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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

-- April 1, 2005 through March 31, 2006 --

This report is submitted by the Canadian Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 October 2006.

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Executive Summary

1. The number of mergers the Competition Bureau (“Bureau”) reviewed in 2005-2006 increased from the previous year, continuing an upward trend. The size and scope of the mergers were also notable, as was the complexity of the competition issues they raised. There was also a significant increase in the number of complex mergers compared to the preceding year. Cases covered a wide range of industrial sectors, including agriculture, natural resources, media, pharmaceuticals and telecommunications.

2. The Bureau actively investigated cartels and deceptive marketing practices. It successfully obtained a record fine of \$Cdn12.5 million against each of three paper merchants, Cascades Fine Papers Group Inc., Domtar Inc. and Unisource Canada Inc. for taking part in a domestic conspiracy in the carbonless sheet market in Ontario and Québec. The Bureau also acted on information obtained from the United States Federal Trade Commission’s (“USFTC”) “Button Pusher Spam Sweep” and registered four Consent Agreements with the Competition Tribunal against the marketers of Fuel Saver Pro for sending spam containing false or misleading representations about the device’s ability to increase fuel efficiency and reduce emissions.

3. On the international front, the Canadian Commissioner of Competition (“Commissioner”), on behalf of the Government of Canada, signed a Cooperation Agreement with Japan. As well, the Bureau received delegations from various countries, continued to participate in technical assistance initiatives and hosted a Trilateral Meeting with the United States and Mexico. The Bureau has also contributed to the work of international organizations such as the Organisation for Economic Cooperation and Development (“OECD”), the International Competition Network (“ICN”), the International Consumer Protection and Enforcement Network (“ICPEN”), the United Nations Conference on Trade and Development (“UNCTAD”), and the International Development Research Centre (“IDRC”). The Bureau also maintained contact with its foreign counterparts to facilitate the enforcement of the *Competition Act* (“Act”) in the areas of merger review, cartels and deceptive marketing practices.

4. Proposed amendments to the Act, as well as a number of Private Members Bills of relevance to the Bureau, were not passed and died on the Order Paper upon the dissolution of Parliament on November 28, 2005.

5. Public documents, including more detailed descriptions or full texts of many matters referred to in this Annual Report, are available on the Bureau Web site in English at <http://www.competitionbureau.gc.ca> and in French at <http://www.bureaudelaconcurrence.gc.ca>.

Introduction

6. This Annual Report describes recent competition law and policy developments in Canada and summarizes the enforcement activities of the Bureau for the fiscal year April 1, 2005, through March 31, 2006.

1. Changes to Competition Laws and Policies, Proposed or Adopted

1.1 Summary of New Legal Provisions of Competition Law and Related Legislation

7. No new provisions to the Act came into effect during the period covered by this Annual Report.

1.2 Other Relevant Measures

8. In September 2004, the Bureau launched a three-phase consultation process on the treatment of efficiencies under the Act. In the first phase, the Bureau issued a consultation paper on the treatment of efficiencies, inviting written submissions that were complemented by roundtable discussions held across Canada. During the second phase, Bureau staff met with their counterparts from other members of the OECD to discuss the treatment of efficiencies in other jurisdictions. The third phase of the consultations focused on the work of an advisory panel on efficiencies that began discussions in March 2005 and submitted a report in August 2005. The advisory panel was composed of experts with backgrounds in economics, business and international trade. The panel was asked to submit a report about the role that efficiencies should play in the context of Canada's economy in the 21st century. The panel was also asked to consider the relevance of the various types of efficiency, particularly dynamic efficiency, to Canadian competition policy. The Bureau is taking into consideration the information gathered during this consultation process in its determination of future action in the area of efficiencies under the Act. A summary of the consultation on efficiencies is available on the Bureau's Web site.¹

9. On April 28, 2005, the Bureau announced that it would implement a new policy to better inform the public about its work. The policy sets out the circumstances in which the Bureau will provide details of its analysis and the reasons behind its conclusions in certain investigations. The Bureau may issue "Technical Backgrounders" when a matter receives substantial publicity, when issues are sufficiently important or complex, when there is a need to clarify a point of law or policy, when there is a significant impact on consumers, or where the release will encourage greater compliance with the law through education. In determining whether to publish a Technical Backgrounder, the Bureau is guided by the confidentiality provisions of the Act and may consider comments from the parties involved in the case. Technical Backgrounders are not intended to set precedents and will not be published when a case goes before the Competition Tribunal or the courts. For additional information on Technical Backgrounders, please refer to the *Policy Statement for the Publication of Technical Backgrounders* available on the Bureau's Web site.²

10. During the fiscal year ending March 31, 2006, the Bureau published four Technical Backgrounders on merger review cases, which were well-received by stakeholders. In its efforts to enhance transparency, the Bureau will continue to issue Technical Backgrounders in the future.

11. On August 20, 2005, the Bureau announced that it had begun consultations on a draft *Information Bulletin on the Communication and Treatment of Information under the Competition Act*. The revised policy sets out the Bureau's approach to the communication and treatment of information obtained through the course of its work. The document was updated to reflect amendments to the Act since the last statement on the subject had been published in 1995. The draft Bulletin and written responses received during the consultation process are available on the Bureau's Web site.³

¹ Summary of the consultation on efficiencies:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2114&lg=e>.

² *Policy Statement for the Publication of Technical Backgrounders*:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1301&lg=e>.

³ *Information Bulletin on the Communication and Treatment of Information under the Competition Act*:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1937&lg=e>.

Responses to Consultations - *Information Bulletin on the Communication and Treatment of Information Under the Competition Act*: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2020&lg=e>.

12. On October 19, 2005, the Bureau issued a draft *Information Bulletin on Merger Remedies in Canada* for consultation. The document sets out how the Bureau will seek, design and implement remedies to resolve competition concerns arising from a merger. The draft Bulletin was the result of extensive consultations, both within the Bureau and with antitrust authorities in the United States and the European Union. The Bureau expects to publish a final document that will provide stakeholders and businesses with enhanced transparency and predictability regarding the Bureau's approach to merger remedies and enforcement processes. The draft Bulletin is available on the Bureau's Web site.⁴

13. On November 3, 2005, the Competition Bureau issued an *Information Bulletin on Section 11 of the Competition Act*. This Bulletin provides general information on the practice of the Commissioner with respect to the use of section 11 of the Act. Section 11 orders allow the Commissioner to obtain information from persons who have or are likely to have information that is relevant to a matter under inquiry. The Bulletin is available on the Bureau's Web site.⁵

14. In Fall 2005, the Bureau organized internal and external working groups composed of lawyers and economists to consider various models to assess potential features of an amended section 45 of the Act. Section 45 is the cornerstone conspiracy provision in the Act. Members of the working groups agreed on criteria for evaluating the various models and assessed the models in the context of a number of case scenarios to determine, among other things, what behaviour the provisions should cover and whether the provisions should be criminal or civil. Upon the completion of the working groups' assessments, the Bureau intends to hold roundtable discussions on proposals regarding the reform of section 45.

15. In 2005, there were a number of Private Members Bills of relevance to the Bureau's work. None of these Bills were passed because they all died on the Order Paper upon the dissolution of Parliament on November 28, 2005.

- Private Members Bill C-229: An Act to establish the Energy Price Commission

This Bill sought to establish an Energy Price Commission to regulate the wholesale and retail price of motor fuels, including diesel and propane, as well as heating oil and electric power. The issue of price control was linked to competition.

- Private Members Bill C-249: An Act to amend the Bank Act

This Bill proposed to amend the merger approval process for banks and trust companies. Specifically, the Bill would prevent the merger of banks unless the Superintendent of Financial Institutions advised the Minister of Finance that the merger was necessary to prevent an insolvency or informed the Minister that none of the applicants wishing to merge were about to become insolvent. In such a case, the merger would have to be approved by a resolution of the Senate and the House of Commons.

- Private Members Bill C-321: An Act to establish and maintain a national Do-Not-Call Registry
- This Bill sought to create a national registry of Canadian residential telephone subscribers who choose not to receive telephone solicitations. Companies or individuals would be prohibited from soliciting or causing a solicitation to a listed residential telephone subscriber.

⁴ *Information Bulletin on Merger Remedies in Canada:*
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1982&lg=e>.

⁵ *Information Bulletin on Section 11 of the Competition Act:*
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1995&lg=e>.

This Bill was made redundant by the passage of Bill C-37, the Government's Do-Not-Call legislation.

- Private Members Bill C-387: An Act to amend the *Competition Act*
- This Bill proposed to amend the Act regarding investigations by the Commissioner and class action suits. The Bill would have caused the Commissioner to conduct an inquiry upon application by 100 or more persons who were of the view that there existed, in any sector of the Canadian economy, an arrangement or relationship that may constitute an offence. The Bill also provided class actions for compensation by individuals who could demonstrate that they had suffered losses due to a contravention of the Act.
- Private Members Bill S-15: An Act to prevent unsolicited messages on the Internet
- This Bill sought to establish a list of Internet users who did not wish to receive commercial solicitation by electronic mail (no-spam list), to create legal obligations for Internet service providers and allow them to seek damages from senders of spam.
- Private Member Motion 165: Gasoline prices
- A motion was introduced in October 2004 to have the government intervene with regard to gasoline prices by establishing a petroleum monitoring agency that would report on prices and competition issues and bring forward amendments that would strengthen the Act. This motion was debated in February and April 2005. A vote took place on April 20, 2005, at which time the motion was defeated.

16. In 2005-2006, the Bureau increasingly used the media to reach Canadians. In order to inform Canadian consumers, businesses and other stakeholders about its work, the Bureau issued 29 news releases and 20 information notices describing the benefits of its activities to the economy and to Canadians; responded to enquiries from journalists in Canada and abroad; and ensured that senior managers and communications staff were available to the media to act as spokespersons on key issues. This resulted in over 3,000 print, radio, television and online media reports on Bureau-related matters.

1.3 Government Proposals for New Legislation

17. On November 2, 2004, Bill C-19 (An Act to amend the *Competition Act*) was introduced in the House of Commons. This Bill would have authorized the Commissioner to seek restitution for consumers, introduced a general administrative monetary penalty for abuse of dominance, increased the administrative monetary penalties for deceptive marketing practices, removed the airline-specific provisions from the Act and decriminalized the pricing provisions of the Act. The Bill was debated in the House of Commons on November 16, 2004, and was then referred to the Standing Committee on Industry, Natural Resources, Science and Technology before second reading. The Committee held several meetings on this Bill in 2004 and 2005. Officials from the Bureau and Industry Canada, as well as witnesses, such as the Association of Canadian Advertisers, the Canadian Bar Association, the Canadian Council of Chief Executives, the Canadian Chamber of Commerce and the Retail Council of Canada, appeared before the Committee. Bill C-19 died on the Order Paper upon the dissolution of Parliament on November 28, 2005.

2. International Co-operation Developments

18. The Commissioner continues to act as a member of the Bureau of the OECD Competition Committee.

19. The Bureau participates in the OECD Committee on Consumer Policy ("CCP"), which examines questions regarding consumer policy and law. The Office of Consumer Affairs, Department of Industry,

leads Canada's participation, with its Director General serving as the chair. The Bureau participates in its own capacity as a Canadian law enforcement agency.

20. The CCP met in Paris in October 2005 and in Jeju, Republic of Korea, in March 2006. The topics discussed included the implementation of the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* ("Cross-border Guidelines"); dispute resolution and redress; demand-side economics for consumers; consumer information campaigns; and new technologies and emerging business models (including spam).

21. Bureau representatives contributed to the work of the CCP in 2005-2006 in the areas of dispute resolution and consumer redress, spam, cross-border enforcement co-operation in deceptive marketing practices, the implementation of the Cross-border Guidelines, and consumer education and awareness.

22. The implementation of the Cross-border Guidelines remained at the core of the CCP's work. The Bureau has continued efforts to implement the Guidelines in Canada in collaboration with its various partners and contributed to a report on the implementation of the Guidelines.⁶

23. Bureau officials participated in the CCP's Working Group on Dispute Resolution and Redress and continue to be involved in the development of an OECD recommendation on this topic. In April 2005, Bureau representatives attended a workshop in Washington, D.C., on the subject of dispute resolution and redress and gave a presentation on the existing and proposed powers to obtain redress under the Act.

24. Bureau representatives contributed to the Canadian delegation on the OECD Spam Task Force, which produced the *Report of the OECD Task Force on SPAM: Anti-spam Toolkit of Recommended Policies and Measures*. The CCP approved the proposed draft of the *OECD Recommendation on Cross-border Spam Enforcement Cooperation*, which included the Bureau's input.

25. The Bureau continues to be an active member of the ICN. The Commissioner is a vice-chair of the ICN Steering Group and is a co-chair of the Telecommunications Working Group. The Telecommunications Working Group provides insight into the role of competition authorities with respect to their enforcement and advocacy efforts in this sector. This Working Group produced a Report and a set of Suggested Best Practices for the 2006 Annual ICN Conference.⁷ The Report surveys existing work on competition policy in the telecommunications sector, including relevant case law and country-specific studies, while the Suggested Best Practices are a set of key criteria designed to promote and maintain competition in this sector.

26. The Bureau takes other leadership positions in the ICN and co-chairs the Subgroup on Anti-Cartel Enforcement Techniques, the Operational Framework Working Group and Subgroup Two of the Competition Policy Implementation Working Group on Enhancing the Role of Competition. The Bureau also acts as the *de facto* Secretariat of the ICN.

27. The Bureau's Deputy Commissioner of the Criminal Matters Branch continued to act as co-chair of the Subgroup on Anti-Cartel Enforcement Techniques. The Bureau contributed to the Subgroup's work

⁶ The implementation report was declassified by OECD Council on July 13, 2006. It is available on the OECD Web site at: http://www.oecd.org/document/11/0,2340,en_2649_34267_2514994_1_1_1_1,00.html.

⁷ The Report on Telecommunications Services is available on the ICN Web site at: http://www.internationalcompetitionnetwork.org/capetown2006/Reportofthe_Telecoms_WorkingGroup.pdf.

The Suggested Best Practices are available on the ICN Web site at: <http://www.internationalcompetitionnetwork.org/capetown2006/SuggestedBestPractices.pdf>.

program in 2005-2006, particularly with respect to the continued work on the Anti-Cartel Enforcement Manual, the Web linked Anti-Cartel Enforcement Templates and the Cartel Workshop. Work on the Anti-Cartel Enforcement Manual included an update of the chapter, *Drafting and Implementing an Effective Leniency Program* and the development of the new chapter, *Digital Evidence Gathering*. The Bureau played a steering role for the 2005 Annual Cartel Workshop, which took place in Seoul, Korea. The Workshop covered a range of topics including investigative techniques and analysis; detecting cartels and generating leads; calculating fines; and gathering foreign-based and digital evidence.

28. In 2005-2006, the Bureau participated in the ICN Mergers Notification and Procedures Workshop and the Cartels Workshop, and remained active in the Working Groups on mergers and cartels.

29. This year, the Bureau provided technical assistance to a number of countries, including Costa Rica, Chile and Switzerland. Such assistance included providing information on Canadian competition policy, law and practices; welcoming visitors from foreign governments and competition authorities; helping to develop or refine foreign competition laws; and providing advice on how to deal with particular types of investigations.

30. In June 2005, the Bureau welcomed a lawyer and an economist from the Fiscalía Nacional Económica, the authority responsible for enforcing competition law in Chile, to the Mergers Branch to learn about merger review in Canada.

31. In January 2006, the Bureau began a two-year technical assistance project entitled *The Role and Importance of Competition Policy in Promoting Investment, Growth, Competitiveness and Poverty Reduction in Costa Rica*. This project is in partnership with the Canadian International Development Agency, the Foreign Investment Advisory Services, the Private Sector Development Vice-Presidency of the World Bank Group, and the Commission for the Promotion of Competition (“COPROCOM”) of the Ministry of Economy, Industry and Trade, Government of Costa Rica. The main goals of the project are to continue to build a competition culture in Costa Rica and to strengthen the staff and institutional capacity of COPROCOM.

32. Jurisdictions that co-operated with the Bureau on ongoing international cartel and merger cases included the United States and the European Commission.

33. In addition to implementing the *OECD Guidelines for Increased Co-operation Against Cross-border Fraud and Deceptive Commercial Practices*, the Bureau has participated in the fight against deceptive telemarketing and mail solicitations through a number of initiatives, including: an anti-fraud education campaign, known as Fraud Prevention Month; and enhanced co-operation with other international and domestic enforcement agencies in its investigations.

34. On September 7, 2005, Canada signed a Co-operation Agreement with Japan. The Agreement is designed to contribute to the effective enforcement of the competition laws of each country through co-operation and, where appropriate, coordination between the two competition authorities. Commissioner Sheridan Scott and His Excellency Sadaaki Numata, Japan’s Ambassador to Canada, signed the Agreement in Ottawa. In March 2006, the first bilateral meeting was held pursuant to the agreement.

35. Negotiations continued between the Bureau and the Korea Fair Trade Commission on an inter-agency Co-operation Arrangement for competition law. The proposed Arrangement is expected to provide a framework for coordination and co-operation to deal effectively with anticompetitive business activities affecting both jurisdictions.⁸

⁸ The Co-operation Arrangement was signed on May 4, 2006.

36. On November 2, 2005, the Commissioner and other Bureau representatives hosted a Bilateral Meeting in Gatineau, Québec, with the Chairman and staff of the USFTC. The purpose of the meeting was to discuss ways to improve inter-agency co-operation in a number of areas, including consumer awareness and education; intelligence sharing; coordinated enforcement action against cross-border deceptive marketing practices; and proposed legislation in the United States that could facilitate co-operation in the fight against deceptive cross-border marketing practices.

37. On November 3, 2005, the Bureau hosted a Trilateral Meeting with the heads of the antitrust agencies from the United States and Mexico. The meeting included a roundtable discussion on the interface between competition and intellectual property and on approaches to abuse and monopolization.

38. The Bureau participated in the Fifth UNCTAD Conference on Competition Policy that was held in Antalya, Turkey from November 14 to 18, 2005. The Conference assessed the application and implementation of the *UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices* and discussed proposals for its improvement.

39. The Bureau is a member of the IDRC Advisory Group. As part of the IDRC's Distribution Sector Project, competition authorities from developing countries were invited to apply for research grants to study competition issues in the distribution sector. As a member of the IDRC Advisory Group, the Bureau has been responsible for reviewing submissions and providing input to the Advisory Group concerning research grant proposals.

40. In November 2005 and March 2006, Bureau representatives participated in the bi-annual meetings of ICPEN, held in Seoul and Jeju, Republic of Korea. ICPEN is a voluntary organization of trade practices law enforcement authorities from 34 countries.

41. At the Seoul meeting, Bureau representatives discussed a study that attempted to measure the detriment to consumers from mass marketing fraud schemes in Canada. A Bureau official also gave a presentation on how to build effective educational and awareness campaigns for fraud prevention.

42. At the Jeju meeting, the Bureau, as chair of the ICPEN Fraud Prevention Working Group, reported on the 2006 ICPEN Fraud Prevention Month. The Working Group aims at generating interest among ICPEN members to actively participate in the Fraud Prevention Month. The Bureau indicated that 24 ICPEN member and observer agencies committed to holding a variety of activities aimed at raising awareness and educating consumers about fraud. At the meeting, many acknowledged the Bureau's leadership in fraud prevention and noted that our Fraud Prevention Forum was a worthy model to emulate.

43. In Jeju, a joint meeting was held between ICPEN and the CCP on the subject of public education and awareness relating to fraud. The meeting was the result of a Bureau proposal made to the CCP and ICPEN as a means to further implement the *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*.

44. The Bureau co-chairs, with the United Kingdom Office of Fair Trading, the ICPEN Mass Marketing Fraud Working Group. The purpose of the Working Group is to increase the intelligence-sharing capacity of the network and to undertake joint enforcement action in combating deceptive cross-border marketing practices.

45. In March 2006, the Bureau, along with 61 other government agencies worldwide, completed a special three-day Internet surveillance and enforcement sweep targeting bogus product claims found on the Internet. This year's international sweep was spearheaded by 23 ICPEN agencies. Bureau officers searched for Canadian-based Internet sites making unrealistic performance claims about their products'

capabilities to cure serious diseases and collected spam using e-mail “harvest” accounts. The results of the ICPEN sweep will be analysed and the Bureau will take follow-up enforcement action as necessary.

46. The Bureau, in partnership with the Department of Foreign Affairs and International Trade, contributes to the development of competition policy and competition provisions in bilateral and regional trade agreements. Canada is currently negotiating or exploring free trade with the following partners: the Republic of Korea; the European Free Trade Association; the Central America Four; the Americas (Free Trade Area of the Americas); Singapore; the Andean Community countries; the Dominican Republic; and the Caribbean Community and Common Market. Canada is also working on an Economic Framework Agreement with Japan and a Trade and Investment Enhancement Agreement with the European Union, both of which include competition as priority areas.

3. Enforcement of Competition Laws and Policies

3.1 *Action Against Anticompetitive Practices*

3.1.1 *Abuse of Dominance*

47. On February 3, 2005, the Competition Tribunal issued a decision dismissing the Bureau’s 2002 application for an order prohibiting Canada Pipe Company Ltd./Tuyauteries Canada Ltée. from engaging in anticompetitive acts through its Bibby Ste-Croix Division. The Bureau alleged that Bibby was abusing its dominant position in the Canadian market for cast iron pipe, fittings, and mechanical joint couplings for drain, waste, and vent applications. The company’s loyalty program required its distributors to purchase all their drain, waste and vent products exclusively from Bibby in return for substantial rebates. The Bureau argued that the loyalty program locked in Bibby’s customers and reduced competition from potential entrants and existing competitors by impeding access to distributors covered by the program. The Tribunal concluded that Canada Pipe controlled more than 80 percent of the market but that its loyalty program was not anticompetitive and, based on the evidence, had not substantially lessened or prevented competition. On March 7, 2005, the Bureau filed a notice of appeal of this decision with the Federal Court of Appeal. Canada Pipe filed a notice of cross-appeal on March 17, 2005. The hearings were held on February 7 and 8, 2006.⁹

48. In February 2005, the City of Niagara Falls complained to the Bureau that their city’s gasoline prices were the highest in the Niagara Region. The Bureau’s examination found that prices in Niagara Falls were not consistently higher than those in the surrounding area and did not find any reason to believe that retail gasoline prices in Niagara Falls were the result of anticompetitive conduct.

49. On May 13, 2005, the Federal Court’s Trial Division dismissed two applications filed by Cinémas Guzzo in October 2002. The applications concerned a Bureau inquiry into motion picture distribution and exhibition in Canada that was discontinued in December 2002. The Federal Court denied Cinémas Guzzo access to the Bureau’s report on this inquiry because the Court held that it should defer to the Bureau’s decision to discontinue the inquiry for discretionary and administrative reasons. Cinémas Guzzo has appealed this decision to the Federal Court of Appeal.

50. On June 15, 2005, the Competition Tribunal consented to the Interac Association’s request to vary the Interac case Consent Order of June 20, 1996. The variation allowed the Interac Association to

⁹ On June 23, 2006, the Federal Court of Appeal allowed the Commissioner’s appeal and dismissed Canada Pipe’s cross-appeal. These decisions can be found on the Federal Court of Appeal’s Web site at: <http://decisions.fca-caf.gc.ca/en/dn/2006/06.html>.

impose a minimum annual fee and to recover costs associated with significant system changes made by members of the Association.

51. In Spring 2005, the Bureau received a complaint from a manufacturer of specialized residential construction products alleging that a group of competing manufacturers were controlling a standard-setting organisation committee responsible for setting the relevant standards. The standard in question provides prescriptive requirements as opposed to performance criteria. The approval of the standard-setting organisation is required by provincial governments before the product in question may be sold commercially. As a result, the complainant alleged that his firm was being prevented from introducing its innovative technology to the Canadian market. The Bureau was concerned about the possible manipulation of the standard-setting process by certain competitors on the committee and the use of standards to block newcomers and innovation.

52. Following discussions with the Bureau, the standard-setting organisation created a Task Force with the mandate of developing a test protocol in order to carry out a performance comparison between the traditional and the innovative product. Furthermore, as part of the Bureau's outreach program, a presentation was made to the standard-setting organisation in February 2006 in order to generate dialogue and awareness on the importance of competition and the potential anticompetitive pitfalls of standard-setting. The Bureau's examination of this matter is ongoing.

53. In 2005, the Bureau reviewed allegations of predatory pricing by a major airline carrier. The alleged behaviour was said to have caused the bankruptcy of a low-cost airline carrier. The Bureau concluded that the major airline carrier was not engaged in predatory behaviour.

54. In January 2006, the Bureau determined that Canada's largest sellers of tracking data and services for retail sales of consumer packaged goods did not engage in practices that substantially lessened competition. The Bureau's examination largely focused on third-party provision of scanner data analysis to Canadian manufacturers and retailers. The Bureau concluded that there were no grounds to warrant an application to the Competition Tribunal for a remedial order.

55. On March 30, 2006, the Bureau released the results of its examination of an unprecedented spike in Canadian gasoline prices following Hurricane Katrina. The Bureau conducted an examination to determine if increases in wholesale and retail gasoline prices in Fall 2005 resulted from anti-competitive behaviour among the integrated gasoline refiners/retailers or from major changes to the North American supply of wholesale gasoline resulting from the hurricane. The Bureau found that the hurricane caused major supply reductions in the United States and caused gasoline prices to rise rapidly throughout North America. The Bureau found no evidence that anticompetitive behaviour caused the price of gasoline to spike in the aftermath of Hurricane Katrina.

56. On March 30, 2006, the Bureau released its findings from an examination to determine if refinery-owned and large-volume independent gasoline retailers abused their dominant position to lessen competition. The examination stemmed from complaints by smaller independent gasoline retailers, the majority of which were from Ontario and New Brunswick; these areas were accordingly the focus of the Bureau's review. The Bureau's examination found no evidence to support a claim of margin squeezing and predatory pricing by national integrated firms and large-volume independent gasoline retailers. The independent report *What Determines the Profitability of a Retail Gasoline Outlet? A Study for the Competition Bureau of Canada* found that retailers are relying on higher volumes and ancillary services, such as convenience stores and car washes, to earn profits.

3.1.2 *Price Maintenance*

57. In February 2005, the Bureau received a complaint against a welding supplies company regarding its alleged involvement in price maintenance activities. Bureau officers interviewed the complainant and obtained documentation about the alleged offence. In November 2005, the Bureau informed the welding supplier that the alleged behaviour would likely contravene the price maintenance provision of the Act. The supplier assured the Bureau that it would take the necessary measures to ensure compliance with the Act.

58. In November 2005, Labatt Brewing Company Ltd. pleaded guilty in the Superior Court of Québec to a charge of price maintenance of the company's discount beer sold by nine independent convenience/grocery retailers operating in Québec. The Court fined Labatt \$Cdn250,000 and issued a Prohibition Order against the company. Under the Prohibition Order, Labatt is required to inform all of its Québec independent convenience/grocery retailers in writing that under section 61 of the Act, the company or its representatives cannot by agreement, threat, promise or similar means attempt to influence upward or discourage the reduction of the price of alcoholic beverages.

3.1.3 *Conspiracy*

59. In May 2005, Mitsubishi Corp., a Japanese corporation, was convicted and fined \$Cdn1 million for aiding and abetting a foreign-directed conspiracy to fix the price of graphite electrodes in Canada. Graphite electrodes are used in the production of steel in electric arc furnaces and for steel refining in ladle furnaces. In December 2005, Nippon Carbon Co. Ltd., also a Japanese corporation, pleaded guilty to participating in the international graphite electrodes cartel and was fined \$Cdn100,000. Mitsubishi and Nippon are the sixth and seventh parties to be convicted in Canada for participating in the graphite electrodes cartel. UCAR Inc., SGL Carbon Aktiengesellschaft, Tokai Carbon Co., and two former UCAR executives were previously fined a total of nearly \$Cdn24 million for their roles in the international conspiracy.

60. In August 2005, Ajinomoto Co. Inc., a Japanese corporation, and CJ Corp., a Korean corporation, pleaded guilty to participating in a conspiracy to fix the prices of nucleotides in Canada. Nucleotides are used as flavour enhancers in a variety of foods. Ajinomoto was fined \$Cdn1.5 million and CJ Corp. was fined \$Cdn175,000.

61. In January 2006, three paper merchants operating in Canada pleaded guilty to two counts of conspiring to unduly lessen competition in the carbonless sheet market in Ontario and Québec. Commercial printers use carbonless sheets in the manufacture of forms and receipts. The paper merchants included two Canadian corporations, Cascades Fine Papers Group Inc. and Domtar Inc., and an American corporation, Unisource Canada Inc. The Superior Court of Justice in Toronto sentenced each company to record fines of \$Cdn12.5 million for taking part in the domestic conspiracy and issued a Prohibition Order against the companies. Further, key personnel involved in the conspiracy will be removed from their positions in the paper merchant business.

62. From January 9 to February 4, 2006 a Preliminary Inquiry was held in the Provincial Court of Newfoundland and Labrador following charges laid in July 2004 against six taxi companies and seven individuals. The charges alleged that between 1992 and 2004 the taxi companies agreed not to compete for contracts to supply taxi services to institutional and commercial facilities in St. John's, Newfoundland.

3.1.4 *Bid-rigging*

63. On February 2, 2005, the Bureau received a complaint about alleged bid-rigging following a school board's call for tenders for a contract on school bus transportation in the Québec City region. A

review of the bids suggested that four bidders had consulted each other before submitting bids for separate and distinct routes so that they could share the territory. In order to encourage these companies to comply with the Act in the future, Bureau officers met with the companies' managers in March 2006 to provide them with information on the provisions of the Act. Official written notices and letters of warning about the alleged offence were also sent to the companies.

3.2 Mergers and Acquisitions

3.2.1 Statistics on Mergers Notified and/or Controlled Under the Competition Act

64. During the 2005-2006 fiscal year, the Bureau's Mergers Branch concluded 283 merger examinations, with 20 examinations still ongoing at year-end. With respect to the concluded examinations, five concluded with agreed remedies, including three examinations that resulted in Consent Agreements and two examinations where the Bureau was satisfied that remedies required by foreign agencies resolved Canadian competition concerns; one transaction was abandoned by the parties as a result of the Commissioner's position; and 277 examinations posed no issue under the Act, 166 of which resulted in the issuance of Advance Ruling Certificates.¹⁰

3.2.2 Summary of Significant Cases

65. On April 6, 2005, Saskatchewan Wheat Pool and James Richardson International announced the creation of a joint venture that would operate their port grain terminals at Vancouver as one combined facility and market the grain-handling services offered at this facility to third party non-integrated grain handling companies. The Bureau concluded that the joint venture would likely result in a substantial lessening of competition in the agriculture sector, specifically in the provision of grain-handling services at Canadian west coast ports. On November 10, 2005, the Commissioner filed an application with the Competition Tribunal challenging the joint venture. In December 2005, the Tribunal issued an Interim Hold Separate Order prohibiting the parties from jointly engaging in specified marketing activities and from disclosing to each other specific marketing information until the Tribunal's final determination on the merits of the Commissioner's application challenging the merger. In February 2006, the parties filed their responses to the Commissioner's application with the Tribunal. The Commissioner's reply was filed in March 2006.

66. On April 15, 2005, Cargill Ltd. and the Better Beef Group of Companies announced that they had signed an agreement to merge. The Bureau examined the merger's impact on the Canadian cattle and beef industry, focusing on the purchase of cattle and the sale of boxed beef and case-ready beef. The Bureau had to consider the impact of the bovine spongiform encephalopathy ("BSE") crisis. The examination revealed that there was limited direct competitive overlap between Cargill and Better Beef in the purchase of cattle. In addition, the 2005 reopening of the United States border to the export of live Canadian cattle under 30 months of age provided a viable and competitive outlet for Canadian cattle producers. Further, the Bureau determined that, even if the border were to close again, the effects of the proposed transaction would not result in a substantial lessening or prevention of competition because of the distance between Cargill's beef processing facility in High River, Alberta and Better Beef's facility in Guelph, Ontario. Finally, the Bureau concluded that, following the merger, Canadian retailers would still have access to sufficient sources of supply for boxed beef and some large retailers would likely possess sufficient countervailing power to offset any exercise of market power by the merged company in the supply of case-ready beef. Therefore, on August 30, 2005, the Bureau announced that the acquisition was not likely to

¹⁰ An Advanced Ruling Certificate may be issued by the Commissioner to a party or parties to a proposed merger transaction who want to be assured that the transaction will not give rise to proceedings under section 92 of the Act.

result in a substantial lessening or prevention of competition in the agriculture sector. More information about this case can be found in the Technical Backgrounder published on the Bureau's Web site.¹¹

67. In July 2001, United Grain Growers Ltd. ("UGG") and Agricore Cooperative Ltd. announced their plan to merge into Agricore United ("AU"). The Bureau advised the parties that the proposed transaction was likely to substantially lessen competition in the agriculture sector, specifically in certain grain-handling markets in Manitoba and Alberta and in grain-handling services at the Port of Vancouver. In response to the Bureau's competition concerns, AU agreed to divest up to seven primary grain elevators in western Canada.

68. With respect to the Port of Vancouver, following a hearing in September 2002, the Tribunal found that UGG's acquisition of Agricore's port terminal assets did substantially lessen competition in the market for grain-handling services at the port of Vancouver. On October 17, 2002, the Bureau announced that it had reached an agreement with AU to divest either the UGG or Pacific grain-handling terminal in the Port of Vancouver. A Consent Agreement reflecting the settlement was registered with the Tribunal and AU selected the UGG Terminal for divestiture. Pursuant to the Consent Agreement, if AU did not divest the port terminal within an initial sale period, the divestiture was to be carried out by a trustee. The Commissioner granted ten extensions of the initial sale period to AU. On August 10, 2005, the Commissioner refused to further extend the sale period and the responsibility for the sale of the terminal was to be effected by a trustee.

69. In August 2005, AU filed an application with the Tribunal pursuant to section 106 of the Act for an order rescinding the Consent Agreement, citing that circumstances had changed significantly. AU claimed that the amount of "uncommitted grain" shipped to the Port of Vancouver by non-integrated grain companies in western Canada had diminished dramatically, such that the purchaser of the UGG Terminal would not be able to secure enough grain to operate as a grain terminal on a sustainable basis. In contrast, the Bureau maintained that the volume of "uncommitted grain" had not changed since the date that the Consent Agreement was registered. Hearings on the matter before the Competition Tribunal commenced in March 2006.¹²

70. In December 2005, the Bureau was notified of a proposed transaction in the forestry sector between Western Forest Products Inc. and Canadian Forest Products Ltd. whereby Western Forest would acquire all of the assets of Canadian Forest's Englewood Logging Division and the companies would enter into a long-term fiber supply agreement. Central to this transaction was an agreement by Western Forest to close its Squamish pulp mill and supply all of its pulp logs and wood chips to the Howe Sound Pulp mill, a pulp mill in which Canadian Forest was a partner. Based on submissions by the parties and information obtained during the course of the Bureau's review, the Commissioner concluded that there were insufficient grounds to initiate proceedings before the Competition Tribunal under the merger provisions of the Act.

71. On December 7, 2004, the Bureau filed a Consent Agreement with the Competition Tribunal addressing competition concerns in the forestry sector raised by the merger of West Fraser Timber Co. Ltd. and Weldwood of Canada Ltd. The Consent Agreement required the parties to divest two sawmills and related assets, including timber tenures and harvesting rights. In February 2005, the Burns Lake Native Development Corporation ("BLNDC") *et al.* filed an application with the Tribunal for an order rescinding or varying the Consent Agreement to recognize its rights and interests. To resolve the threshold issue of whether BLNDC *et al.* had standing to challenge the Consent Agreement, the Commissioner filed a

¹¹ Acquisition of Better Beef by Cargill Ltd.:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1941&lg=e>.

¹² AU discontinued its section 106 application shortly after the end of the fiscal year.

Reference under subsection 124.2(2) of the Act with the Tribunal for a determination of the meaning of the term “directly affected” in the context of subsection 106(2) of the Act. Shortly thereafter, BLNDC *et al.* launched two appeals regarding a preliminary ruling on the procedural propriety of the Reference. In a judgment released March 7, 2006, the Federal Court of Appeal dismissed the appeals. The Tribunal released its decision dismissing the application by BLNDC *et al.*, finding that it was not a “directly affected” party for the purpose of section 106 of the Act. At year-end, the matter was still ongoing as the latter decision of the Tribunal is now under appeal by BLNDC *et al.*

72. The Bureau’s review of the competition effects in the forestry sector resulting from the acquisition of Riverside Forest Products Ltd. by Tolko Industries Ltd. was still ongoing at year-end.

73. On December 21, 2001, the Bureau challenged Astral Media Inc.’s proposed acquisition of Télémedia Radio Inc.’s French-language radio stations and a 50 percent interest in Radiomédia (Astral already owned the other 50 percent interest) on the grounds that this acquisition would substantially lessen competition in the media sector, specifically in six radio-advertising markets in Québec. On September 3, 2002, a Consent Agreement was filed with the Competition Tribunal. The Consent Agreement included the obligation for Astral to sell its AM radio stations in all six relevant markets and CFOM-FM in Québec City. Astral’s initial attempts to sell these radio stations were not successful. Subsequently, Corus Entertainment Inc. proposed to exchange five of its Québec regional radio stations for the Astral radio stations that were available for sale to resolve the Commissioner’s competition concerns with respect to the merger. On January 21, 2005, the Canadian Radio-television and Telecommunications Commission (“CRTC”) approved this transaction subject to certain conditions. The transaction between Astral and Corus was completed on May 27, 2005, resolving Bureau concerns.

74. In late 2004, Cineplex Galaxy Ltd. Partnership contacted the Bureau regarding its interest in acquiring the Famous Players Division of Viacom Canada Inc. The Bureau conducted an extensive merger review to determine the competitive effects of the proposed transaction in the media sector. In conducting its inquiry, the Bureau gathered information from a number of sources, including the parties to the transaction, economic and industry experts, major Hollywood and Canadian film distributors, other exhibitors and foreign antitrust authorities. The Bureau determined that the transaction would likely substantially lessen competition in a significant number of geographic areas of overlap in terms of both price and non-price factors. To resolve these concerns, a Consent Agreement was registered with the Tribunal on June 13, 2005, requiring the divestiture of 35 theatres in 17 Canadian cities. In September 2005, Cineplex Galaxy was successful in divesting the western Canada and Ontario packages of theatres to Empire Theatres Ltd. In March 2006, the theatres located in Québec were successfully divested to Fortune Cinemas Inc. More information about this case can be found in the Technical Backgrounder published on the Bureau’s Web site.¹³

75. In Fall 2005, Québecor Media Inc. contacted the Bureau with respect to its interest in acquiring Sogides Ltée. The Bureau reviewed the proposed merger to determine its effect on competition in the media sector, specifically in the publishing and distribution of French-language trade books. During this process, the Bureau gathered information from the parties to the transaction, French-language book publishers, distributors and retailers, various Québec book industry associations and government officials. The Bureau concluded that the merger of Québecor and Sogides would not likely result in a substantial lessening or prevention of competition in the market. However, in the course of reviewing the transaction, the Bureau learned that Sogides’ president had an interest in Gestion Renaud-Bray Inc., which competes with Québecor’s Archambault Group Inc. bookstores. In order to eliminate the possibility of information exchanges between Archambault and Renaud-Bray via Sogides’ president, Québecor and Sogides signed a

¹³ Acquisition of Famous Players by Cineplex Galaxy:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1921&lg=e>.

Consent Agreement with the Bureau addressing this issue. More information about this case can be found in the Technical Backgrounder published on the Bureau's Web site.¹⁴

76. On January 28, 2005, Procter and Gamble Co. ("P&G") announced that it intended to acquire the Gillette Co. The Bureau conducted a thorough review of the proposed merger to determine the competitive effects of the removal of Gillette as a competitor in the pharmaceutical sector, specifically in the markets for oral care, antiperspirant/deodorant and aftershave. During the course of its examination, the Bureau consulted with customers and competitors, and co-operated with the Directorate-General for Competition of the European Commission ("EC") and with the USFTC. The Bureau identified concerns in the oral care markets for battery powered toothbrushes and teeth whitening products. In order to resolve competition concerns, P&G made commitments to the EC and the USFTC to divest the Spinbrush and Rembrandt oral care lines worldwide. These divestitures adequately resolved competition concerns in Canada.

77. On September 7, 2005, the United Kingdom's GlaxoSmithKline Inc. announced that it had reached an agreement to acquire ID Biomedical Corp., a Vancouver-based biotechnology company developing innovative vaccine products. The Bureau found that the vaccine industry in Canada is unique because of the role that the Canadian government plays in providing certain vaccine products and because of the long-term supply contracts necessary to ensure security of supply for Canadians. Prior to the acquisition, ID Biomedical provided approximately 75 percent of the public requirements for influenza vaccine pursuant to such contracts. The Bureau found that there was no product overlap in Canada between the parties and that there were no significant issues relating to products under development. The merger did not change the fact that there would be no competition until the next bidding process in 2008 for 50 percent of the annual public requirement of influenza vaccine. At that time, there would likely be a number of pharmaceutical companies capable of competing. The Bureau also determined that the acquisition would not result in any substantial lessening or prevention of competition in the pharmaceutical sector, specifically in the small private market for influenza vaccines in Canada, or any other vaccine products under clinical development. Therefore, in November 2005, the Bureau concluded that the transaction was not likely to result in a substantial prevention or lessening of competition. More information about this case can be found in the Technical Backgrounder published on the Bureau's Web site.¹⁵

78. The Bureau reviewed the acquisition of Guidant Corp. by Boston Scientific Corp., following the breakdown of an earlier proposed merger between Guidant and Johnson & Johnson Inc. During the course of the examination, the Bureau consulted with customers and competitors, and co-operated with the USFTC and the EC. The Bureau determined that a Consent Order between Boston Scientific and the USFTC, which included a commitment by Boston Scientific to divest Guidant's vascular intervention and endovascular businesses to Abbott Laboratories, together with commitments made to the EC, would adequately resolve competition concerns in Canada.

79. On September 4, 2003, a Consent Agreement was registered with the Competition Tribunal whereby RONA Inc. agreed to divest itself of the Réno-Dépôt store in Sherbrooke, Québec, in order to remedy competition concerns in the market for hardware supplies with respect to its merger with Réno-Dépôt Inc. By late February 2004, RONA had not sold the Sherbrooke store, so a trustee was appointed to realize the sale. On November 24, 2004, the trustee and the purchaser signed an Agreement of Purchase and Sale. On January 10, 2005, RONA filed a notice of objection to the proposed sale along with an application under section 106 of the Act. RONA submitted that the sale of the Réno-Dépôt was no longer

¹⁴ Acquisition of Sogides Ltée. by Québecor Media Inc.:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2032&lg=e>

¹⁵ Acquisition of ID Biomedical Corp. by GlaxoSmithKline Inc.:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2139&lg=e>

necessary because a Home Depot was to open in Sherbrooke at the end of 2005. On April 29, 2005, the Tribunal made an order approving the sale concluded between the trustee and the purchaser. However, the order would only be binding if the Tribunal dismissed RONA's application. On May 30, 2005, the Competition Tribunal allowed RONA's application under section 106 and rescinded the Consent Agreement.

80. In May 2005, the Bureau was notified of an auction to be held by A&P Canada Co.'s American parent corporation to divest its Canadian operations, namely 237 grocery stores in Ontario. After a thorough review involving all of A&P's assets in Ontario, the Bureau agreed to the terms of a Consent Agreement with a potential purchaser, who was ultimately unsuccessful in its bid. Ultimately, another purchaser acquired the Canadian operations.

81. In August 2005, Whirlpool Corp. announced its intention to acquire Maytag Corp. Competition authorities in Canada, as well as in the United States, Brazil, Germany and Mexico, were notified of the transaction in the appliances sector shortly thereafter. As part of its examination of the proposed transaction, the Bureau conducted interviews with the parties, customers and industry stakeholders such as competitors, major retailers, buying groups and appliance parts distributors. In March 2006, the Bureau completed its review of the transaction and advised the parties that grounds did not exist to challenge the proposed transaction before the Competition Tribunal. More information about this case can be found in the Technical Backgrounder published on the Bureau's Web site.¹⁶

82. On November 17, 2005, PaperLinX Ltd. of Melbourne, Australia, announced that it intended to acquire the paper merchant and distribution business of Cascades Fine Paper Group Inc. through its Canadian subsidiary, PaperlinX Canada Ltd. In March 2006, the Bureau filed a Consent Agreement with the Competition Tribunal addressing competition concerns in the market for paper raised by the acquisition. Under the terms of the Agreement, PaperlinX was required to divest all of Cascades' assets relating to the fine paper merchant business in British Columbia and Alberta (excluding the graphic arts business of Cascades). To address the Bureau's concern regarding access to the supply of fine paper, PaperlinX agreed not to obstruct or object to the supply of fine paper by any fine paper mill to the purchaser of the divested assets. Furthermore, Cascades Fine Paper Group Inc. agreed to supply its fine paper brands to the divested business before and after the divestiture. The Agreement also provides that if PaperlinX is unable to divest Cascades' merchant assets in these two provinces, a trustee will be appointed to complete the sales process. More information about this case can be found in the Technical Backgrounder found on the Bureau's Web site.¹⁷

83. The Bureau reviewed the proposed acquisition of Falconbridge Ltd. by Inco Ltd., two of the world's largest nickel producers. The Bureau found that the merger would not lead to a substantial lessening or prevention of competition in the mining sector in Canada and cleared the transaction in January 2006. As of March 31, 2006, the transaction was still under review by authorities in the United States and Europe.

¹⁶ Acquisition of Maytag Corp. by Whirlpool Corp.:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2113&lg=e>.

¹⁷ Asset Acquisition by PaperlinX Canada Ltd. from Cascades Resources Fine Papers Group Inc.
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2157&lg=e>.

3.3 *Misleading Advertising and Deceptive Marketing Practices*

3.3.1 *Criminal*

84. Between October 2002 and June 2005, 11 individuals pleaded guilty to deceptive telemarketing under section 52.1 of the Act. The individuals are Gerald Goldstein, Scarlet Jove, Armenia Linhares, William Kenwood, Sheldon Cutler, Constantina Athanasopoulos, Jerry Browman, Marcus Miller, Michel Rosenberg, Lawrence Walsh and Doron Kunin, all of Alexis Corporation (3636135 Canada Inc.) and 3587932 Canada Inc. The Bureau and PhoneBusters (the Canadian Anti-Fraud Call Centre)¹⁸ had received numerous complaints alleging that telemarketers were explicitly telling consumers they had won valuable prizes. The telemarketers deceived and misled consumers about the quantity and value of these prizes. Furthermore, to qualify for these prizes, customers were required to make a purchase of a promotional item. The sentences against the 11 individuals ranged from up to two years less a day conditional sentence; up to two years probation; up to 150 hours of community service; and/or fines up to \$Cdn20,000.

85. On August 2, 2005, the Bureau laid charges against Michael Reynolds of Toronto, Ontario and John Armstrong of Penticton, British Columbia for making false or misleading cancer therapy claims. It alleged that the accused preyed upon vulnerable consumers (specifically cancer victims or their families) by making unsubstantiated representations on their Web site, at seminars, in alternative health-care magazine articles and advertisements, in direct mailings and in telephone communications. The accused were charged with ten counts each under the Act for knowingly or recklessly making representations to the public that were false or misleading in a material respect, and one count each under the Criminal Code of Canada for defrauding the public of money exceeding \$Cdn5,000.

86. On September 22, 2005, the Bureau laid charges under subsection 52.1(3) of the Act against Aleksandr and Oleg Oks, directors of a number of Toronto-area corporations, for their role in various telemarketing scams. It was alleged that the accused preyed on vulnerable United States citizens with poor credit history by offering them Visa or MasterCard credit cards for an upfront fee of \$US279 to \$US319 even though the accused had no affiliation with these credit companies. The victims' bank accounts were debited but they did not receive a credit card. The accused have been charged with one count each under the Act for deceptive telemarketing practices and one count each under the Criminal Code for defrauding the public of money exceeding \$Cdn5,000.

87. On September 30, 2005, Justin Pold of Montréal pleaded guilty under section 52.1 of the Act for his role in a telemarketing scam that targeted not-for-profit organizations, businesses and government agencies in Canada, the United States and the United Kingdom. Telemarketers solicited new business by falsely claiming to be the businesses' regular suppliers of office supplies or to be renewing a subscription to a previously ordered business directory when no such supply arrangement or orders had been made. Businesses then received office supplies or directories that they would not have ordered in the absence of these false or misleading representations.

88. Randolph Misiurak and Stéphane Oullet, both of Montréal, had pleaded guilty earlier. Mr. Misiurak was sentenced to house arrest as well as to a seven-year Prohibition Order. Mr. Oullet was sentenced to a \$Cdn3,400 fine. Charles McCulloch, of Toronto, received a conditional discharge and a ten-year Prohibition Order. François Lefort of Montréal received an unconditional discharge, a seven-year Prohibition Order and was sentenced to make a \$Cdn4,000 donation to charity. Mr. Pold, who led the directories scam at International Business Directories, was sentenced to 18 months in prison. He also

¹⁸ PhoneBusters is the central agency in Canada that collects information on fraudulent telemarketing and advanced-fee fraud letters, and identity theft complaints. The information is disseminated to the appropriate law enforcement agencies.

received two years probation, a seven-year Prohibition Order under section 34 (2.2) of the Act and an order prohibiting him from participating in any telemarketing activity involving the sale of office supplies or business directories. The companies (Commercial Business Supplies, Merchant Transaction Supplies, Merchant Supply Services, International Business Directories, 153595 Canada Inc., 162013 Canada Inc., 162014 Canada Inc., 174440 Canada Inc., M.M. International Business Directories Ltd., 3350550 Canada Inc.) and their president, Micheal Mouyal, are awaiting trial, which is scheduled for November 2006.

89. On December 12, 2005, the Bureau announced that criminal charges had been laid against six persons and one company (Infosearch Publications Inc.) for their alleged involvement in deceptive telemarketing activities in Québec. The accused are Anderson Ramirez, Heather Romano, Yancy Romano, Efstathios (Steve) Kok(k)inasidis, Maria Kok(k)inasidis and Charalambos (Bobby) Kok(k)inasidis. On March 7, 2006, the Bureau announced additional charges against one of the same individuals, Bobby Kok(k)inasidis, and three companies, which carried out business under the names Corporate Media Services and Commercial Media Services. Kok(k)inasidis was charged with nine counts under the Act for masterminding the alleged deceptive mail and telemarketing scam. In all, 27 charges were laid pursuant to the Act under subsection 52(1) and paragraphs 52.1(2)(b) and 52.1(3)(a). Bobby and Maria Kok(k)inasidis have also been charged for a breach of a June 2002 Prohibition Order, which prohibits them from engaging in deceptive telemarketing for a period of ten years. In these related scams, invoices were received from the accused companies demanding payment for unordered listings in one of three Internet-based business directories. The invoices were often preceded by telephone calls advising recipients that they had previously authorized the listing, which complainants said was untrue. The Bureau asserted that at the height of its operations between April 2002 and September 2003, Infosearch duped 10,000 Canadian businesses out of more than \$Cdn4 million.

90. On March 30, 2006, the Bureau announced that criminal charges under subsection 52.1(3) of the Act had been laid against four persons allegedly involved in deceptive telemarketing activities in Québec. These individuals are Neil Leventhal, Pierre Richard, Rick Aguino and Matthew Grenia. Two companies, Merchant Supply International Inc. and International Merchant Supply Inc., were also charged. Telemarketers from these companies contacted businesses in Canada and the United States claiming to be their regular suppliers of rolls of paper, ink cartridges, and cleaning cards for use with electronic payment and credit card devices, or claiming that an increase in the price of these supplies was imminent. The telemarketers failed to disclose important information such as the price of the merchandise offered and the terms and conditions for returning it. The businesses subsequently received office supplies which they would not have ordered had it not been for the false representations.

91. On March 30, 2006, criminal charges were laid against Andrew James Wilson and 1462986 Ontario Inc., also operating as Business Supply Centre and National Supply Centre in the city of Toronto, in the Toronto region and elsewhere in Canada. It is alleged that the accused engaged in deceptive telemarketing while promoting the sale of toner or ink jet cartridges for use in office equipment such as photocopiers and printers. The parties are accused of failing to disclose mandatory information in a fair and reasonable manner, making false or misleading representations with respect to price increases and discounts, and making pricing errors on invoices. It is further alleged that the parties provided clients with inferior (refilled) toner and generic ink jet cartridges at grossly inflated prices. The parties allegedly used these deceptive practices to defraud Canadian businesses of an amount in excess of \$Cdn5,000.

3.3.2 *Civil*

92. In January 2005, following a lengthy hearing, the Competition Tribunal decided that Sears Canada Inc. had breached the Act by making false or misleading representations when advertising discounts on certain tires. This landmark decision was the first to be handed down by the Tribunal under section 74.01(3), the ordinary selling price provision of the Act. In its ruling, the Tribunal found that Sears

had not sold a substantial volume of the tires at the regular price featured in the advertisements, and could not truly have believed that its regular tire prices were genuine. The Tribunal also upheld the constitutionality of the relevant provisions of the Act.

93. In April 2005, the Tribunal ordered Sears to pay a \$Cdn100,000 administrative monetary penalty, as well as \$Cdn387,000 towards the Bureau's legal costs. The Tribunal's order also prohibited Sears' automotive business division from engaging in similar conduct for a period of ten years. The administrative monetary penalty, which Sears agreed to in a joint submission to the Tribunal, was the maximum that could be imposed in these circumstances.

94. On June 28, 2005, the Bureau filed an application for an order under paragraphs 74.01(a) and (b) of the Act with the Competition Tribunal to prevent five Québec companies (Gestion Lebski Inc., La Société de Financement Vanoit Inc., Maigrissimo Inc., Gestion Finance Tamalia Inc., and 9083-8434 Québec Inc.) operating a chain of weight-loss clinics called Centre de Santé Minceur, and their president, Sylvain Leblanc, from making misleading representations to the public about a weight-loss method involving a special apparatus and natural products. The Bureau requested that the Tribunal order Mr. Leblanc and the companies to cease making certain representations about the weight-loss method; to publish a corrective notice in newspapers, magazines, on Québec infomercials and on their Web site; and to pay an administrative monetary penalty.

95. In December 2005 and January 2006, four Consent Agreements (relating to Mike Stothers, Cory Gratton, Tracy Gratton, Everette Gratton and Joe Walsh) were registered with the Competition Tribunal under paragraphs 74.01(1)(a) and (b) of the Act in relation to the marketing of Fuel Saver Pro, an alleged fuel saving device. The Agreements followed a Bureau investigation revealing that, between January 2002 and May 2004, several individuals sent spam containing false or misleading representations about the device's ability to increase fuel efficiency and reduce emissions. The Bureau was acting on information obtained from the USFTC's "Button Pusher Spam Sweep". After extensive testing, the USFTC and the United States Environmental Protection Agency both concluded that the claims about the Fuel Saver Pro could not be substantiated. The Consent Agreements, which are valid for ten years, require the parties not to make any false or misleading representations to the public; not to make any performance claims to the public without having first provided proof of adequate and proper testing to the Bureau; and to pay administrative monetary penalties totalling \$Cdn12,000.

96. On February 22, 2006, the Bureau registered a Consent Agreement with the Competition Tribunal regarding an Internet-based job scam. Strategic Ecomm Inc. and its sole principal, Matthew Hovila, operated an on-line resumé distribution scheme offering guaranteed results to those seeking employment in either the oil and gas industry or with government agencies in the United States. For a fee, the company claimed that it would distribute customers' resumé to key employers in each industry. The Bureau's investigation revealed that the company made misrepresentations regarding the number of companies to which resumé were forwarded, its relationships with potential employers, and the effectiveness of its services. Further, it misrepresented the validity of a "money-back, risk-free guarantee" and its endorsement by an on-line, third party watchdog. The company and principal also provided phony customer testimonials and misled customers into believing that their services were "on sale" for a time-limited special price. Under the terms of the Consent Agreement, Strategic Ecomm Inc. and its principal have agreed to admit to having engaged in reviewable conduct under subsections 74.01(1), 74.01(3) and section 74.02 of the Act; pay an administrative monetary penalty of \$Cdn100,000; publish corrective notices; and discontinue the conduct on its two Web sites (www.oilcareer.com and www.governmentaljobs.com).

97. On February 23, 2006, the Bureau filed an application for an order with the Competition Tribunal under paragraphs 74.01(1)(a) and (b) of the Act prohibiting Econoco Inc. and its directors from making

misleading representations about the Econopro, which was marketed as a device that saved fuel and reduced emissions. The Bureau application aims to prohibit Econoco Inc. (President Réal Laroche and former Vice-president and Technical Director Claude Tardif) from making representations in the form of a statement, warranty or guarantee of the performance or efficacy of the Econopro or similar device that are not based on adequate or proper tests.

98. On February 27, 2006, the Bureau registered a Consent Agreement with the Competition Tribunal pursuant to paragraphs 74.01(1)(a) and (b) of the Act requiring Fabutan Corporation and its president, Douglas Scott McNabb, to refrain from making representations linking indoor tanning with the unproven benefits of Vitamin D. The Bureau discontinued its original Application against the Dosco Group Inc. and Fabutan Studios. Under the Agreement, Fabutan has agreed to do the following: ensure that any messages to the public concerning exposure to UV-B and possible health benefits associated with Vitamin D are accompanied by statements that tanning may cause premature aging of the skin and skin cancer, that mild exposure to UV-B is sufficient to generate Vitamin D, and that tanning is not required; refrain from making statements conveying the impression that tanning has proven health benefits unless such benefits have been scientifically demonstrated; establish and maintain a corporate compliance program; post a corrective notice on its Web site; and pay an administrative monetary penalty of \$Cdn62,500. Douglas Scott McNabb has also agreed to make a charitable donation of \$Cdn12,500.

4. The Role of Competition Authorities in the Formulation and Implementation of Other Policies

99. In 2005-2006, the Bureau made a number of interventions in sectors including transportation, telecommunications, pharmaceuticals and the professions. The following pages summarize these interventions, their outcomes and potential benefits for Canadians.

4.1 Transportation

4.1.1 Marine: Submission on Canada Marine Act Review

100. On June 22, 2005, the Minister of Transportation introduced, in Parliament, Bill C-61, *An Act to Amend the Canada Marine Act*.¹⁹ The amendments would have provided Canada Port Authorities (“CPA”) with access to federal contribution programs for key infrastructure improvements. The amendments would have allowed the Minister, in certain cases, to increase a port authority’s borrowing limits and to reduce the minimum number of directors on the boards of most CPAs. They would have also enhanced the safety and efficiency of Canadian waterways. In order to improve the competitiveness of the Canadian marine industry, Transport Canada would not have limited its activities to legislative amendments and would have been able to pursue other policy initiatives. These could have alleviated some of the problems facing the country’s 19 largest ports, and enabled infrastructure improvements in order to expand capacity. Bill C-61 died upon the dissolution of Parliament on November 28, 2005.

4.1.2 Air Transportation Liberalization

101. On May 4, 2005, the Commissioner appeared before the House of Commons Standing Committee on Industry, Natural Resources, Science and Technology in support of the further liberalization of air travel and cargo within North America and between Canada and offshore countries. In her remarks, the Commissioner outlined the role and activities of the Bureau in dealing with competition abuses in the

¹⁹ Under the current *Canada Marine Act*, port investment in infrastructure is constrained because the *Canada Marine Act* prohibits public financial grants and subsidies, and limits the borrowing power of ports.

airline sector and provided her views on questions raised in the Minister of Transportation's 2004 reference paper to the Committee on airline market liberalization. Specific recommendations included the reduction and removal of restrictions on the ownership and control of Canadian air carriers; allowing rights of establishment to permit foreign owned 'Canada-only carriers'; permitting cabotage in Canada to enhance competition on routes within the country and on a reciprocal basis with other countries; the establishment of 'United States-style' open skies agreements, with subsequent negotiations at a later date to further liberalise Canada/United States air transportation markets; allowing co-terminalisation, enabling United States or Canadian carriers to deliver United States or Canadian cargo to the other country using routes having more than one destination in the country of destination; and the initiation of negotiations to further liberalize overseas air travel on a bilateral basis.

102. In November 2005, consistent with the Commissioner's recommendations, the Government of Canada negotiated an expanded open skies agreement with the United States.

4.2 Telecommunications

4.2.1 Policy Review Panel

103. On August 15 and September 15, 2005, the Bureau filed its submissions with the Telecommunications Policy Review Panel as part of the Panel's consultation on Canada's telecommunications policy and regulatory framework. The Bureau's recommendations included a greater role for competition principles in assessing the need for regulation; increased reliance on market forces, where warranted; a review of telecommunications policy objectives; improved information-sharing between the Bureau and the CRTC and best use of expertise within both agencies; and the removal of foreign ownership restrictions in the telecommunications sector. The full text of the Bureau's submissions is available on the Bureau's Web site.²⁰

104. In March 2006, the Telecommunications Policy Review Panel issued its report, which made a number of recommendations to the Minister of Industry that were consistent with the Bureau's views. In particular, the report endorses greater reliance on market forces and the broad application of competition law principles; recommends a narrowed set of policy objectives and specific guidelines for the CRTC under the *Telecommunications Act*; recognizes the importance of utilizing the respective expertise in the CRTC and the Bureau in a more coordinated and effective manner; and addresses foreign ownership restrictions.

4.2.2 Local Telephone Services

105. On April 28, 2005, the CRTC initiated Public Notice 2005-2 to determine the framework (including the criteria) for forbearance from regulation of residential and business local telephone services. The Bureau participated fully as it considered this proceeding critical to the development of competitive markets for local telephone services in Canada. Bureau participation included written submissions, interrogatories and a hearing appearance.

106. The Bureau called for a rigorous competition analysis, such as the one it uses to review mergers, and proposed a forward-looking framework to help the CRTC determine when consumers and businesses would benefit from deregulation of local telephone services. The Bureau submissions also provided a general framework for defining the relevant product and geographic markets applicable to local residential and business services, as well as for the CRTC's assessment of market power within those markets;

²⁰ The Bureau's submission to the Telecommunications Policy Review Panel:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=1969&lg=e>.

identified the types of data and evidence required to properly determine the relevant markets and assess market power; and provided a practical, analytical approach to assessing the data generated.

4.2.3 *Broadcasting*

107. On January 13, 2006, the CRTC initiated a review of its commercial radio policy through Public Notice 2006-1. On March 15, 2006, the Bureau filed a submission to the CRTC to ensure that the review took competitive factors into consideration. In its submission, the Bureau focused primarily on issues related to radio station mergers, local management agreements (“LMA”), and the regulatory approach to activities over new and emerging distribution platforms. In particular, the Bureau encouraged the CRTC to consider the following points:

- Consistent with the approach taken in other jurisdictions, the Commission should assess the effect of a broadcasting merger on competition for advertising dollars in accordance with well-recognized competition principles, outlined in the Bureau’s Merger Enforcement Guidelines.
- Where the Commission approves a radio station merger or LMA that will likely result in a significant increase in local advertising rates, but does so with a view to implementing one or more of the objectives of the *Broadcasting Act*, it should clearly explain to stakeholders how it has balanced these interests and how permitting such anticompetitive behaviour is justified in the circumstances. Further, the Commission should work toward achieving a consistency and neutrality in its regulation of new media technologies, not by regulating new forms of broadcasting but by deregulating traditional ones, to help broadcasters adapt to competition with new distribution platforms.

108. An executive summary of the submission is available on the Bureau’s Web site.²¹

4.3 *Pharmaceuticals*

109. On October 28, 2005, a Bureau representative addressed the Committee to Advise on Tropical Medicine and Travel (“CATMAT”). CATMAT provides recommendations on the prevention and treatment of infectious diseases that may be encountered by Canadians while travelling outside of Canada. The Bureau address focused on anticompetitive clauses in pharmaceutical contracts and drew on the Bureau’s recent experience in several investigations in this area. This presentation was the first of several the Bureau has made on the subject. The Bureau expects that raising awareness among public purchasers of pharmaceuticals of anticompetitive clauses will benefit Canadians through lower health care prices.

4.4 *The Professions*

110. On March 7, 2006, the Bureau published letters on its Web site that it sent to the provincial governments of Alberta, Nova Scotia and New Brunswick. The Bureau supported provincial initiatives to create independent colleges of dental hygiene and made suggestions for the rules which might govern an effective and efficient college. It encouraged the provinces to use the opportunity to establish meaningful competition in the market for dental hygiene services.

²¹ Executive summary of the Bureau’s submission to the CRTC on commercial radio policy: <http://www.competitionbureau.gc.ca/PDFs/ExecSummary-radio-e.pdf>.

A complete version of the Commissioner’s comments are available on the CRTC Web site at: http://support.crtc.gc.ca/applicant/docs.aspx?pn_ph_no=2006-1&call_id=29678&lang=E&defaultName=Competition%20Bureau.

5. Resources of Competition Authorities

5.1 Resources Overall (current numbers and change over previous year)

5.1.1 Annual Budget (in Canadian currency and USD)

111. In the 2005-2006 fiscal year, the Bureau received \$Cdn37.7 million (\$US33.6) in base budget plus \$Cdn8 million (\$US7.2) in temporary funding for a total of \$Cdn45.7 million (\$US40.8).

5.1.2 Number of Employees (person-years)

- 13 Economists
- 23 Lawyers and 1 Paralegal (employees of the Department of Justice)
- 23 Executives, 253 Competition Law Officers
- 133 Support Staff
- 9 Communications Professionals
- 455 staff combined

5.2 Application of Human Resources (person-years)

- 285 persons applied to enforcement against anti-competitive practices (excludes deceptive marketing practices enforcement staff, but includes employees of the Department of Justice)
- 43 persons applied to merger review and enforcement
- 21.3 persons applied to advocacy efforts

5.3 Period Covered by the Above Information

112. April 1, 2005 – March 31, 2006.

6. References to New Reports and Studies on Competition Policy Issues

Erutku, Can and Eva Audy, “Price Tests to Define Markets: An Application to Wholesale Gasoline in Canada”, *Journal of Industry, Competition and Trade*, Volume 5, 2005, pp. 137-154.

Erutku, Can, “Buying Power and Strategic Interactions”, *Canadian Journal of Economics*, Volume 38, 2005, pp. 1160-1172.

Krause, David and Joseph Monteiro, “Computer Reservation Systems in Canada - Changing Regulations and their Economic Rationale”, **Old Foundations, Modern Challenges**, Canadian Transportation Research Forum Proceedings of the 2005 Annual Conference, Hamilton, Ontario, May 8 - May 11, 2005, pp. 270-285.

Krause, David and Joseph Monteiro, “Air Transportation - Are New Destinations On The Horizon?”, **Old Foundations, Modern Challenges**, Canadian Transportation Research Forum Proceedings of the 2005 Annual Conference, Hamilton, Ontario, May 8 - May 11, 2005, pp. 253-269.

Monteiro, Joseph, “Canadian and US Ports, Port Competition and Cargo Diversion”, **Old Foundations, Modern Challenges**, Canadian Transportation Research Forum Proceedings of the 2005 Annual Conference, Hamilton, Ontario, May 8 - May 11, 2005, pp. 400-416.

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Monteiro, Joseph, Gerald Robertson and Keith Dawson, "The Canadian Shipbuilding Industry and Market Distorting Practices - Mechanisms To Deal With It", **Old Foundations, Modern Challenges**, Canadian Transportation Research Forum Proceedings of the 2005 Annual Conference, Hamilton, Ontario, May 8 - May 11, 2005, pp. 432-449.