of the public.

1. Allegations of the Practice of
Resale Price Maintenance

In considering the allegations relating to resale price maintenance it is necessary to keep in mind the arrangements under which the manufacturers of electric large lamps supplied their products to the various types of distributors.

As has been made abundantly clear in the preceding chapters of this report the manufacturers had as an important objective the control over prices of lamps going to the commercial and industrial market. Canadian General Electric, from an early period, had endeavoured to supply this market through wholesalers, described as "agents" who carried consignment stocks of lamps and could be required to supply lamps to purchasers at prices set by Canadian General Electric. At the outset of the 1959 Large Lamp Sales Plan practically all CGE agents were on consignment and thus, in the legal sense, they did not "resell" lamps. Only other types of distributors were free to set resale prices independently and there are no instances disclosed in the inquiry where Canadian General Electric engaged in the practice of resale price maintenance in dealing with such distributors.

In the case of Canadian Westinghouse, some of its distributors supplying the commercial and industrial market were on a consignment basis when the 1959 Sales Plan was introduced and by the middle of 1962 the consignment arrangement had been extended to all such distributors. In the case of Sylvania, arrangements for consignment selling were made later but by 1963 Sylvania had also placed its distributors supplying the commercial and industrial market on a consignment basis.

Instances were disclosed in the inquiry in the case of both Canadian Westinghouse and Sylvania in

the period prior to mid-1962, in the case of the former, and in the period prior to 1963, in the case of the latter, where efforts were made to control prices of distributors not on consignment, sometimes resulting in discontinuance of supplies. With respect to both companies, one or more of the instances disclosed in the inquiry involved actions which appear to be in conflict with the prohibitions of resale price maintenance contained in section 34 of the Combines Investigation Act. To this extent the allegations of the Director with respect to Canadian Westinghouse and Sylvania in regard to the practice of resale price maintenance are well-founded. However, in view of the lapse of time and the general adoption of consignment selling by both companies it does not appear that any useful purpose would be served by pursuing this matter further.

2. Allegations of an Agreement or
 Arrangement to Prevent or
 Lessen Competition Unduly

The structure of distribution outlets and the prices to direct and indirect customers of the three manufacturers of electric large lamps which were practically identical for Canadian General Electric, Canadian Westinghouse and Sylvania were alleged by the Director to be the result of an agreement or understanding between the three companies. It was argued on behalf of the companies that no agreement or understanding had been reached and that the common pattern was brought about by the leading position of Canadian General Electric which introduced the Sales Plan. This plan was then adopted as an independent action by the other two manufacturers, Canadian Westinghouse and Sylvania.

Canadian General Electric made known at a meeting of the Canadian Electrical Distributors Association in April 1961 that it was developing a new lamp sales plan which would use net prices rather than a scale of discounts as under the 1959 Plan. Although rumours of the proposed change by Canadian General Electric had been circulating in the trade for some months previously it is significant that in a letter dated October 7, 1960 Mr. G.R. Nettleton of Canadian Westinghouse wrote to Messrs. W.E. Dugal and F. Aubin of the same company about possible changes in the sales plan. His letter included the following:

" . . . Actually, there is a new Plan under consideration, but when we will break with it, is anybody's guess. The thinking is to reduce discounts to Non Durables, but rather than use actual discount, we may go to net price lists for

Non Durable Jobbers. This way they would probably buy bread and butter types at, say 45% or less. But Fluorescent and high wattage Incandescent would be at net prices of, say 38% or so. Get the idea.

Also, the qualifications for a direct deal would be changed and the three step discount system altered to one step and so on. You might discuss this with Mr. Dugal, suggesting that these are the type of solutions we are looking at."

In introducing the 1959 Sales Plan to distributors of the company, Mr. E.H. Lindsay of Canadian General Electric said:

"In order to try to provide some relief the manufacturers raised the list prices of lamps by about 3½% during the past two years. The benefits have been disappointing. The manufacturers lost a considerable part of the increase by lengthening discounts to distributors and other direct accounts. You probably had to lose even more by being forced to raise discounts to your dealers and consumers."

It will be noted that Mr. Lindsay did not refer to the action of Canadian General Electric in raising prices but to what was done by the "manufacturers" as though it was recognized that whatever was done would take place on a common basis.

Representatives of the lamp divisions of Canadian General Electric, Canadian Westinghouse and Sylvania testified during the inquiry and at the Commission hearing about communications they had had with their counterparts in the other two companies in regard to the operations of the lamp sales plan. The general effect of such testimony was that in such communications information was sought about concluded tenders or sales, generally by agents of one or other of the companies, and as to whether any variations in prices from those in the sales plan resulted from a change in policy. Counsel for Canadian General Electric admitted during his argument that an inquiry about policy "does imply some statement as to what the price is going to be in the future."

The evidence as to communications between representatives of the three manufacturers goes a great deal further and conveys clear indication that the application of the Large Lamp Sales Plan by each of the companies was a matter of agreement among these companies.

The use of electric lamps for fund-raising

purposes by a service club in Moncton, N.B., in the fall of 1963 was a matter of little consequence in the general distribution of electric lamps. But a senior official of Sylvania got in touch with senior officials at Canadian General Electric and Canadian Westinghouse because the prices at which the lamps were to be supplied to the service club were not in conformity with the sales plan. While the manufacturers did not take any action because the wholesalers concerned were in the grocery field, the fact that they responded to the call from Sylvania cannot be construed in any other way except that they acted on the basis of an agreement as to policy and prices.

In 1964, when Zenith Electric Supply Ltd., a distributor of lamps for Canadian General Electric, submitted a tender to the Township of Scarborough, offering a discount of 5 per cent for cash instead of 2 per cent as provided under the sales plan, Canadian General Electric sent a letter of explanation to all tenderers. In this letter Canadian General Electric stated its policy of following the Large Lamp Sales Plan "to the letter". The Commission considers that this letter sent to agents of Canadian General Electric and to agents of the other manufacturers who submitted tenders indicates that Canadian General Electric relied on a common understanding as to the application of the Large Lamp Sales Plan.

A considerable amount of detailed price information was submitted to the Commission on behalf of Canadian General Electric to show that during the period included in the allegations of the Director there were many instances when large lamps were offered on tenders or in direct sales to individual customers at prices which were below those set out in the Large Lamp Sales Plan. In the main, the information was provided in reports of lost business by officials of Canadian General Electric at different sales offices of the company across the country.

It may first be said that the reports of Canadian General Electric offices submitted to the Commission show that the company was interested in trying to check on sales at less than published prices in transactions of a very minor nature as well as in business amounting to tens of thousands of dollars.

In a number of instances showing sales at prices considered by Canadian General Electric not to be in keeping with the Large Lamp Sales Plan, the variation in prices resulted from the use of a rate of discount under the Plan which provided a lower price than that to which Canadian General Electric considered the customer entitled. Descriptions have been given earlier in this

report of the classes of customers defined in the Large Lamp Sales Plan and the different rates of discount or scales of prices which were provided for the different classes of purchasers or size of purchases. Although agents of manufacturers, selling consignment stock, had no control over the prices of lamps sold to their customers, such agents' remuneration for handling lamps was dependent upon the volume sold. There would, therefore, be a temptation to shade a price slightly in order to secure business. A considerable part of Canadian General Electric lost business reports was devoted to instances of this kind.

Although there are some instances in the reports of lost business filed with the Commission in which the representatives of Canadian General Electric reported that the deviations in prices had been encouraged or tolerated by Canadian Westinghouse or Sylvania, the great majority of such instances indicate actions by a few wholesale suppliers to increase the volume of their business by using a rate of discount or scale of price which offered a prospective buyer some advantage over the cost of lamps provided under the Large Lamp Sales Plan. Of more weight to the Commission is the evidence of persistent and strenuous efforts on the part of all three manufacturers to see that their distributors maintained the prices and conditions established under the Large Lamp Sales Plan. It is impossible that Canadian Westinghouse and Sylvania would use such efforts to control the operations of their lamp agents if they were not pursuing a policy of keeping their distribution of lamps on a common basis with that of Canadian General Electric.

It is the conclusion of the Commission that between February 1, 1959 and August 25, 1967, Canadian General Electric Company Limited, Canadian Westinghouse Company Limited, and Sylvania Electric (Canada) Ltd. conspired, combined, agreed or arranged to prevent, or lessen, unduly, competition in the manufacture, distribution, sale and supply of electric large lamps contrary to section 32(1)(c) of the Combines Investigation Act and that the arrangement did not relate to any of the matters specified in subsection (2) of section 32 of the said Act.

3. Allegations of a Monopoly

The definition of monopoly in section 2(f) of the Combines Investigation Act is as follows:

"2. . . .

(f) 'monopoly' means a situation where one or more

persons either substantially or completely control throughout Canada or any area thereof the class or species of business in which they are engaged and have operated such business or are likely to operate it to the detriment or against the interest of the public, whether consumers, producers or others, but a situation shall not be deemed a monopoly within the meaning of this paragraph by reason only of the exercise of any right or enjoyment of any interest derived under the Patent Act, or any other Act of the Parliament of Canada;"

In its original sense "monopoly" meant a single seller but the term is no longer confined to this narrow meaning. The Glossary of Terms Relating to Restrictive Business Practices published by the Organization for Economic Co-operation and Development (O.E.C.D.) in 1965, gives the following definition of monopoly:

"A market situation in which an enterprise or a number of enterprises acting in concert control such a large proportion of the market in a certain product that they can fix prices and terms of trade to a large extent without regard to competitors."

The commentary on the term "monopoly" included in the Glossary contains the following:

"Originally the term was used to indicate exclusive control of an invention or of some part of trade bestowed by grant from the sovereign. In its literal sense monopoly means that there is only a single seller of a certain product in the market. In some countries the term 'monopoly' is still used to mean a situation in which one enterprise controls substantially all of a market. Economically a monopoly also exists where a single enterprise or a group of enterprises acting in concert, control such a large proportion of the market supply that, although there may be competitors, the enterprise or group can act like a monopolist in the literal sense, and can fix prices and terms of trade to a large extent without regard to the reaction of competitors. A monopoly held by a group of enterprises acting in concert is sometimes called 'collective monopoly'. In economics, the case where apart from the monopolist the other suppliers

in the market, individually or collectively, can satisfy only such a small part of the demand that the effects of their market conduct are not significant to the monopolist is called 'partial monopoly'. In such a case the monopolist is usually the price leader of the small suppliers."

It is of some significance that the O.E.C.D. Glossary uses the term "situation" in the definition of monopoly. The Combines Investigation Act also uses the term "situation" in a similar context. It should be noted, however, that the definition given in the Glossary published by the O.E.C.D. requires more than that which is to be found in section 2(f) of the Combines Investigation Act since it calls for "an enterprise or a number of enterprises acting in concert". The Glossary also defines "concerted action or practice" as follows:

"Action or practice by two or more independent enterprises pursuant to either explicit or implicit agreement or pursuant to decision or initiative within an association of such enterprises.

Commentary

When such action or practice has the purpose or effect of preventing, restraining or distorting competition then it is a cartel(*)."

This concept of "concerted action" as relating to a situation where one or more persons control a market entails, according to a noted authority, "a common action actually followed" ("parallel action") and a "prior agreement".** Where there is common action, actually followed, there is an inference of a prior agreement in circumstances where there are also particulars of evidence all pointing in that direction. Under these circumstances, an implicit agreement might thus be said to have existed. It is quite clear that if the evidence should reveal that there was an express agreement, there would be no problem at all. In the present case, the evidence relating to resale price

* "cartel" is translated in the Glossary as "entente", in the sense of a "combine".

** Jean-Bernard Blaise, Le statut juridique des ententes économiques dans le droit français et le droit des Communautés européennes, Librairies Techniques, Paris 1964, p. 111. (The author's study of this question relies in part on Chamberlin, The Theory of Monopolistic Competition.)

maintenance and to the existence of an agreement or arrangement to prevent or lessen competition unduly constitutes evidence of an implicit agreement resulting in a monopoly situation and is much more significant in this direction than in the commission of distinct offences under sections 32 and 34 of the Act.

From the common practices followed by Canadian General Electric, Canadian Westinghouse and Sylvania in the distribution of electric large lamps it is clear that a situation was created in which there was monopolistic control of supply and distribution. The supplies of lamps furnished by Service Lamp Co. Limited and the imports which were made by independent suppliers in the period covered by the inquiry were not of such a character as to affect in a meaningful way the monopolistic control of Canadian General Electric, Canadian Westinghouse and Sylvania acting in concert.

It is clear that all but a small part of the purchases of electric large lamps were made by buyers who were offered the same prices and terms of sale by each of the three manufacturers, Canadian General Electric, Canadian Westinghouse and Sylvania. It is the opinion of the Commission that such a common policy and concerted action on the part of suppliers controlling practically the entire Canadian market for large lamps constitute a situation of monopoly and that the operation of the business in this manner has been against the public interest.

4. Detrimental Effects of the Monopoly
and Agreement of Canadian General
Electric, Canadian Westinghouse
and Sylvania

Viewed generally, the monopoly situation created by the concerted actions of the three lamp manufacturers deprived the public of Canada of the benefits of free competition in the supply and sale of electric large lamps and was, consequently, detrimental to the public interest. One of the clearest examples of the detrimental situation was the frustration of the system of calling for public tenders for the supply of lamps by the submission of uniform prices established under the common policy of Canadian General Electric, Canadian Westinghouse and Sylvania. But, except in the supply of household lamps by distributors not stocking lamps on a consignment basis, the same non-competitive situation would generally be faced by any purchaser of electric large lamps.

Mr. E.H. Lindsay of Canadian General Electric in his address to the company's dealers in February, 1959, cited earlier in this chapter, referred to the action of the lamp manufacturers in raising list prices by about 3½ per cent. He went on to say:

"The net result has been that the retail consumer is paying more for his lamps but the dealers, municipalities and commercial and industrial users who already were buying too cheaply are now getting even better prices. Although from time to time it may be necessary to make further increases in list prices to obtain whatever benefits we can, this is not the solution to the mess in which we find ourselves."

This clearly illustrates the power of the three manufacturers, acting in concert, to increase prices. Prices of household lamps were increased from time to time after 1959. Information given the Commission by Canadian General Electric showed that the user price of a 60 watt household lamp was 22 cents in 1958 and 31.5 cents in 1970.

That the maintenance of uniformity in prices and terms of sale on the part of the three lamp manufacturers provided a basis for substantial profits was made clear in a letter of May 8, 1961 from Mr. G.S. MacDonell to Mr. L.R. McCowan, both of Canadian General Electric, in regard to the Large Lamp Sales Plan to be introduced later in the year. Mr. MacDonell's letter contained the following comments on the competitive situation and an estimate of increased profits under the proposed plan:

"General Electric consignment agents will be expected to sell our product in accordance with the Large Lamp Sales Plan, and there will be no deviation yet in the face of price cutting on the part of our competitors.

Another point is, if we can introduce this new Large Lamp Sales Plan as it stands and maintain our present volume of business, we should increase our profits something like \$300,000.00 annually. These are big stakes and I am sure you will agree, well worth taking some short term risks for.

However, I assure you that we will watch the price situation from day to day, and take whatever action is necessary if price cutting becomes wide-spread throughout the industry, and not

just confined to the few tenders that will be coming up between now and September 1st."

Data in the form of percentage graphs were submitted by Canadian General Electric to the Commission to show that the company's share of the commercial and industrial market for large lamps had declined between 1964 and 1969 by about 12 per cent although its share of the retail-household lamp market increased in the same period by over 11 per cent. One of the implications sought to be drawn from these data was that Canadian General Electric did not have control in the market for lamps because competition determined what share each company would secure at any time.

Control of a market does not mean that there is complete control so that the positions of the controlling firms remain unchanged. Control, as the definition used by the O.E.C.D. makes clear, involves control "to a large extent" and it is clear that the three manufacturers had this measure of control.

It is also clear that Canadian General Electric was prepared to tolerate minor deviations from its published prices as long as the general level of the prices it established was maintained. This was regarded as part of the cost of price leadership which was described to the Commission by Mr. Harry W.G. Johnson of Canadian General Electric as follows:

"A. The cost of price leadership is extremely high and when things happen --

Q. Cost in what sense? Please explain.

A. You have to be prepared, as price leader in the industry, to follow prices down when they start to go down. If you are not prepared to make that investment or that sacrifice in profits in the short run, then you can bear the fruit of those decisions, and I would say we have done that. For instance, through no decision of our own, the 150 power spot lamp dropped in price from \$1.66 in 1964 landed from the U.S., to \$1.41, and that is quite a chunk of money to take out of a lamp that is priced in the neighbourhood of \$1.50. To make the decision that, you know, management may say, 'Well, let's not do it in 1965, let's do it in 1966'. It becomes increasingly hard to make that decision and as time goes by, you keep postponing the decision and it becomes easier to

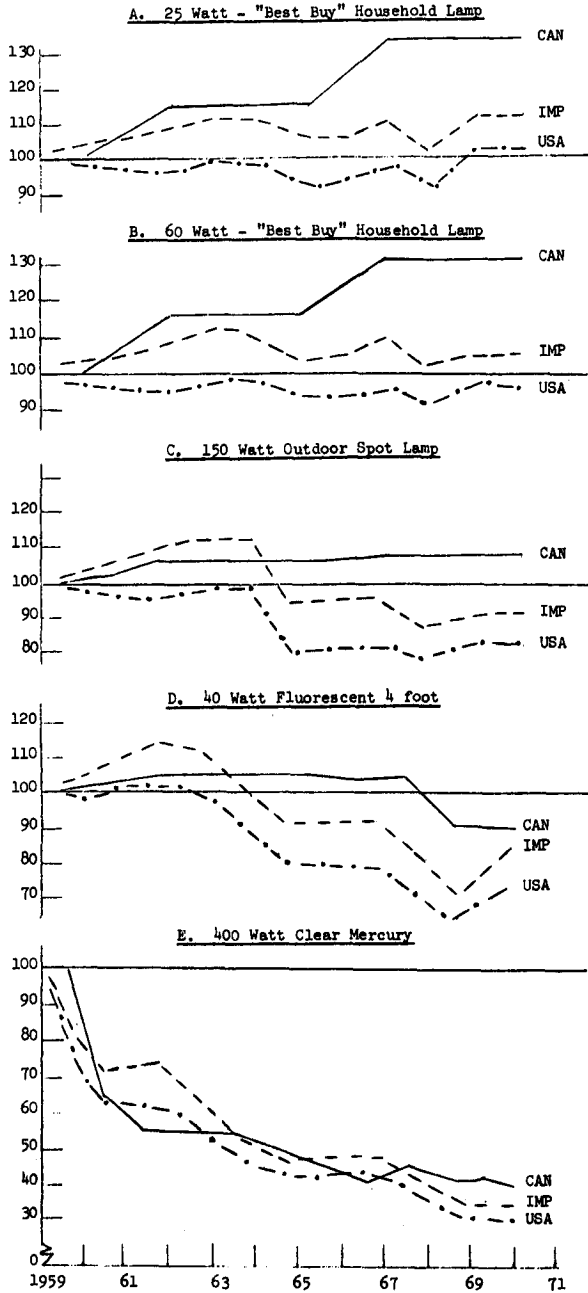
rationalize what your competitors are doing in the marketplace by saying, 'Oh well, we are not interested in this tender, or we are not interested in that tender', and before you know it, you are losing your share. The competition has the initiative and you land up in the position of losing the type of share we have lost in the course of five years."

The price histories of a number of categories of lamps for the period 1959 to February 1970 were submitted to the Commission by Canadian General Electric. The tables show the franchise and jobber prices in Canada and the equivalent cost if lamps were imported at the same trade levels from the United States. The prices in the United States were also included in the sets of tables. If the prices are translated into index numbers with 1959 as the base year equalling 100, the observations made by Mr. Johnson about the failure of Canadian General Electric to follow the downward trend in U.S. prices are strikingly illustrated. Data for five representative lamp series are shown in the graphs hereunder. The figures on which the graphs are based are contained in Appendix C.

The landed cost of imported lamps is affected by the exchange value of the Canadian dollar, the rate of customs duties and the federal sales tax. The rates on these items used in compiling the data included in Appendix C are shown in the table following the graphs.

PRICES TO WHOLESALESALE OF C.G.E. LAMPS IN CANADA,
G.E. LAMPS IN THE UNITED STATES AND
IMPORT COST OF G.E. LAMPS
(1959 = 100)

Price of CGE Lamps in Canada ——— CAN
Import Cost of GE Lamps (duty paid) - - - - - IMP
Price of GE Lamps in U.S.A. (U.S. Funds) USA



		<u>Rate of Customs Duty</u>	<u>Sales Tax</u>	<u>Price of U.S. Dollar in Canada</u>
Dec. 31	1959	25%	11%	.9522
	1960	25	11	.9969
	1961	25	11	1.0437
	1962	25	11	1.0778
	1963	25	11	1.0813
	1964	25	11	1.0744
	1965	25	11	1.0756
	1966	25	11	1.0844
	1967	25	12	1.0813
	1968	24	12	1.0734
	1969	20	12	1.0734
Feb. 19	1970	20	12	1.0731

In the household lamp field price movements of 25 and 60 watt lamps are shown in graphs A and B. This is the field in which Canadian General Electric increased its share of the Canadian market between 1964 and 1969. In this period when prices in the United States moved downward and then fluctuated below the 1959 level until 1968, the prices in Canada which had already advanced in 1961 and 1962 advanced further in 1966 and 1967. When prices in the United States advanced in 1969 to near or slightly above the 1959 level Canadian General Electric did not, however, change its prices from the level reached in 1967.

In the case of the 150 watt outdoor spot lamp the price in Canada advanced when the import cost increased, although the price in the United States declined between 1959 and 1961. The price in Canada was increased in 1967 and 1968 although the import cost and the price in the United States declined. This is the type of lamp referred to in the testimony of Mr. Johnson quoted above.

The price history of the 40 watt fluorescent lamp also illustrates the comments made by Mr. Johnson. By 1965 the import cost of this lamp was below the Canadian price but Canadian General Electric did not make the adjustment in its prices until 1969.

Graph E on the chart illustrates the price history of the 400 watt clear mercury lamp. In the case of this lamp the price changes made by Canadian General Electric appear to have been much more responsive to the prices of imported lamps than was the case with the other three types of lamps. Although the price in Canada was maintained in 1960 when prices in the United States were dropping sharply and although prices in Canada

were kept constant between 1962 and 1964 after prices in the United States had again declined, further downward adjustments in price were made in Canada between 1965 and 1969. In the case of mercury lamps, Canadian manufacturers were faced not only with competition from the United States but, in a way which was regarded as significant, also from sources outside North America. From the nature of the price adjustments made in the United States it would appear that competition from outside sources of supply also had a substantial influence upon manufacturers of mercury lamps in the United States.

In the opinion of the Commission the price histories which have been reviewed, together with the testimony of representatives of Canadian General Electric regarding the pricing policies and behaviour of Canadian General Electric, demonstrate the control over prices of lamps in Canada which Canadian General Electric was able to maintain in concert with Canadian Westinghouse and Sylvania. The Commission considers that such control constitutes a monopoly situation which has had detrimental effects.

The Commission finds that Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. substantially controlled the business of the manufacture, distribution, sale and supply of electric large lamps and have operated and are likely to operate such business to the detriment or against the interest of the public and are parties or privies to a monopoly within the meaning of section 2(f) of the Combines Investigation Act and contrary to section 33 of the said Act.

5. Remedies

The arrangements among Canadian General Electric, Canadian Westinghouse and Sylvania which resulted in the monopoly situation which has been described with its detrimental effects found concrete expression in the large lamp plans which were developed by Canadian General Electric and adopted by Canadian Westinghouse and Sylvania. The complex nature of the lamp plans including the classifications of customers, the differential prices and the types of lamps made available to customers in different classes is also evidence of a monopoly situation. Such differential treatment of customers could not be maintained unless the firms engaging in such differential treatment possessed substantial control of the market.

It was strongly argued before the Commission,

on behalf of the three manufacturers, that because of the homogeneous nature of standard types of electric lamps and the willingness of purchasers to accept any one of the three brands, any change in price downward on the part of one manufacturer would have to be followed immediately by the other two or substantial loss of business would result. While this is undoubtedly the case it does not mean that each manufacturer could not determine what pricing or distribution policy best suits its own interests and does not mean that manufacturers could not make competitive offers for particular pieces of business, such as those offered on tender. The Monopolies Commission of Great Britain, which examined the electric lamp industry in that country, made the following comment in its report* published in 1968:

" . . . If competition was operating fully, we would in principle expect each supplier to quote a price to a user according to the cost and the value of the business to him. This does not mean that prices should be separately negotiated with all the numerous user customers; standard terms related to quantity would be appropriate in the majority of cases, but prices might be individually negotiated for the largest customers and individually determined offers ought in our view to be made where public tenders are invited. Each user would then place his business with the supplier whose quotations and service arrangements seemed most advantageous, and the resulting division of the total business among suppliers should be conducive to maximum efficiency and should give the most economical and satisfactory service to the customers. In practice, however, the prices and discounts quoted by manufacturers to users for main brands have been identical and in most cases have been unrelated to the total quantity required from an individual manufacturer, to the size of individual deliveries or to the service required in other respects. . . ."

Changes in the industrial practices and distribution policies of Canadian General Electric, Canadian Westinghouse and Sylvania which, in the opinion of the Commission, are necessary if the detrimental

* The Monopolies Commission, Electric Lamps, Second Report on the Supply of Electric Lamps, Part I, 2nd December 1968. par. 59, p. 26.

effects on the public interest of the monopoly situation relating to electric large lamps are not to continue may be stated as follows:

1. Abandonment of the practice of each manufacturer using exactly the same price schedules without regard to the particular piece of business involved and the adoption of the practice of submitting genuinely competitive bids when invited to tender on public or private contracts.

2. Abandonment of the practice of establishing differential prices and ranges of products offered to defined classes of customers. Instead, the lamp manufacturers should offer their products for sale on the same basis to all direct buyers, whether distributors or users, subject to such reasonable conditions as the manufacturer may establish as to quantities and varieties for purchase orders and as to stocking requirements for varieties and quantities of lamps in the case of distributors. As the Commission stated in its report* on Ammunition the manufacturers should "... allow the competition of the market and public choice to select those channels of distribution and types of outlets which will best meet the public needs. . . ."

3. In view of the way in which the system of consignment stocking and selling has been used by the three manufacturers, it appears to the Commission that there should be abandonment of the system in the distribution of electric large lamps. This system of selling which has its legitimate uses has been used by Canadian General Electric, Canadian Westinghouse and Sylvania to control and regulate the trade in electric large lamps in concerted manner which has been against the public interest. The removal of such control is clearly necessary if there is to be opportunity for the public to secure the benefit of competition in the supply and sale of electric large lamps.

4. The customs tariff has made it possible for the three lamp manufacturers to insulate themselves to a considerable degree from the competitive influence of foreign sources of

* Report Concerning the Manufacture, Distribution and Sale of Ammunition in Canada. Ottawa, 1959. p. 108 (RTPC No. 1).

supply for lamps. The protective tariff has made it possible for the Canadian manufacturers to delay price reductions and even to make advances in prices when prices in foreign countries have been moving downward. The Canadian Customs Tariff on electric large lamps should be carefully reviewed and reductions in rates of duty should be considered to encourage competition in the supply of lamps to Canadian users.

6. Summary of Conclusions and Recommendations

1. Prior to the general adoption of consignment contracts by agents Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. engaged during a limited period in the practice of resale price maintenance. The number of such instances disclosed in the evidence was small.

2. Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. entered into arrangements to prevent or lessen unduly competition in the manufacture, distribution, sale and supply of electric large lamps. Uniform large lamp sales plans made effective simultaneously by the three manufacturers assisted in the maintenance of common prices and conditions of sale. Programmes for uniform prices on tenders and in the commercial and industrial market generally were made more effective by the use of the practice of consignment selling which enabled manufacturers to control the prices charged by their agents.

3. The substantial control of the business of large lamps in Canada by Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. resulted in a monopoly situation and such business has been operated and is likely to be operated to the detriment or against the interest of the public.

4. To remedy the detrimental situation resulting from the restrictive arrangements among Canadian General Electric Company Limited, Canadian Westinghouse Company Limited and Sylvania Electric (Canada) Ltd. and the detrimental monopoly situation in which they have participated,

the Commission believes that the following changes are necessary:

(a) Abandonment of the practice of each manufacturer exactly matching price schedules of the others without regard to the nature or scale of business being offered and, as one step in the restoration of competition, the adoption of the practice of submitting genuinely competitive bids on public or private tenders.

(b) Abandonment of the practice of uniformly classifying customers on the basis of definitions common to the three manufacturers. In the place of this system, manufacturers should offer products for sale without discrimination to all direct buyers without restricting types of lamps to particular classes of distributors.

(c) Review from time to time of the customs duties on electric lamps to ensure that the tariff is not being used to insulate Canadian manufacturers from the competition of outside suppliers in a way unduly disadvantageous to users in Canada.

Continue

Acting Chairman

A. S. Whitley
Member

Member

Ottawa
January 14, 1971.

APPENDIX A

SALES OF ELECTRIC LAMPS, BY TYPES

Year	Incandescent		Mercury		Fluorescent		Slimline		Sub-total		Photo		Miniature		Total	
	(000's)		(000's)		(000's)		(000's)		(000's)		(000's)		(000's)		(000's)	
	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$
1961	88,731	18,756	114	1,410	8,786	7,639	1,662	3,087	99,293	30,892	51,911	4,363	47,250	7,047	198,453	42,302
1962	92,107	20,421	129	1,503	10,225	9,041	1,752	3,235	104,213	34,199	52,150	4,700	27,037	5,990	183,400	44,389
1963	97,311	22,119	162	1,866	11,185	9,911	1,825	3,437	110,483	37,332	52,532	5,205	32,570	6,889	195,585	49,426
1964	102,619	23,351	215	2,359	12,402	10,977	2,029	3,837	117,265	40,524	59,050	5,752	43,919	8,836	220,234	55,112
1965	104,373	24,446	271	2,786	13,942	12,598	2,098	3,944	120,685	43,824	65,472	7,068	50,307	9,696	236,464	60,537
1966	110,745	26,425	353	2,952	15,647	13,860	2,277	3,710	129,021	46,948	76,445	8,476	53,122	10,409	258,588	65,833
1967	115,220	28,855	355	3,145	16,227	14,511	2,509	3,849	134,311	50,361	92,468	10,879	54,677	10,748	281,457	71,988
1968	121,927	31,571	375	3,390	17,252	15,589	2,370	3,797	141,923	54,347	76,611	10,219	54,797	11,051	273,331	75,617
1969	129,549	32,852	425	3,986	18,012	15,837	2,580	4,035	150,566	56,711	94,157	11,929	58,422	12,283	303,145	80,923

Source: Electric Lamps (Light Sources),
Dominion Bureau of Statistics.
(This publication is issued monthly)

APPENDIX B

IMPORTS OF ELECTRIC LAMPS INTO CANADA 1959 - 1969

Year	Incandescent lamps, large		Fluorescent lamps, bulbs and tubes		Mercury vapour lamps, bulbs and tubes		Vapour lamps N.E.S.		Sealed beam lamps		Xmas tree & colored miniature lamps		Miniature lamps N.E.S.	
	(000's)		(000's)		(000's)		(000's)		(000's)		(000's)		(000's)	
	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$	No.	\$
1959	12,726	2,741	1,134	1,101	655	900	- not available -		1,264	848	23,290	457	- not available -	
1960	5,293	1,724	968	1,032	81	498	778	140	1,292	1,002	23,291	482	5,117	400
1961	5,691	1,895	1,379	1,446	75	484	818	157	629	488	29,253	717	5,901	435
1962	5,842	2,003	1,490	1,662	61	361	1,044	198	505	388	34,465	851	6,482	491
1963	4,839	1,812	1,061	1,156	30	302	1,466	201	486	430	24,159	625	5,572	527
1964	6,190	2,120	1,177	1,166	52	349	1,719	187	404	356	17,876	458	6,447	663
1965	6,786	2,557	1,374	1,253	76	492	1,576	224	318	303	15,791	493	8,949	863
1966	7,263	2,749	1,564	1,401	71	477	1,520	199	712	589	18,067	627	11,848	1,125
1967	7,823	3,133	1,436	1,409	147	884	1,371	335	534	528	35,242	1,106	13,505	1,442
1968	9,407	2,935	1,584	1,459	132	678	1,478	266	1,008	778	49,545	1,265	11,371	1,180
1969	13,384	3,977	2,623	2,094	84	696	1,557	463	1,862	1,412	44,991	1,287	24,710	2,225

Source: Imports by Commodities,
Dominion Bureau of Statistics,
Publication 65-007.

APPENDIX C

PRICES TO WHOLESALEERS OF C.G.E. LAMPS IN CANADA,
G.E. LAMPS IN THE UNITED STATES AND
IMPORT COST OF G.E. LAMPS
(1959 = 100)

A. 25 Watt - "Best Buy" Household Lamp

	<u>Price in Canada</u>		<u>Import Cost</u>		<u>Price in U.S.A.</u>	
	\$	Index	\$	Index	\$	Index
1959	.120	100.0	.161	100.0	.120	100.0
1960	.120	100.0	.165	102.5	.117	97.5
1961	.130	108.3	.171	106.2	.116	96.7
1962	.140	116.7	.176	109.3	.116	96.7
1963	.140	116.7	.182	113.0	.119	99.2
1964	.140	116.7	.180	111.8	.119	99.2
1965	.140	116.7	.170	105.6	.112	93.3
1966	.150	125.0	.172	106.8	.112	93.3
1967	.160	133.3	.180	111.8	.117	97.5
1968	.160	133.3	.167	103.7	.110	91.7
1969	.160	133.3	.182	113.0	.123	102.5
1970 (Feb. 19)	.160	133.3	.182	113.0	.123	102.5

B. 60 Watt - "Best Buy" Household Lamp

	<u>Price in Canada</u>		<u>Import Cost</u>		<u>Price in U.S.A.</u>	
	\$	Index	\$	Index	\$	Index
1959	.120	100.0	.161	100.0	.120	100.0
1960	.120	100.0	.165	102.5	.117	97.5
1961	.130	108.3	.171	106.2	.116	96.7
1962	.140	116.7	.176	109.3	.116	96.7
1963	.140	116.7	.182	113.0	.119	99.2
1964	.140	116.7	.180	111.8	.119	99.2
1965	.140	116.7	.170	105.6	.112	93.3
1966	.150	125.0	.172	106.8	.112	93.3
1967	.160	133.3	.180	111.8	.117	97.5
1968	.160	133.3	.167	103.7	.110	91.7
1969	.160	133.3	.175	108.7	.119	99.2
1970 (Feb. 19)	.160	133.3	.175	108.7	.119	99.2

C. 150 Watt Outdoor Spot Lamp

	<u>Price in Canada</u>		<u>Import Cost</u>		<u>Price in U.S.A.</u>	
	\$	Index	\$	Index	\$	Index
1959	1.350	100.0	1.482	100.0	1.10	100.0
1960	1.350	100.0	1.524	102.8	1.08	98.2
1961	1.400	103.7	1.581	106.7	1.07	97.3
1962	1.440	106.7	1.633	110.2	1.07	97.3
1963	1.440	106.7	1.668	112.6	1.09	99.1
1964	1.440	106.7	1.658	111.9	1.09	99.1
1965	1.440	106.7	1.407	94.9	.924	84.0
1966	1.440	106.7	1.419	95.7	.924	84.0
1967	1.460	108.1	1.428	96.4	.924	84.0
1968	1.470	108.9	1.328	89.6	.873	79.4
1969	1.470	108.9	1.363	92.0	.926	84.2
1970 (Feb. 19)	1.470	108.9	1.363	92.0	.926	84.2

D. 40 Watt Fluorescent 4 foot

	<u>Price in Canada</u>		<u>Import Cost</u>		<u>Price in U.S.A.</u>	
	\$	Index	\$	Index	\$	Index
1959	.740	100.0	.807	100.0	.599	100.0
1960	.740	100.0	.829	102.7	.587	98.0
1961	.750	101.4	.892	110.5	.604	100.8
1962	.780	105.4	.921	114.1	.604	100.8
1963	.780	105.4	.908	112.5	.593	99.0
1964	.780	105.4	.844	104.6	.555	92.7
1965	.780	105.4	.746	92.4	.490	81.8
1966	.770	104.1	.752	93.2	.490	81.8
1967	.780	105.4	.757	93.8	.490	81.8
1968	.780	105.4	.704	87.2	.463	77.3
1969	.670	90.5	.584	72.4	.397	66.3
1970 (Feb. 19)	.670	90.5	.681	84.4	.463	77.3

E. 400 Watt Clear Mercury

	<u>Price in Canada</u>		<u>Import Cost</u>		<u>Price in USA</u>	
	\$	Index	\$	Index	\$	Index
1959	15.310	100.0	16.150	100.0	11.98	100.0
1960	15.310	100.0	13.254	82.1	9.39	78.4
1961	10.300	67.3	11.659	72.2	7.89	65.9
1962	8.550	55.8	12.039	74.5	7.89	65.9
1963	8.550	55.8	10.900	67.5	7.12	59.4
1964	8.550	55.8	8.898	55.1	5.85	48.8
1965	7.650	50.0	7.889	48.8	5.18	43.2
1966	7.250	47.4	7.953	49.2	5.18	43.2
1967	6,500	42.5	8.002	49.5	5.18	43.2
1968	7.290	47.6	7.454	46.2	4.90	40.9
1969	6.800	44.4	6.189	38.3	4.21	35.1
1970 (Feb. 19)	6.800	44.4	6.187	38.3	4.21	35.1

APPENDIX D

WITNESSES EXAMINED IN THIS INQUIRY

The following list gives the names of witnesses examined in this inquiry and the current or former business affiliation of the witness relevant to the inquiry:

March 1-10, 1966 at Montreal, Quebec

E.S. Wilson	)	Sylvania Electric
H.E. Fry	)	(Canada) Ltd.
W.J. McCormick)	
D.J. Moodie	)	Canadian Westinghouse
G.R. Nettleton	)	Company Limited
P.C. Angers)	
M.J. Côté)	
A.W. Callard	)	A.W. Callard and Company
	)	Limited
G.S. MacDonell	)	Canadian General Electric
K.S. Wood	)	Company Limited
Mrs. N.I. VanBarneveld)	
D.D. Dufort)	
R.M. Fauteux)	
W.E. Percival)	

March 29-April 6, 1966 at Toronto, Ontario

J.J. Dawson	)	Canadian Westinghouse
J. Nairn	)	Company Limited
R.K. Owen)	
B. Field)	
G. Vassallo	)	Harwell Electric Supply
L.P. Vassallo	)	Company Limited
W.J.R.E. Jamieson	)	Union Electric Supply
	)	Company Limited
L. Greenbaum	)	Superior Electric Supply
	)	Company of Toronto Limited
M.R. Olanow	)	Pitt Products Limited
K. Wilkinson	)	Sylvania Electric
A.J. McIntosh	)	(Canada) Ltd.

Mrs. S. Norton	)	Canadian General
R.A. Lewis	)	Electric Company Limited
F.R. Johnson)	
J.V. Cox)	
G.W. Hutchinson)	
L.R. McCowan)	
E.H. Lindsay)	
D.R. Hughes	)	Howden's Electrical Supply
	)	Division,
	)	D.H. Howden and Company
A.G.V. Smith	)	Northern Electric Company,
	)	Limited

April 25, 1966 at Winnipeg, Manitoba

N. Gardner	)	Cam-Gard Supply Limited
F. Aubin	)	Canadian Westinghouse
	)	Company Limited

April 27-29, 1966 at Vancouver, British Columbia

H.G.E. Horsman	)	E.B. Horsman and Son
S.B. Vineberg	)	Ideal Electric (Western)
	)	Limited
L.H. Noble	)	Hickman Tye Hardware
	)	Company Limited
I. Pappin	)	Sylvania Electric
	)	(Canada) Ltd.
G.H. Wheatley	)	Canadian General Electric
W.J. Lind	)	Company Limited
W.R. Oliver	)	Canadian Westinghouse
	)	Company Limited
J.E. Milburn	)	Northern Electric
	)	Company, Limited

May 24, 1966 at Windsor, Ontario

C. Cohen	)	Merchants Paper Company
N.C. Soullière	)	(Windsor) Limited

May 25, 1966 at Toronto, Ontario

D.S. Ratray	)	Zenith Electric Supply Ltd.
E.L. Peter)	
A.C. Cowan)	

May 26, 1966 at London, Ontario

P. Rudolph	)	The Service Lamp Co.
	)	Limited

June 14, 1966 at Ottawa, Ontario

P.S. Marchand	)	Marchand Electrical
	)	Company Limited
S. Ellis	)	Lumo Electric Company
E.M. Fillman	)	Limited
W.C. Kosalle	)	Sylvania Electric
	)	(Canada) Ltd.

March 17, 1967 at Toronto, Ontario

D.C. McKellar	)	Canadian Electrical
	)	Distributors Association

August 25, 1967 at Toronto, Ontario

R.W. Rawlings	)	Department of Highways
	)	of Ontario

WITNESSES AND APPEARANCES AT THE
HEARING BEFORE THE COMMISSION

March 23-26 and March 31-April 1, 1970 at Ottawa, Ontario

WITNESSES

H.W.G. Johnson	)	Canadian General Electric
W.H. Richards	)	Company Limited
R.A. Lewis)	
G.H. Wheatley)	
G.S. MacDonell)	
G.W. Hutchinson)	

APPEARANCES

Counsel

Representing

J.B.S. Southey, Q.C.	)	Canadian General Electric
F.J.C. Newbould	)	Company Limited
A.G. Trites)	
W.P. McKeown)	

J.W. Brown	) Canadian Westinghouse
D.I.W. Bruce, Q.C.	) Company Limited
K.E. Eaton, Q.C.	) Sylvania Electric
B.A. Crane	) (Canada) Ltd.

The Director of Investigation and Research was represented by:

F.N. MacLeod
D.Q. Patterson



INDUSTRY CANADA/INDUSTRIE CANADA



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