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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA

-- April 1, 2006 through March 31, 2007 --

This report is submitted by the Canadian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 October 2007.

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Executive Summary

1. The number of mergers the Competition Bureau (“Bureau”) reviewed in 2006-2007 increased from the previous year, continuing an upward trend. Merger reviews covered a wide range of industrial sectors, including agriculture, natural resources, pharmaceuticals and telecommunications.

2. The Bureau actively investigated cartels and deceptive marketing practices. For example, it successfully resolved allegations of conspiracy and price maintenance levelled against six automotive shops in Fort McMurray, Alberta. The Bureau also joined forces with Health Canada and counterpart agencies in the United States and Mexico to announce 177 compliance and enforcement actions against companies promoting false diabetes products and services.

3. On the international front, the Canadian Commissioner of Competition (“Commissioner”) signed a cooperation arrangement with the Korea Fair Trade Commission. As well, the Bureau received delegations from various countries and continued to participate in technical assistance initiatives. 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 Asia Pacific Economic Cooperation (“APEC”) forum. 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. This year, proposed amendments to the Act, as well as a number of private members bills and motions of relevance to the Bureau were introduced.

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.bureaudelaconurrence.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, 2006 through March 31, 2007.

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. The reform of the conspiracy provision (section 45) of the Act has been a topic of much debate in recent years. Agreements between competitors can be anti-competitive, competitively neutral or pro-competitive. Section 45 makes it a criminal offence for anyone to conspire with someone else to unduly lessen competition. There are some concerns that the current provision may not adequately distinguish anti-competitive agreements from competitively neutral or pro-competitive agreements.

9. In the fall 2005, the Bureau formed internal and external working groups of lawyers and economists to help it consider various models to assess potential features of an amended conspiracy

provision of the Act. Members of the working groups agreed on criteria for evaluating the various models and began a systematic assessment of them in the context of a number of case scenarios, all with a view to determining, among other things, what behaviour the provisions should cover and whether the provisions should be criminal or civil. Their assessment was completed in May 2006. The Bureau continues to work on the consideration of various models for reform and is developing a proposal to amend section 45.

10. In 2006-2007, three private members bills of relevance to the Bureau were introduced. None have yet received royal assent.

- Private Members Bill C-299: An Act to amend the *Criminal Code* and the *Competition Act* (identification of information obtained by fraud or false pretence)

This bill was introduced April 3, 2006, to protect personal information. The House Standing Committee on Justice and Human Rights removed the clauses which contained amendments to the *Competition Act* and the *Canada Evidence Act*, and a definition of personal information. The Bill is now titled An Act to amend the *Criminal Code*.

- Private Members Bill C-319: An Act to establish the Energy Price Commission

This bill was introduced June 6, 2006 and seeks 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. It also links the issue of price control to competition.

- Private Members Bill C-352: An Act to Amend the *Bank Act* (Bank Mergers)

This bill was introduced June 6, 2006, and proposes to amend the merger approval process for bank and trust company mergers. Specifically, it would prevent bank mergers unless the Superintendent of Financial Institutions advised the Minister of Finance that a merger was necessary to prevent insolvency or informed the Minister that none of the applicants wishing to merge would become insolvent. In these cases, the merger would have to be approved by a resolution of the Senate and House of Commons.

11. In 2006-2007, there were two private members motions of relevance to the Bureau.

- Private Members Motion 119: Petroleum Monitoring Agency

This motion was introduced April 4, 2006, and states: "That, in the opinion of the House, the government should: (a) create a petroleum monitoring agency with a three-year mandate to collect and disseminate, on a timely basis, price data on crude oil, refined petroleum products, and retail gasoline for all relevant North American markets; (b) in consultation with stakeholders from the petroleum sector (the majors, the independents, and consumer groups), appoint a director who would lead this agency; (c) require the agency to report to Parliament on an annual basis on the competitive aspects of the petroleum sector in Canada; and (d) request that the Standing Committee on Industry, Natural Resources, Science and Technology review the agency's performance and the need for an extension of its mandate following the tabling of the agency's third report."

- Private Members Motion 160: Gasoline Prices and Petroleum Monitoring Agency

This motion was introduced on May 8, 2006, and states: "That, in the opinion of the House, the government should implement a plan to counter the negative effects of the repeated increases in gas prices, including a surtax on the profits of the big oil companies, the creation of a petroleum monitoring agency and the strengthening of the *Competition Act*." This motion was defeated in the House of Commons on June 6, 2006.

12. On September 22, 2006, the Bureau published an information bulletin on merger remedies in Canada. This bulletin is a guideline for businesses and lawyers on the objectives and principles used by the Bureau when it searches for, creates and implements remedies to resolve competition issues in respect of a proposed or completed merger. This bulletin includes a consent agreement form to facilitate negotiations between merging parties and the Bureau.

13. On September 28, 2006, the Bureau issued a draft bulletin for public comment that describes its approach in reviewing abuse of dominance complaints in deregulated telecommunications markets. This bulletin supplements the Bureau's Enforcement Guidelines on the Abuse of Dominance Provisions, which provide general guidance on its approach to abuse of dominance. The Bureau developed the bulletin in anticipation of greater reliance on the Act, rather than sector-specific regulation, with a view to being more transparent and predictable. In drafting the bulletin, the Bureau consulted the Canadian Radio-Television and Telecommunications Commission ("CRTC") staff to benefit from their expertise in the telecommunications sector. The Bureau expects to finalize the draft bulletin in the next fiscal year after considering and incorporating comments from various stakeholders.

14. On February 5, 2007, the Commissioner appeared before the House of Commons Standing Committee on Industry, Science and Technology to speak on the issue of the deregulation of telecommunications. The hearing focused on questions surrounding the Minister's policy direction; the proposed order to vary the CRTC local forbearance decision and Bill C-41 (An Act to Amend the *Competition Act*). The hearing also discussed whether the Minister's approach was consistent with the Telecommunication Policy Review Panel's ("TPRP") Report. The Commissioner indicated the Bureau's support for efforts to place greater reliance on market forces in the telecommunications industry, and outlined the steps the Bureau is taking to prepare itself for the coming changes in the telecommunications regulatory environment¹.

15. On March 21, 2007, officials from the Bureau appeared before the Senate Standing Committee on Banking, Trade and Commerce to speak on Bill C-26, An Act to amend the *Criminal Code* (Criminal Interest Rate). This bill proposed to create an offence under the *Criminal Code* to address concerns in the small and short-term "payday loans" sector in Canada. The Bureau addressed possible consumer concerns, federal and provincial jurisdiction, and the powers currently available under the Act.

16. During this fiscal year, the Bureau published seven technical backgrounders on merger review cases, which were well-received by stakeholders². In its efforts to enhance transparency, the Bureau will continue to issue technical backgrounders in the future.

17. In 2006-2007, to inform Canadian consumers, businesses and other stakeholders about its work, the Bureau issued 28 news releases and 18 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 2,700 print, radio, television and online media reports on Bureau-related matters.

¹ The Commissioner's submission can be found on the Bureau's Web site at:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2275&lg=e>.

² The technical backgrounders can be found on the Bureau's Web site at:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=21&lg=e>.

1.3 Government Proposals for New Legislation

18. Bill C-41, An Act to Amend the *Competition Act*, was introduced in the House of Commons and received first reading on December 7, 2006. Under the proposed amendments, the Competition Tribunal (“Tribunal”) could order telecommunications service providers to pay an administrative monetary penalty of up to \$Cdn15 million in cases where the telecom service provider abused its dominant position. As the telecommunications industry is deregulated, increased competition law oversight and enforcement is required to ensure that competition has the opportunity to develop so that it can eventually replace regulation as the key source of discipline in those markets. Second reading of the bill began on February 27, 2007, however, the bill progressed no further than the first hour of debate at the time this report was completed.

2. International Co-operation Developments

19. The Commissioner continues to act as a member of the Bureau of the OECD Competition Committee (“CC”).

20. 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.

21. The CCP met in Paris in October 2006. The meeting focussed on building consumer confidence in the global economy through work on dispute resolution and redress; mobile commerce; the future of the Internet; and the examination of consumer policy regimes (including work on penalty regimes and consumer contracts). A Bureau representative also attended the half-day roundtable on the economics of consumer policy organized by the CCP.

22. This fiscal year, Bureau efforts within the CCP were primarily focussed on the continued development of a draft recommendation on dispute resolution and consumer redress. The Bureau played an active role in the working group on dispute resolution and redress and at the committee level.

23. The Bureau continues to be an active member of the ICN. In February 2007, the Commissioner was elected chair of the ICN Steering Group.

24. The Bureau assumes other leadership roles in the ICN including co-chairing the subgroup on Anti-Cartel Enforcement Techniques and the Operational Framework working group. The Bureau also acts as the *de facto* secretariat of the ICN.

25. The Deputy Commissioner of the Bureau’s Criminal Matters Branch continued to act as co-chair of the ICN Cartel working group subgroup on Anti-Cartel Enforcement Techniques. The Bureau contributed to the subgroup by: assisting in preparations for the Cartels Workshop in the Hague in the fall 2006; participating in the drafting of a chapter on case initiation for the Anti-Cartel Enforcement Manual and contributing to the ICN Annual Conference in Cape Town.

26. The Bureau’s Criminal Matters Branch was a key contributor to work products of the ICN Cartel Working Group subgroup on General Legal Framework. This subgroup issued two reports in 2006-2007, *the Interaction of Public and Private Enforcement in Cartel Cases* and *Co-operation Between Competition Agencies in Cartel Investigations: Part 2*.

27. In 2006-2007, the Bureau participated in the ICN Substantive Issues in Merger Review Workshop and the Cartels Workshop. The Bureau was active in the cartels, mergers and unilateral conduct working groups.

28. This year, the Bureau provided technical assistance to several countries, including Switzerland, the People's Republic of China, and Costa Rica. Such assistance included the provision of information on the Act; welcoming visiting delegations from foreign governments and competition authorities; helping to develop and refine foreign competition laws; and providing assistance on the handling of investigations in certain sectors.

29. In October 2006, the second phase of the Costa Rica technical assistance project took place in San José. Topics examined included the telecom sector in Costa Rica, internship feedback, voluntary compliance, document management, abuse of dominance, bid rigging and cartel enforcement in Costa Rica. The project -- *The Role and Importance of Competition Policy in Promoting Investment, Growth, Competitiveness and Poverty Reduction in Costa Rica* -- is in partnership with the Canadian International Development Agency ("CIDA"), the Foreign Investment Advisory Services ("FIAS"), 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. The next training session in Canada will take place in September 2007.

30. In November 2006, the Commissioner met with senior officials of the People's Republic Of China's Ministry of Commerce ("MOFCOM"). The Commissioner provided an overview of the Act, the organization of the Bureau, its enforcement powers and role as the chief advocate for competition.

31. In March 2007, at the request of the Swiss Competition Commission, the Bureau provided publicly available information about its review of mergers in the book retailing, grocery and home improvement sectors.

32. The Bureau contributes to the development of competition policy in regional and multilateral fora, such as APEC, UNCTAD'S Intergovernmental Group of Experts on Competition Law and Policy, the OECD's Global Competition Forum and the ICN.

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

34. On May 4, 2006, the Bureau signed a cooperation arrangement with the Korean Fair Trade Commission ("KFTC") to improve competition law enforcement and to effectively address anticompetitive activities with cross-border implications in areas such as cartel investigations and deceptive marketing practices.

35. The Commissioner met with a delegation from the European Commission ("EC") on February 26, 2007, in Brussels as part of the Canada-EU bilateral meeting. The meeting focused on developing the working relationship between the Bureau and the Directorate General for Competition ("DG Competition") and on the enhancement of the Canada-EU cooperation agreement. Discussions will continue during the next fiscal year.

36. To improve communication and cooperation between the EC DG Competition and the Bureau, the two agencies have agreed to undertake a staff exchange. A staff exchange between the agencies will provide a means to improve communication and cooperation; develop an understanding of each other's enforcement and policy initiatives; and identify best practices. An officer from the Bureau's Mergers

Branch will be spending six months with the DG Competition at the EC in Brussels commencing in late August 2007. The Bureau's Mergers branch will host an officer from DG Competition for a six-month period as well.

37. In October 2006, Bureau representatives participated in the bi-annual meeting and the Best Practices Training session of ICPEN, held in Warsaw, Poland. ICPEN is a voluntary organization of trade practices law enforcement authorities from 36 countries. In 2006-2007, the Bureau was a member of the ICPEN advisory group under the Polish presidency.

38. At the ICPEN best practices training session, Bureau representatives gave a presentation on investigating an international lottery scam based on the lessons learned in the R. v Stucky case. This was also an opportunity for Bureau officials to discuss furthering cross-border enforcement cooperation amongst ICPEN members.

39. A Bureau representative delivered a presentation on the development of a national strategy to fight mass marketing fraud. Another Bureau official provided an update on the work of the ICPEN Mass Marketing Fraud working group, which aims to foster cross-border enforcement cooperation amongst ICPEN members. The Bureau co-chairs this working group with the United Kingdom Office of Fair Trading ("OFT").

40. As chair of the ICPEN Fraud Prevention working group, a Bureau officer led a discussion, along with a representative from the Australian Competition and Consumer Commission ("ACCC"), on expanding the ICPEN Fraud Prevention Month by reaching out to global corporations and international consumer groups.

41. In October 2006, the Bureau, alongside its partners in the Mexico, United States, Canada Health Fraud working group ("MUCH") announced over 177 compliance and enforcement actions taken against companies promoting false and misleading diabetes schemes. Members of this group include Health Canada; the United States Federal Trade Commission ("FTC") and Food and Drug Administration; and the Mexican Federal Commission for the Protection from Sanitary Risks ("COFEPRIS") and the Federal Office of the Judge Advocate General of Consumers ("PROFECO").

42. Enforcement work under the diabetes fraud campaign was complemented by a comprehensive education and public outreach program to help consumers, industry and advertisers identify claims that are deceptive and misleading. To this end, Health Canada, the Bureau and the Public Health Agency of Canada, in consultation with the Canadian Diabetes Association, produced a diabetes fraud pamphlet to raise consumer awareness about diabetes in Canada and the types of claims that consumers should be sceptical of when they encounter products that claim to cure or treat diabetes.

43. Over the last year, the Bureau has attended the Messaging Anti-Abuse Working Group (MAAWG) meetings in Toronto and San Francisco. MAAWG is a global partnership bringing together the private sector, academia and law enforcement in an effort to safeguard electronic messaging from online exploits and abuse with the goal of enhancing user trust and confidence. E-commerce-related enforcement is a priority for the Bureau and for its Fair Business Practices Branch. At the root of developing properly equipped e-commerce enforcement teams and strategies are partnerships, competencies and technology. This includes the need for close coordination among law enforcement agencies, the private sector and academia and also the need for uniformly trained and equipped personnel to gather evidence, investigate, and prosecute these cases. Through its involvement in MAAWG, the Bureau has been able to develop and maintain good partnerships with major companies within the private sector, learn about new technologies and share investigative tips with other law enforcement agencies engaged in Internet investigations.

44. The Bureau, in partnership with the Department of Foreign Affairs and International Trade (“DFAIT”), develops competition policy and competition provisions in bilateral and regional free trade agreements. Canada is currently negotiating or exploring free trade with the following partners: the Republic of Korea, the Central America Four, Singapore, Columbia/Peru, the European Free Trade Association, CARICOM and the Dominican Republic.

3. Enforcement of Competition Laws and Policies

3.1 Action Against Anti-competitive Practices

3.1.1 Abuse of Dominance

45. In March 2006, the Bureau appealed to the Federal Court of Appeal the Tribunal’s 2005 decision that Canada Pipe Company Ltd. (“Canada Pipe”) had not abused its dominant position in Canada. On June 23, 2006, the Federal Court of Appeal allowed the Bureau's appeal and dismissed Canada Pipe's cross-appeal. The Federal Court of Appeal concluded that the Tribunal erred in its analysis of paragraphs 79(1)(b) and 79(1) of the Act and decided that the matter should be returned to the Tribunal for reconsideration in light of the correct legal tests. Subsequently, Canada Pipe sought leave to appeal that decision to the Supreme Court of Canada. The Supreme Court denied leave and a hearing is being rescheduled before the Tribunal.

46. On May 2, 2006, the Federal Court of Appeal dismissed two appeals filed by Cinémas Guzzo. These appeals were in response to the May 13, 2005, decision of the Federal Court, Trial Division, which dismissed two applications filed by that firm concerning the Bureau’s decision in December 2002 to discontinue its inquiry into motion picture distribution and exhibition in Canada. The lower court held that because the Bureau’s decision to discontinue an inquiry is purely discretionary and of an administrative nature, the court should show deference to that decision. Following the decision of the Federal Court of Appeal, Cinémas Guzzo filed an application for leave to appeal to the Supreme Court of Canada. This application was rejected on November 23, 2006.

47. In August 2006, the Bureau discontinued its inquiry of the Standard Mould Bottle Agreement (“SMBA”). This inquiry was initiated on October 21, 2003, following a complaint alleging anti-competitive acts through the SMBA. The agreement requires that signatories (brewers) exclusively use the Industry Standard Bottle (“ISB”) for domestically produced products in non-metal containers under 600 ml. The allegations were that the SMBA was being used to entrench the dominant firms’ market power in the Canadian beer industry contrary to section 79 of the Act. It was argued that having the ability to bottle beer in both ISBs and non-ISBs is a key method of competing in the beer industry. Non-ISBs are of a different colour (clear or green) or shape (shorter or taller) than the amber long-necked ISB. The Bureau did not find any clear evidence of a substantial lessening or prevention of competition as required under section 79 of the Act.

48. On September 7, 2006, Waste Management of Canada Corp., with the consent of the Commissioner, applied to the Tribunal, pursuant to paragraph 106(1)(a) of the Act, for an order to rescind the order which was issued in *Director of Investigation and Research v. Laidlaw Waste Systems* on February 11, 1992 (“the 1992 Order”). The Tribunal allowed the application on November 21, 2006. The Tribunal found that the circumstances which had led to the making of the 1992 Order had changed and that Waste Management (Laidlaw's successor) no longer occupied the dominant position in the geographic markets to which the 1992 Order applied.

49. On September 19, 2006, the Bureau initiated an inquiry as a result of a complaint by six residents concerning the trade practices of a supplier of software and software hosting services. It was alleged in the

complaint that the company concerned, which had developed software in accordance with the specifications of one of the complainants, had tied the sale of a licence for that software to its hosting services. The trade practices of the company concerned were examined under sections 77 and 79 of the Act. According to the information gathered, it appears that the company concerned does not dominate the markets in question, namely the client management software market and the software hosting and development market. After examining the information obtained, the Bureau concluded that continuation of the inquiry was not warranted based on the evidence in the file. Consequently, the Bureau discontinued its inquiry in December 2006.

50. On November 1, 2006, the Bureau discontinued its inquiry into the rules enforced by the Real Estate Council of Alberta (“RECA”). The Bureau initiated this inquiry on September 21, 2005, following receipt of a request to investigate rules enforced by RECA that prohibited real estate brokers from offering cash incentives and referral fees to non-industry members in Alberta. On May 29, 2006, following widespread consultations and discussions with the Bureau, RECA announced amendments to Alberta’s Real Estate Act Rules. As a result of the changes, brokers in Alberta are now free to offer cash rebates on the sale of a home to buyers as a means of competing for their business. Through the use of referral fees, they also have access to greater means of identifying prospective buyers and sellers. The amendments came into force on October 1, 2006. The Bureau concluded that the amendments to the rules should alleviate any substantial lessening or prevention of competition in the relevant markets and as such discontinued the inquiry.

51. In December 2006, the Bureau discontinued its inquiry into Air Canada and Jazz Air LP (collectively Air Canada). The Bureau initiated this inquiry on March 22, 2006, following receipt of a complaint from six persons residing in Canada alleging that Air Canada had engaged in anti-competitive conduct with regards to their advertising of flights in and out of the Toronto City Centre Airport contrary to sections 52, 74(1) and 79 of the Act. On August 14, 2006, the Bureau published an information notice announcing that concerns relating to sections 52 and 74(1) of the Act had been resolved since Air Canada stopped all advertising and bookings for the Toronto City Centre Airport³. In addition, the Bureau found no evidence suggesting a violation of section 79. As such, the inquiry was discontinued.

52. In March 2007, the Bureau discontinued its inquiry into the ability of an emerging health care profession to independently provide services to consumers in Ontario. This inquiry was initiated on October 27, 2005. It was alleged that the emerging profession's ability to independently provide services was being constrained as a result of anti-competitive acts on the part of a competing and dominant health care profession that has an overlapping scope of practice. This allegation was examined with regard to section 79 of the Act. The investigation revealed that there was provincial legislation governing the emerging profession which required that its members obtain an order from the dominant profession prior to treating clients. The Bureau determined that this requirement for an order acted as a barrier to entry for the emerging profession. It was determined that while individual members of the dominant profession may have had economic incentives to use the requirement for an order in an anti-competitive fashion, there was no apparent incentive for the profession to do so as a whole. Further, the dominant profession may have been exercising caution in giving such orders due to apprehension regarding their liability. The regulatory body of the dominant profession has since provided greater clarity for its members in this regard.

³ This information notice can be found on the Bureau’s Web site at:
<http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2150&lg=e>.

3.1.2 *Price Maintenance*

53. In January 2006, the Bureau received information suggesting that a wholesale distributor of collectibles had implemented a policy of price maintenance with respect to the resale and discounting of its products throughout Canada. The Bureau contacted the company concerned, informing them that such a policy raised concerns under section 61 of the Act. The company expressed their willingness to comply with the Act and responded to the Bureau's concerns by revising their company policy and informing distributors that they are free to set their own prices. This matter was closed in May 2006.

54. The Bureau contacted an agricultural producers market, advising it that one of its policies raised concerns under sections 61 and 45 of the Act. The Bureau's concerns were resolved by receiving written confirmation that the policy in question was cancelled and a memo to that effect was circulated to all vendors. Bureau staff also met with the board of directors to explain how the policy raised issues under the Act.

3.1.3 *Conspiracy*

55. In July 2004, the Bureau laid charges against six taxi companies and seven individuals alleging that they had agreed to lessen competition in bidding for taxi-service contracts in St. John's, Newfoundland and Labrador, contrary to section 45 of the Act. The Bureau alleged that, between 1992 and 2004, the taxi companies agreed not to compete with each other for contracts to supply taxi services to institutional and commercial facilities in St. John's. A preliminary inquiry was held from January 9, 2006, to February 4, 2006, and closing arguments took place in the spring and summer of 2006 in the Provincial Court of Newfoundland and Labrador. On September 18, 2006, the Court ruled that there was sufficient evidence to permit a jury to conclude that there was an agreement between the accused during the time frame set out in the information to address bidding on contracts for taxi services and that the accused joined together to refuse to bid on contracts. However, the court ruled that there was insufficient evidence as to the absolute size of the market, making it impossible to draw any inference as to the impact any agreement would have on competition. Therefore, the Court concluded that a properly instructed jury could not draw an inference that an agreement not to bid on contracts would unduly lessen competition. The Crown subsequently requested a judicial review of the Court's decision through an application for certiorari in the Supreme Court Trial Division of Newfoundland and Labrador which was to be heard on June 11 to 19, 2007⁴.

56. The Bureau resolved allegations of conspiracy and price maintenance contrary to the provisions of the Act levelled against six automotive body shops in Fort McMurray, Alberta. The parties, Shamrock Maintenance & Hotshot Services Ltd., Pete's Custom Coachwork, Birchwood Auto Body, Alberta Motor Products Ltd., Noral Motors and Lane's Auto Shop, agreed to the terms of a consent prohibition order pursuant to section 34(2) of the Act. Under the order, the parties are restricted from communicating certain price and service information with each other or entering into agreements or arrangements related to the pricing of products or services with each other or other parties providing auto body services in the Fort McMurray area. In addition, the parties were required to publish a corrective notice outlining key terms of the order in the local newspaper and to implement a compliance program directed at ensuring future compliance with the Act. The order also prohibited the parties from the continuation or repetition of acts directed toward the commission of an offence under sections 45 and 61 of the Act.

57. In February 2006, a corporation that had acted as an agent of the Crown sought a written opinion to determine whether a particular licensing system would raise concerns under the Act. The Bureau examined the matter in light of Crown immunity and section 2(1) of the Act. In April 2006, the Bureau

⁴ The Supreme Court Trial Division of Newfoundland and Labrador dismissed the motion on June 26, 2007.

determined that the Act would not apply to the operation of the licensing system as the activities under scrutiny were not commercial activities which were in actual or potential competition with other persons.

58. In August 2006, the Federal Court of Canada issued a prohibition order under subsection 34(2) of the Act against the international auction house, Sotheby's, headquartered in New York, and its Toronto based Canadian subsidiary, Sotheby's (Canada) Inc. The issuance of the order was the result of an inquiry by the Bureau into an alleged international conspiracy to suppress and eliminate competition by fixing auction commission rates, and the effects this may have had on Canadian auction sellers between April 1993 and February 2000. The court imposed a five-year prohibition order against the companies from doing any act or thing directed toward the commission of an offence under sections 45 and 46 of the Act. The order included the requirement to maintain and implement a corporate compliance program to educate employees on the relevant provisions of the Act; the terms of the order; and the ramifications for non-compliance. Each company is required to provide the Commissioner on an annual basis upon request, written proof of compliance with the order for a period of five years. The Commissioner is also given the power to request additional information for the purpose of monitoring compliance with the order. Sotheby's was required to post a notice of the order on its Canadian Web site for 120 days. During this period, the companies were also required to notify in writing all Canadian consignors for international auctions and direct them to the existence of the order on Sotheby's Canadian Web site or advise them in writing of the existence and content of the order. The court further ordered the parties to pay the Bureau's investigative costs at just under \$Cdn800,000. The resolution of this case addressed the Bureau's concerns in relation to deterrence and compliance to ensure a competitive marketplace for international auction services in Canada.

3.1.4 Bid-rigging

59. A Mutual Legal Assistance Treaty ("MLAT") request was received from the United States Department of Justice ("DOJ") on November 18, 2004, requesting searches of two Canadian fur brokers allegedly involved in bid-rigging at a wild fur pelt auction held in Seattle in February 2004. Searches were completed and a report to the judge was filed on July 4, 2005, together with an application by the Attorney General for orders to send the seized documents to the United States. Both sending orders were granted despite challenges by the brokers as to the validity of the search warrants. Leave to appeal the issuance of MLAT sending orders was denied by the Ontario Court of Appeal on November 16, 2006.

60. On September 11, 2006, Joel Perreault, appraiser for Les Entreprises Promécanic Ltd., was charged under sections 64 and 65 of the Act with obstructing the course of an investigation and destroying documents during the execution of a search warrant that was done in the offices of Les Entreprises Promécanic Ltd.

61. On October 30, 2006, Electromega Ltd. and its president, Alain Lamoureux, as well as Les Technologies Tassimco Canada Inc. and its vice-president, Conrad DiPietro, were accused of bid-rigging under section 47 of the Act following a tender call from the city of Quebec with respect to supplying material for lighting panels. The tender call from the city took place during an energy efficiency global plan initiated by Hydro-Quebec. The purpose of the plan was to replace all incandescent signalization lights on public roads with light-emitting diode (LED) technology lights.

3.2. Mergers and Acquisitions

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

62. During the 2006-2007 fiscal year, the Bureau's Mergers Branch concluded 320 merger examinations, with 23 examinations still ongoing at year-end. With respect to the concluded examinations,

four concluded with agreed remedies, including three examinations that resulted in consent agreements and one examination where the Bureau was satisfied that remedies required by foreign agencies resolved Canadian competition concerns; four transactions were abandoned by the parties as a result of the Commissioner's concerns about the competitive effects of the merger; and 259 examinations posed no significant issues under the Act, 167 of which resulted in the issuance of advance ruling certificates⁵.

3.2.2 *Summary of Significant Cases*

63. In July 2001, two of the largest grain-handling companies in western Canada, United Grain Growers Limited ("UGG") and Agricore Cooperative Ltd., announced they would merge to form Agricore United ("AU"). After a complete review, the Bureau advised the parties that the proposed transaction was likely to substantially lessen competition in a number of markets, including the market for grain-handling services at the Port of Vancouver, and the findings of the Tribunal, following a hearing in September 2002, agreed with the Commissioner's position. 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 at the Port. A consent agreement reflecting the settlement was registered with the Tribunal, and AU subsequently selected the UGG terminal for divestiture. The consent agreement stipulated that if the port terminal was not divested by AU within an initial sale period, the divestiture was to be carried out by a trustee.

64. In August 2005, AU filed an application with the Tribunal pursuant to section 106 of the Act for an order rescinding the consent agreement. The end of the initial sale period was stayed pending resolution of the section 106 application. Hearings before the Tribunal began in March 2006. After the close of its case, and prior to the Bureau presenting its case, AU brought a motion to adjourn the hearing of the application, which the Bureau opposed. On May 12, 2006, the Tribunal dismissed AU's motion to adjourn; and AU discontinued its application. Pursuant to the consent agreement, the Commissioner appointed a trustee with the mandate and sole authority to divest the UGG terminal. As of the end of the fiscal year, the trustee was in the process of evaluating offers for the terminal and would be forwarding the name of selected purchaser to the Bureau shortly⁶.

65. In September 2005, RONA communicated to the Bureau its intention to acquire a 51 per cent interest in the operating businesses of Matériaux Coupal Inc. ("Coupal"). RONA is both a distributor and retailer of hardware, renovation and gardening products and is a leader in this sector in Canada. The Bureau began a review to determine the effects of this merger on competition in the hardware and building materials sector. Coupal operates nine stores and two plants in the province of Quebec. Although the Bureau had some concerns about the impact of the merger, in August 2006 it concluded that there were not sufficient grounds to commence proceedings before the Tribunal. However, the Commissioner continues to monitor this merger under section 97 of the Act.

66. On November 10, 2005, the Bureau filed an application with the Tribunal challenging the joint venture between Saskatchewan Wheat Pool ("SWP") and James Richardson International ("JRI") to operate their port grain terminals in Vancouver as one combined facility. The Canadian National Railway Company, the Canadian Pacific Railway Company, the Canadian Wheat Board and the Vancouver Port Authority were granted leave to intervene. Prior to the commencement of the hearing on the challenged

⁵ An advance ruling certificate may be issued by the Commissioner to a party or parties of a proposed merger transaction who want to be assured that the transaction will not give rise to proceedings under section 92 of the Act. Once an advance ruling certificate has been issued, the decision is irreversible.

⁶ On April 18, 2007, the Commissioner approved the trustee's selection of Alliance Grain Terminal Ltd. as purchaser of the UGG terminal and that purchase closed on June 29, 2007. Alliance Grain Terminal Ltd. is owned by a consortium of grain handling companies composed of Paterson Globalfoods Inc., Parrish and Heimbecker Ltd., Prairie West Terminal Ltd., Weyburn Inland Terminal Ltd., Great Sandhills Terminal Marketing Centre Ltd., and North West Terminal Ltd.

joint-venture, SWP proposed to acquire AU, and a consent agreement between SWP and the Commissioner with respect to this acquisition was filed with the Tribunal on March 28, 2007. This agreement includes a provision whereby SWP would terminate the joint venture with JRI, thus resolving the application before the Tribunal. At year-end, the matter was in abeyance pending further developments in the (competing) proposals to acquire AU by SWP and JRI⁷.

67. In January 2006, Mittal, the world's largest steel company, announced its intention to merge with Arcelor, the largest steel producer in Europe and Latin America. At that time, competition authorities in Canada, the United States and Europe were notified, and the Bureau began an inquiry. This transaction was classified by the Bureau as "complex"⁸ and the investigation focused on flat carbon steel (hot and cold rolled products). In early June 2006, the Bureau concluded its investigation and notified the parties that the merger was not likely to result in a substantial lessening or prevention of competition.

68. In April 2006, Service Corporation International ("SCI") (working in Canada through its subsidiary Service Corporation Canada Limited or "SCSC") approached the Bureau regarding a proposed amalgamation with Alderwoods Group Inc. ("Alderwoods"). SCI is the largest provider of funeral, cemetery and cremation services in North America, and Alderwoods is the second largest provider. The Bureau determined the relevant geographic markets to be Ontario and British Columbia. In both provinces, there was a direct and significant competitive overlap. In September 2006, the Bureau concluded that the amalgamation was not likely to result in a substantial lessening or prevention of competition in the relevant markets although the Bureau will monitor the competitive effects of the merger in British Columbia and Ontario⁹.

69. On June 26, 2006, Johnson & Johnson announced that it would purchase the healthcare business of Pfizer, which includes such brands as Listerine, Nicorette and Visine. The Bureau launched an investigation along with other competition authorities such as the United States FTC and the EC DG Competition. The Bureau conducted interviews and gathered information from various affected parties. The Bureau concluded that the transaction would result in a substantial lessening of competition in Canada in the market for zinc oxide-based rash ointment, with four out of the five brands sold belonging to Johnson & Johnson. Due to the competition concerns raised by the Bureau, a consent agreement between the Commissioner and Johnson & Johnson was entered into which required them to divest the Zincofax brand¹⁰.

70. On July 12, 2006, Bell GlobeMedia Inc. ("BGM", now "CTVglobemedia Inc.") publicly announced its intention to acquire CHUM Ltd. ("CHUM"). BGM owns and operates the CTV television broadcast network across Canada along with other media assets. CHUM had assets in television and radio broadcasting. Because this transaction involved the transfer of broadcasting licenses, which are regulated by the CRTC, it also required CRTC approval before the transaction could close. The parties entered into a CRTC-approved trust arrangement to protect the shares of CHUM while the matter was under review. On September 1, 2006, a separate consent interim agreement between the Bureau and the parties was filed with the Tribunal. On March 1, 2007, the Bureau announced that the acquisition of CHUM by BGM would not be challenged before the Tribunal.

⁷ Ultimately, SWP successfully bid for AU, the consent agreement between SWP and the Commissioner was implemented, and the joint venture was unwound on June 30, 2007.

⁸ When the Bureau classifies a merger as "complex", the merger is between direct competitors and there are indications that the transaction might create or enhance market power.

⁹ As noted in section 97 of the Act, the Commissioner has three years to file an application with the Tribunal once a merger has been completed.

¹⁰ On May 29, 2007, it was announced that Squire Pharmaceuticals Inc., a wholly owned subsidiary of Paladin Labs Inc., was approved by the Commissioner as the purchaser for the Zincofax brand of diaper rash ointment and related assets.

71. In November 2006, SWP made a hostile bid to acquire all outstanding shares of AU. Following an extensive review, the Bureau found that the proposed acquisition would likely give rise to a substantial lessening of competition for grain handling services in the Port of Vancouver and in certain in-country markets. On March 28, 2007, the Commissioner entered into a consent agreement with SWP¹¹. Under the consent agreement, SWP would sell to Cargill Ltd. (“Cargill”) its port terminal elevator on the north shore of Burrard Inlet in the Port of Vancouver and nine in-country elevators. In return, Cargill would transfer to SWP its 50 per cent interest in the Cascadia port terminal in Vancouver. SWP had three months from the date that it took control of AU’s board of directors to effect this asset swap, after which time a divestiture trustee would be appointed responsible for the asset sale. The consent agreement also required that the Pacific Gateway terminal joint venture between SWP and JRI be terminated¹².

72. On January 29, 2007, Abitibi-Consolidated Inc. and Bowater Inc. announced their intention to merge. The merged entity would create the third largest publicly traded paper and forest products company in North America and the eighth largest in the world. At year-end, the Bureau was continuing its review of the proposed merger to determine if it is likely to prevent or lessen competition substantially in any relevant market¹³.

73. On February 1, 2007, Labatt Brewing Company Ltd. (“Labatt”) announced its plan to acquire all of the outstanding units of Lakeport Brewing Income Trust (“Lakeport Fund”) for a price of \$Cdn28.00 per unit and shortly thereafter filed the prescribed long form information. On February 21, 2007, the Commissioner applied to the Federal Court for orders requiring various participants in the beer industry to produce records and/or to provide written returns of information pursuant to paragraphs 11(1)(b) and 11(1)(c) of the Act. On March 21, 2007, the Commissioner applied pursuant to section 100 of the Act for an interim order prohibiting the parties from completing the transaction for 30 days, in order to complete the inquiry into the matter. On March 28, 2007, the Tribunal issued an order dismissing the application and the proposed merger was closed on March 29, 2007. At year-end, the Bureau’s inquiry continues¹⁴.

74. On February 9, 2007, CanWest MediaWorks Inc. (“CanWest”) and Alliance Atlantis Communications (“Alliance Atlantis”) informed the Bureau of their intention to merge. CanWest owns and operates the Global Television Network and Alliance Atlantis is known for its portfolio of specialty television channels. This transaction involved the English language specialty television advertising market, which is also subject to CRTC review. The Bureau concluded that it was unlikely that the proposed merger would lead to a substantial lessening of competition in the sale of advertising space on television specialty channels. Although both CanWest and Alliance Atlantis are seen as competitors in the market for sale of advertising space on television specialty channels, it was determined that there was sufficient effective remaining competition to preclude a substantial lessening of competition.

¹¹ The registered consent agreement can be found on the Tribunal’s Web site at: http://www.ct-tc.gc.ca/CMFiles/CT-2007-005_0002_45LSZ-3292007-6212.pdf?windowSize=popup.

¹² Ultimately, SWP successfully bid for AU, the consent agreement between SWP and the Commissioner was implemented, and the inland and port terminal elevator divestitures were completed on June 30, 2007.

¹³ On July 24, 2007, the Bureau announced that it would not challenge the merger between Abitibi-Consolidated Inc. and Bowater Inc.

¹⁴ On April 11, 2007, the Bureau announced that it had filed a notice with the Federal Court appealing the Tribunal’s refusal to grant an interim order.

3.3 *Misleading Advertising and Deceptive Marketing Practices*

3.3.1 *Criminal*

75. On May 25, 2006, the Bureau announced that criminal charges had been laid against a Toronto-based telemarketing company, that allegedly targeted businesses and not-for-profit organizations across Canada, invoicing them for toner and ink jet cartridges which they neither ordered nor wanted. Andrew James Wilson of Toronto and 1462986 Ontario Inc. (operating as National Supply Centre and Business Supply Centre) appeared in Provincial Court on May 25, 2006, facing criminal charges under the Act and the *Criminal Code*.

76. On May 26, 2006, the Bureau announced that Judy Neinstein of Toronto, Bernard Fromstein of Oakville and Paul Barnard of Ajax, were charged for their involvement in deceptive telemarketing activities over a ten-year period in Toronto. Two other individuals, James Sharo and George Pavlopoulos of St-Hubert, were charged for their involvement in the alleged scam, operating out of Montreal. The companies, Datacom Marketing Inc. (Ontario 1431798), Datacom Direct Inc. (Ontario 1417524) and the Quebec affiliate Datacom Marketing Inc. (Quebec 1149885080) were also charged. Charges included counts under the Act and the *Criminal Code*.

77. On June 15, 2006, seven people involved in a Calgary-based scam were charged following a Bureau investigation into Ambus Registry Inc. This telemarketing operation allegedly used deceptive techniques to peddle business directories and listings to businesses throughout the United States. Charges included counts under the Act and the *Criminal Code*.

78. On November 17, 2006, David Stucky was acquitted on all 16 counts of making false or misleading representations under section 52 of the Act in respect of various direct mail lottery and prize pitch promotions. This acquittal was based on the view of the Honourable Mr. Justice Arthur Gans that a representation to "the public" in section 52 of the Act includes only the Canadian public. The judgment, however, found all of the promotions except for International Lottery Commission misleading and the accused would have been found guilty on six of the 16 counts but for the ruling on the public issue. On December 18, 2006, the Attorney General filed an appeal of this acquittal with the Ontario Court of Appeal.

79. On December 13, 2006, the Bureau announced that Tom Taylor of White Rock, British Columbia, was ordered to pay a record fine of \$Cdn225,000 and perform 100 hours of community service for offences under the lottery and gaming provisions of the *Criminal Code*. Taylor's offences relate to direct mail lottery schemes that brought in \$Cdn47 million under the names Canadian Lottery Buyers Association ("CLBA"); International Monetary Funding ("IMF"); International Lottery Commission ("ILC") and Transworld Lottery Commission ("TLC"). The lottery schemes were mailed to residents of the United States, the United Kingdom, Australia and New Zealand from 1995 to 2002.

80. On December 20, 2006, as a result of a Bureau investigation, Simon Gouin, a top executive at 9089-9816 Quebec Inc., operating under the name Centre d'expédition direct ("CED"), pleaded guilty to deceptive marketing practices in the promotion of supplies used in bank machines. Following presentations by the federal prosecutor for the Federal Prosecution Service and counsel for the accused, the Court imposed a \$Cdn75,000 fine against Simon Gouin. In addition, Mr. Gouin and CED were subject to a prohibition order for a period of ten years, under section 34 of the Act.

81. On January 22, 2007, the Bureau announced that criminal charges were laid against two persons allegedly involved in deceptive telemarketing activities in Montreal. The accused are Nikolaos Rothos of Brossard and Stelios Vrontakis of Longueuil. The company, 9094-5114 Quebec Inc., operating under the

name Kinito Inc., was also charged. The victims, residing in the United States, were contacted by telemarketers who claimed they were offering them a credit card with a pre-authorized limit in exchange for payment. The credit cards were never delivered to the victims.

82. On March 30, 2007, two Toronto-based telemarketing firms, along with the owner, pleaded guilty and were sentenced following a Bureau investigation into a deceptive telemarketing scam involving the sale of office toner products. Edward Leefe of Toronto, Lexcan International Corp. and H&P Communications Inc. pleaded guilty to 11 charges under the Act and related charges under the Criminal Code. The accused also operated as the Calcom Business Centre, Lecan International Corp. and MPL. The Superior Court of Ontario imposed a \$Cdn50,000 fine and an 18-month conditional sentence on Mr. Leefe, who also pleaded guilty to Criminal Code charges of fraud over \$Cdn5,000; possession of proceeds derived from the commission of an indictable offence; and failing to comply with an undertaking to refrain from deceptive telemarketing. A fine of \$Cdn1.5 million was levied against Lexcan International Corp. and H&P Communications Inc., while the court also ordered that over \$Cdn78,000 worth of seized cheques be returned to victims in Canada and the United States. Leefe and the corporations are prohibited, for a ten-year period, from engaging in any manner of telemarketing.

3.3.2 *Civil*

83. On July 27, 2006, the Bureau announced that it had reached a settlement with one of Canada's largest retailers of men's apparel, Grafton-Fraser Inc., resolving the Bureau's concerns regarding the company's pricing practices. Grafton-Fraser operates over 180 corporate stores under the banners of George Richards Big & Tall, Grafton & Co. (Stonehouse), Mr. Big & Tall, The Suit Exchange, Timberland and Tip Top Tailors. The settlement came in the form of a consent agreement which was registered on July 27, 2006, with the Tribunal. In addition to the company, Mr. Glenn Stonehouse, President, Chief Executive Officer and majority shareholder, was a party to the agreement and was subjected to its terms and conditions. Among other things, the agreement called for the payment of an administrative monetary penalty and costs totalling \$Cdn1.2 million.

84. On September 25, 2006, the Tribunal ruled that Gestion Finance Tamalia Inc. and its president, Sylvain Leblanc, who operated Les Centres de Santé Minceur, a chain of weight-loss clinics, contravened provisions of the Act dealing with deceptive marketing practices. In June 2005, the Bureau filed an application with the Tribunal to prevent Mr. Leblanc and a number of companies from making misleading representations to the public regarding a weight-loss method involving a weight-loss device and natural products. The companies implicated were Gestion Finance Tamalia, Gestion Lebski, La Société de Financement Vanoit, Maigrissimo and 9083-8434 Quebec. The Tribunal concluded that Gestion Tamalia and Mr. Leblanc made numerous false and misleading representations regarding the Cellotherm device and products known as Cure de départ, Noctoslim and Nopasim. The Tribunal issued a ten-year prohibition order against Mr. Leblanc and Gestion Finance Tamalia Inc. and imposed administrative penalties of \$Cdn20,000 and \$Cdn50,000 respectively.

85. On September 28, 2006, the Bureau filed a consent agreement with the Tribunal to prevent Econoco Inc. ("Econoco") and its directors from making misleading representations to the public about the Econopro, which was marketed as a device to save fuel and reduce emissions. Under the terms of the consent agreement, Econoco, president Réal Larocque and former vice-president Claude Tardif have agreed to: a) stop all representations concerning Econopro or similar products for a period of ten years unless adequate and proper tests are carried out; b) inform consumers of the agreement via a public notice in newspapers; and c) pay an administrative monetary penalty of \$Cdn15,000.

3.3.4 *Voluntary Compliance*

86. On June 14, 2006, more than 2,000 Canadians received a refund as part of a settlement reached between the Bureau and three companies involved in deceptive ordinary selling price claims. New York-based Media Syndication Global ("MSG"), Paris-based Havas S.A. ("Havas"), and Canadian-based Interactive Marketing Group ULC cooperated fully with the Bureau. Havas and MSG acted expeditiously to refund the affected CIBC Visa customers. Promotional offers on Bushnell (8x21) Binoculars and Mark of Fitness Blood Pressure Monitors were inserted in CIBC monthly Visa statements between 2002 and 2004. A Bureau investigation revealed that the regular prices claimed in the bill inserts were overstated.

87. On November 9, 2006, at the request of the Bureau, the three major cigarette manufacturers in Canada agreed to accelerate the removal of the descriptors "light" and "mild" or variations thereof, from their cigarette packaging. Imperial Tobacco Canada Ltd., Rothmans Benson & Hedges Inc. and JTI-Macdonald Corp. all agreed to phase out these descriptors on affected brands and products, commencing no later than December 31, 2006, and ending no later than July 31, 2007. A total of 79 brands of cigarettes were affected as well as 18 varieties of fine-cut tobacco.

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

88. In 2006-2007, the Bureau made a number of interventions in sectors including transportation, intellectual property, the professions, telecommunications and pharmaceuticals. 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*

89. In November 2002, the Bureau made a submission to the Canada Marine Act Review Panel. It addressed three areas related to marine services: Canada Port Authorities (CPAs); Pilotage and Ferry Services; and, Shipping in Domestic Waters (coasting trade). Regarding pilotage, in brief, it advocated introducing competition in the provision of pilotage services. The recommendations were: abolish the statutory monopoly of the pilotage authorities in providing pilotage services; create an Accreditation Body for licensing pilots; allow tariffs to be determined by competitive forces; and apply the present limited liability requirements to all accredited pilots.

90. On June 19, 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, introduced Bill C-64, An Act to amend the *Pilotage Act*. The five key amendments help ensure the financial self-sufficiency of the four pilotage authorities while maintaining high levels of safety. More specifically, the amendments were to include financial self-sufficiency in the objects of an authority as a requirement; to give the Minister flexibility to conduct an investigation when a notice of objections is received; to ensure that an arbitrator considers certain factors (i.e. requirement to be self-sufficient and the authority's corporate plan) when selecting a final offer; to require the Canadian Transportation Agency to consider certain factors (i.e. requirement to be self-sufficient and the authority's corporate plan) when making an amendment to a tariff regulation; and to make it possible for an authority to engage in certain employment practices (i.e. engaging both employee pilots and contracted corporate pilots with a pilot corporation) for the provision of pilot services.

4.1.2 *Air Transportation Liberalization*

91. A new international air transportation policy called *Blue Sky* was announced on November 27, 2006, by the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities. This policy is intended to create opportunities for travellers, businesses and the air industry, and encourage the development of new markets, new services and greater competition. For travellers, this means more choices in terms of destinations, flights and routes. Under the new policy, the focus will be to pursue the negotiation of open skies type agreements when it is in Canada's overall interest. The Bureau met with Transport Canada officials to indicate its support for the new policy.

4.2. *Intellectual Property*

92. Beginning in the fall 2005, a research initiative was undertaken by the Bureau in collaboration with the Canadian Intellectual Property Office ("CIPO") and the Strategic Policy Sector (the Marketplace Framework Policy Branch, "MFPB" and the Micro-Economic Policy Analysis Branch, "MEPA") on the interface between competition and intellectual property ("IP") policy.

93. The Bureau initiated this project to support the review of the guidelines it uses to fulfill its competition law enforcement mandate in areas relating to IP. MFPB, MEPA and CIPO participated financially and substantively to bring the IP and innovation perspective to the project and to address their research needs in view of their respective IP policy and administrative mandates. A common objective was to gather a better understanding of how IP and competition policies effectively interplay in the Canadian marketplace and whether or not this interface is efficiently supporting innovation in Canada, while serving the public interest.

94. In May 2006, five research papers were commissioned by the Bureau from leading academics in the fields of law and economics. The papers covered the following topics: authorized generics, collective management of copyright, extension of IP rights, compulsory licensing and tying/bundling in the context of IP. The Bureau organized a symposium in Ottawa on March 29 and 30, 2007, to facilitate an exchange of comments among authors, editors and selected practitioners on the research results. Work is underway to have the final research reports published as a book.

4.3 *The Professions*

4.3.1 *Dental Hygiene Advocacy Work*

95. Following up on last year's work in the dental hygiene profession in Alberta, Nova Scotia and New Brunswick, the Bureau submitted a letter to the Ontario government regarding proposed legislation in Ontario on dental hygienists' practice¹⁵.

96. Dental hygienists in Ontario, although self-regulating, were subject to a legislative requirement that they receive an order from a dentist prior to performing the controlled acts that are at the heart of their work. Very few dental hygienists have entered the market by practicing independently of dentists, and many cite this legislative requirement as a barrier to their entry.

97. In December 2006, a bill was introduced in the Ontario provincial legislature that would allow dental hygienists to practice without a dentist's order in some circumstances. Draft regulations that would

¹⁵ Letter regarding the reform of dental hygiene legislation available on the Bureau's Web site at: <http://www.competitionbureau.gc.ca/internet/index.cfm?itemID=2278&lg=e>.

articulate the particular circumstances in which an order would remain necessary accompanied the bill. The proposed amendments were derived from a memorandum of understanding reached by both the regulating bodies and the professional associations of dentistry and dental hygiene in Ontario. The Bureau reviewed the draft legislation and regulations and offered a competition-based perspective to these four groups. The Bureau supported the proposed changes as they would assist in creating a more competitive market and thus allow consumers greater choice and access to care. The Bureau's comments were provided to the Ontario Legislature's Standing Committee on Social Policy to assist in its review of the bill. The new legislation has since received royal assent but the regulations have yet to be passed and the Bureau continues to monitor the situation with interest.

4.3.2 Comparative Study of Self-Regulated Professions

98. In May 2006, the Commissioner announced that the Bureau would undertake a comparative study of self-regulated professions. The study focuses on accountants, lawyers, optometrists, pharmacists and real estate agents. The purpose is to determine to what extent these professions use anti-competitive restrictions to limit competition in their own or related markets. Anti-competitive restrictions may include barriers to entry in the market; limits on the ability of related professions to offer competing services; requirements regarding business structure and type of practice; mandatory or "suggested" fee schedules; and advertising restrictions. The study will be based on an analysis of legislation, regulations, codes of practice and responses to a voluntary questionnaire the Bureau sent to professional associations, colleges and boards. The study will be similar to those recently carried out by competition agencies in other jurisdictions such as the EC and Ireland. Work on this study will continue into the next fiscal year.

4.4 Telecommunications

4.4.1 Local Forbearance Decision

99. On April 6, 2006, by way of Telecom Decision CRTC 2006-15, the CRTC issued its decision following its proceeding to determine the framework, including the criteria, for forbearance from regulation of residential and business local telephone services. The Commission's framework findings can be summarized as follows:

- The relevant product market includes all local exchange services of incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs") and resellers (including voice-over Internet protocol, "VoIP", and services offered in bundles), but presently excludes mobile wireless. Residential and business are separate product markets.
- The relevant geographic market can be approximated by local forbearance regions ("LFRs"). The LFRs are defined to consist of an aggregation of local exchanges based on a census metropolitan area ("CMA") or one or more economic regions ("ERs").
- The criteria for granting local forbearance include 25 per cent ILEC market share loss in the relevant market, evidence of rivalrous behaviour, and demonstration that competitor quality of services indicators have been met for six months prior to application.
- As a transitional regime, the no-winback period for residential local telephone services is reduced from 12 to three months.

4.4.2 Consultation on the Governor in Council's Proposed Order to vary Telecom Decision CRTC 2006-15 (Forbearance from Regulation of Retail Local Exchange Services)

100. In January 2007, the Bureau provided comments on the Governor in Council's proposed order to vary the CRTC's decision on the framework for forbearance from the regulation of local exchange telephone services. In 2005, the Bureau participated in the CRTC proceeding that led to Telecom Decision CRTC 2006-15. That decision was appealed on petition to the Governor in Council by a number of parties. The Governor in Council responded with a proposed order that would vary the CRTC's decision by changing the criteria for forbearance. The proposed order was published for public consultation and the Bureau participated, recommending amendments to the proposed order to enhance jurisdictional certainty (between the CRTC and the Bureau) in future complaints of anti-competitive behaviour in forborne local telephone markets.

4.4.3 Commercial Radio Policy Review

101. On December 15, 2006, by way of Broadcasting Public Notice CRTC 2006-158, the CRTC issued its revised policy for commercial radio. Areas addressed include airplay and financial support for Canadian content, cultural diversity, local management agreements ("LMAs") and local sales agreements ("LSAs"), local programming and infomercials. Contrary to the position of the Bureau, the CRTC agreed with the other interveners that radio competes with other media for advertising in a given market. However, it remained of the view that LMAs could have negative consequences. Accordingly, the Commission decided to continue to evaluate proposed LMAs on a case-by-case basis¹⁶.

4.4.4 CRTC Proceeding to Review the Regulatory Framework for Wholesale Services and the Definition of Essential Service (Public Notice CRTC 2006-14)

102. The Bureau is participating in this proceeding pursuant to section 125 of the Act, relating to representations to federal boards. The proceeding was initiated on November 9, 2006, and will continue through to November 2007. In this proceeding, the CRTC is considering whether to adopt the definition of essential facility proposed in the Bureau's Draft Information Bulletin on the Abuse of Dominance Provisions as applied to the telecommunications industry. In addition, the CRTC is considering the appropriate regulatory framework for access to wholesale telecommunication services. These questions raise significant competition policy issues and the Bureau, through its participation in the proceeding, seeks to assist the CRTC with the economic and competition analyses required to resolve these questions. This proceeding provides the Bureau with the opportunity to advocate a definition of essential facilities in the existing regulated context that is similar to the definition that the Bureau would use in future cases under the Act. This may ease the transition of telecom markets from regulation to reliance on competition principles. In addition, it may mitigate the potential economic impact and potential effect on competition of the CRTC's ultimate decision.

4.5 Pharmaceuticals

103. At the Canadian Bar Association ("CBA") annual conference on competition policy in September 2006, the Bureau announced that it would be undertaking a study of the generic pharmaceuticals sector. Canada's publicly funded health sector is dependent on the health of many markets. The Bureau's role is to help ensure that these markets remain healthy, in order to deliver the benefits of competition Canada's publicly funded system depends on. Generic drugs play an important role in creating competition for brand

¹⁶ The CRTC's revised policy direction can be found on their Web site at: <http://www.crtc.gc.ca/archive/ENG/Notices/2006/pb2006-158.htm>.

name pharmaceuticals after their period of patent protection has ended. Studies such as the June 2006 report of the Patent Medicine Prices Review Board, which found Canadian generic prices to be generally high in relation to comparator countries, suggest that the related Canadian markets may not be providing the benefits that they could. The report will provide an analysis of the generic drug sector, with a focus on regulatory and market structure matters. The report will be released to the public in the fall 2007. In a second phase, the Bureau will consider ways to assist governments in obtaining the maximum benefits from competition.

5. Resources of Competition Authorities

5.1 Resources Overall

5.1.1 Annual Budget

104. In the 2006-2007 fiscal year, the Bureau received \$Cdn40.3 million (\$US38.5) in base budget plus

\$Cdn7.7 million (\$US7.6) in temporary funding for a total of \$Cdn 48 million (\$US45.8).

5.1.2 Number of Employees (person-years)

- 11 Economists
- 26 Lawyers and 2 Paralegals (employees of the Department of Justice and Public Prosecution Service Canada)
- 26 Executives, 270 Competition Law Officers (various professional backgrounds – lawyers, economists, etc.)
- 140 Support Staff (includes employees carrying out informatics, administrative services and support functions)
- 447 Bureau staff combined (excluding employees of the Department of Justice and Public Prosecution Service Canada)

5.2 Period Covered by the Above Information

April 1, 2006 – March 31, 2007

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

Legault, S. and E. Melrose, *Market Studies: A Contextual Overview*, 2006 Langdon Hall Competition Law and Policy Forum, Langdon Hall, Cambridge, Ontario, Canada, April 25, 2006.

Monteiro, J., *Short Lines and Regional Railways - Competitor or Feeder?*, Competition as a Driver of Change/La Concurrence, un moteur de changement, Canadian Transportation Research Forum Proceedings of the 2005 Annual Conference, Quebec City, Quebec, May 28 - May 31, 2006, pp. 109-127.

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