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

## **Global Forum on Competition**

### **INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES**

**Contribution by Canada**

-- Session III --

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Ms Lynn Robertson, Global Relations Co-ordinator, OECD Competition Division,  
Tel: +33 1 45 24 18 77, Email: Lynn.Robertson@oecd.org.

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## INDEPENDENCE OF COMPETITION AUTHORITIES - FROM DESIGNS TO PRACTICES

-- Canada --

### 1. Introduction

1. The Competition Bureau (the “Bureau”) is pleased to provide this submission to the OECD Global Forum on Competition roundtable entitled “Independence of competition authorities - from designs to practices”.

2. Independence in investigations, enforcement decisions and adjudicative proceedings is critical to the credibility of competition law enforcement. At the same time, as government organizations, competition authorities have an obligation to account for their spending and to be as transparent as possible. Settling on an institutional design that balances these interests can be challenging. As noted in the Secretariat materials prepared for this roundtable, what works well in one jurisdiction may not be appropriate in another, owing to different legal systems and cultural norms.

3. Canada’s first competition law was enacted in 1889.<sup>1</sup> After a long period characterized by mixed enforcement results and court decisions that limited the effective application of competition law, the Canadian government established the Economic Council of Canada in the late 1960s to study Canada’s competition law and institutions, and provide recommendations for reform.<sup>2</sup> Based on those recommendations, in 1986, after almost 100 years of experience with a variety of institutional arrangements for competition law enforcement, the government established a bifurcated institutional model for the enforcement of competition law.<sup>3</sup> Under this model, the Commissioner of Competition (the “Commissioner”), as represented by the Bureau, investigates competition matters, which can then be brought before either the courts or a specialized tribunal, the Competition Tribunal (the “Tribunal”) for adjudication. This institutional arrangement has been subject to only minor changes over the past 30 years.<sup>4</sup>

4. When taken together; protections contained in the *Competition Act* (the “Act”);<sup>5</sup> the bifurcated institutional structure; and a culture of a strong, independent and impartial public service, result in a high degree of independence in Canadian competition law enforcement.

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<sup>1</sup> An Act for the Prevention and Suppression of Combinations formed in the Restraint of Trade, S.C. 1889, c. 41 (the “Anti-Combines Act”).

<sup>2</sup> Edward Iacobucci & Michael Trebilcock, “Canada” in Eleanor M. Fox & Michael J. Trebilcock, eds., *The Design of Competition Law Institutions: Global Norms, Local Choices* (Oxford, U.K.: University of Oxford Press, 2013) 109 at 110-11.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid. at 112.

<sup>5</sup> Competition Act, R.S.C. 1985, c. C-34

5. The first part of this submission sets out the institutions involved in competition policy and enforcement in Canada. The second part describes the relationships between the Bureau and other parts of government, including with the Bureau's parent department, Innovation, Science and Economic Development ("ISED").<sup>6</sup>

## 2. Institutions

6. The institutions involved in Canadian competition policy and law enforcement are:

- Parliament;
- ISED;
- The Bureau;
- The Tribunal;
- The Department of Justice, Competition Bureau Legal Services ("CBLs");
- The Public Prosecution Service of Canada (the "PPSC"); and
- The provincial/territorial and federal courts.

**Table 1: Investigation, Litigation and Adjudication of Competition Matters in Canada**

| <b>Matter Type<sup>7</sup></b> | <b>Civil<sup>8</sup></b>   | <b>Criminal<sup>9</sup></b>  |
|--------------------------------|--|--|
| Investigation                  | Bureau   | Bureau   |
| Litigation                     | CBLs (litigation support to the Bureau)  | PPSC (sole carriage of matters referred by the Bureau)                           |
| Adjudication                   | Tribunal   | Provincial or territorial superior courts of criminal jurisdiction               |
| Adjudication of Appeals        | Federal Court, <sup>10</sup> Federal Court of Appeal, Supreme Court of Canada (with leave) | Provincial or territorial courts of appeal, Supreme Court of Canada (with leave) |

### 2.1 Parliament

7. The Bureau reports to Parliament annually, as set out in the Act. Annual reports are prepared by the Bureau and tabled in the House of Commons by the Minister of ISED. The Bureau also regularly appears before Parliamentary Committees to provide information and answer questions on topics such as the Bureau's enforcement work and policies, legislative proposals and the competitive conditions in specific industries.

<sup>6</sup> ISED was previously called Industry Canada.

<sup>7</sup> Although outside the scope of this paper, the Act also contains criminal and civil provisions to address false or misleading representations and deceptive marketing practices in promoting the supply or use of a product or any business interest.

<sup>8</sup> Civil matters include mergers, abuse of dominance, price maintenance and non-cartel agreements between competitors.

<sup>9</sup> Criminal matters include "hard-core" cartels and bid-rigging.

<sup>10</sup> The federal courts have the power to review decisions, orders and other administrative actions of most federal boards, commissions and tribunals. Most federal government decisions can be challenged in a federal court. With some exceptions, those bodies may refer questions of law, jurisdiction or practice to one of the federal courts at any stage of a proceeding. More information available online at: <http://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/03.html>.

## 2.2 *ISED*

8. ISED is a department of the federal government of Canada. ISED works on a broad range of matters related to industry and technology, trade and commerce, science, consumer affairs, corporations and corporate securities, competition and restraint of trade, bankruptcy and insolvency, intellectual property and investment. Its mandate is “to help make Canadian industry more productive and competitive in the global economy, thus improving the economic and social well-being of Canadians.”<sup>11</sup> One of ISED’s key strategic outcomes is to foster competitiveness through policies that promote competition and instill consumer, investor and business confidence. In support of this outcome, ISED has developed an Innovation Agenda “to improve the quality and impact of programs that support innovation, scientific research and entrepreneurship.”<sup>12</sup>

## 2.3 *Bureau*

9. The Bureau is an organization within ISED that makes independent decisions for the purposes of the enforcement of the Act. The Bureau investigates possible anti-competitive conduct and mergers that may harm competition. Only the Tribunal or the courts have the authority to make a final determination as to whether there has been an infringement of the Act and to impose sanctions or issue orders. In respect of mergers and reviewable matters, section 105 of the Act provides that the Commissioner and the relevant party or parties may instead sign a consent agreement. Following registration with the Tribunal, such consent agreements have the same force and effect as a Tribunal order. A consent agreement must be based on terms that could be the subject of a Tribunal order against that person.

10. As part of its mandate, the Bureau also participates in a wide range of activities to promote and advocate the benefits of a competitive marketplace. Sections 125 and 126 of the Act grant the Commissioner the authority to appear before federal and provincial boards that supervise regulated industries in order to advocate for greater competition in various market sectors.

## 2.4 *Tribunal*

11. The Tribunal adjudicates civil competition law matters. It is a specialized tribunal composed of judicial members and lay members who have expertise in economics, business, finance, accounting or marketing. The Tribunal is a strictly adjudicative body that operates independently of any government department. The federal Cabinet appoints Tribunal members on the advice of the Ministers of Justice or ISED.<sup>13</sup> Members are appointed for fixed terms of up to seven years and may be reappointed.<sup>14</sup>

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<sup>11</sup> See [http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h\\_00018.html](http://www.ic.gc.ca/eic/site/icgc.nsf/eng/h_00018.html).

<sup>12</sup> Minister of Innovation, Science and Economic Development Mandate Letter, available online at: <http://pm.gc.ca/eng/minister-innovation-science-and-economic-development-mandate-letter>.

<sup>13</sup> These are “Governor in Council” appointments, as is the position of the Commissioner. The appointment process is laid out in more detail later in this submission. The Minister of Justice makes recommendations to Cabinet for the appointment of judicial members, and the Minister of ISED makes recommendations to Cabinet for the appointment of lay members.

<sup>13</sup> See <http://www.ct-tc.gc.ca/Home.asp>.

<sup>14</sup> See <http://www.ct-tc.gc.ca/Home.asp>.

## 2.5 *Department of Justice (CBLs)*

12. In civil matters, the Bureau is supported by CBLs, a dedicated legal service unit of the Department of Justice, housed in the same offices as the Bureau. CBLs provides legal services and advice and represents the Bureau on civil matters before the Tribunal or the courts.

## 2.6 *PPSC*

13. The PPSC is responsible for the prosecution of criminal offences under federal jurisdiction. In instances where the Bureau believes a case can be brought forward, the Bureau refers evidence of alleged criminal offences to the PPSC along with prosecution recommendations, including the Bureau's view as to an appropriate sentence. The PPSC decides whether and how to proceed with these prosecutions and has the sole authority to engage in plea and sentencing discussions with counsel for an accused. The Bureau remains an active partner in supporting the prosecution, including providing facts and analysis for PPSC counsel in plea and sentencing discussions, and the PPSC gives due consideration to the Bureau's recommendation.<sup>15</sup>

## 2.7 *Courts*

14. The federal and provincial or territorial governments are all responsible for the judicial system in Canada. Only the federal government can appoint and pay judges of the superior, or upper-level, courts in the provinces and territories. Parliament has exclusive authority over the procedures of criminal courts, ensuring consistent treatment of criminal behaviour across the country. The provinces and territories administer justice in their jurisdictions. This includes organizing and maintaining the civil and criminal provincial / territorial courts, as well as civil procedure in those courts.<sup>16</sup>

## 3. **Relationship with government**

15. This section focuses on the relationship between the Bureau and ISED. It also discusses the Bureau's interactions with other departments and agencies of the federal government.

### 3.1 *Bureau – ISED*

16. The Bureau is an organization within ISED and, as such, the Commissioner is accountable to the Deputy Minister of ISED for financial and administrative matters. The Bureau sets its own priorities, but considers the priorities of ISED, and the federal government as a whole, as part of that process. ISED is responsible for competition policy development and legislative proposals through its Strategic Policy Sector. The Bureau works collaboratively with ISED during the policy development process.

17. On enforcement matters, the Commissioner reports to Parliament through the Minister of ISED. The Bureau operates independently in its enforcement work, with a few limited exceptions (explained in detail below). The Act clearly sets out the role of the Minister of ISED and other Ministers with regard to competition enforcement and advocacy matters.<sup>17</sup> These legal safeguards are supported by a strong culture

<sup>15</sup> More information about the relationship between the Bureau and the PPSC can be found in the Bureau's Memorandum of Understanding with the PPSC, available online at: <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03227.html> and in Part five, section 5.2 of the PPSC's Deskbook, available online at: <http://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfp/fps-sfp/tpd/p5/ch02.html>.

<sup>16</sup> See <http://www.justice.gc.ca/eng/cs-jc/just/07.html>.

<sup>17</sup> The full text of the provisions mentioned in this submission can be found in the Annex.

of separation between the political and non-political levels of government.<sup>18</sup> Within the public service, there is also great attention paid to the key value of “respect for democracy”. As set out in the *Values and Ethics Code for the Public Sector*, “public servants recognize that elected officials are accountable to Parliament, and ultimately to the Canadian people, and that a non-partisan public sector is essential to our democratic system.”<sup>19</sup> Iacobucci and Trebilcock (2013) found through interviews with former Commissioners that “interviewees were unanimously of the view that their decisions as Commissioners in particular cases had never been influenced by the Minister or his political staff, and indeed that no such efforts had been attempted”.<sup>20</sup>

18. This arrangement allows the Bureau to benefit from integration with ISED and the broader public service for accountability, transparency and efficiency while maintaining a high degree of independence in enforcement matters.

### 3.1.1 *Enforcement*

19. As mentioned above, the Act sets out the interaction between the Minister of ISED and the Bureau in enforcement matters. Certain provisions provide legal safeguards that uphold the Commissioner’s independence in enforcement matters. Although some provisions may allow for Ministerial direction to the Commissioner under limited circumstances, in practice they have been very rarely invoked.

#### 3.1.1.1 *Inquiry by Commissioner*

20. After an initial investigation, the Commissioner can initiate a formal inquiry under Section 10 of the Act when he or she has reason to believe:

- That grounds exist for the making of an order under the civil provisions of the Act;
- That there has been a contravention of an order made under those same provisions; or
- That an offence under the criminal provisions of the Act has been or is about to be committed.

21. Under most circumstances, the Bureau will be “on inquiry” before using its formal information-gathering powers.

22. Paragraph 10(1)(c) requires that the Commissioner open a formal inquiry if requested by the Minister, to determine whether any of the circumstances listed above exist. However, the Commissioner is not obligated or expected to take any enforcement action if the circumstances do not warrant it. With respect to competition advocacy, subsection 125(1) similarly allows the Minister to direct the Commissioner to make representations with respect to competition before federal boards, commissions or other tribunals. In practice, these provisions are very rarely invoked.

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<sup>18</sup> See generally Public Service Commission, *Public Service Impartiality: Taking Stock* (Ottawa: Public Service Commission, 2008), available online at: <http://www.psc-cfp.gc.ca/plcy-pltq/rprt/impart/impart-eng.pdf>.

<sup>19</sup> *Values and Ethics Code for the Public Sector*, available online at: <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>).

<sup>20</sup> *Supra* Note 2, at 145.

23. Subsection 10(3) requires that all Bureau inquiries be conducted in private. The fact that the Bureau is reviewing a matter will sometimes be made public by a complainant, another party or publicly available court documents. Where a matter has become known to the general public, the Bureau may confirm that it has an ongoing inquiry.

### 3.1.1.2 Confidentiality

24. Section 29 prevents Bureau employees, including the Commissioner, from communicating information gathered during their enforcement work, unless the communication is to a Canadian law enforcement agency, or for the administration or enforcement of the Act. It effectively draws under its protection nearly all information that is provided to or obtained by the Bureau in the course of executing its mandate.

### 3.1.1.3 Interim Report to Minister

25. Under section 28, the Minister can request an interim report on any inquiry under the Act. The Commissioner would then be required to provide a report “setting out the action taken, the evidence obtained and the Commissioner’s opinion as to the effect of the evidence”.<sup>21</sup> Again, the use of this provision has been extremely rare.

### 3.1.1.4 Reporting Discontinuances

26. Under section 22 of the Act, the Commissioner can decide to discontinue a formal inquiry, if he or she is of the opinion that the matter does not justify further inquiry. Subsection 22(2) requires that the Commissioner provide a report to the Minister when an inquiry is discontinued. Subsection 22(4) allows the Minister to review the decision to discontinue and instruct the Commissioner to inquire further, if he or she thinks it is warranted. Again, the Commissioner is not obligated or expected to take any enforcement action if he or she comes to the same conclusion (that the inquiry should be discontinued) after further inquiry.

## 3.1.2 Budget

27. The Bureau’s budget comes from a combination of government funding and the collection of fees. The authority to spend government funds and to collect fees (as estimated)<sup>22</sup> is granted by Parliament annually. The Bureau’s budget is one part of the ISED budget.

28. The Bureau’s funding has been relatively stable over time.<sup>23</sup>

**Table 2: Competition Bureau Budget By Fiscal Year (2011-2016)<sup>24</sup>**

| <b>Fiscal year</b>             | <b>2011-12</b> | <b>2012-13</b> | <b>2013-14</b> | <b>2014-15</b> | <b>2015-16</b> |
|--------------------------------|----------------|----------------|----------------|----------------|----------------|
| Total budget                   | \$51.4 million | \$51 million   | \$48.8 million | \$49.1 million | \$49.3 million |
| Portion collected through fees | \$10.2 million | \$10.6 million | \$10.5 million | \$10.4 million | \$10.5 million |

<sup>21</sup> Competition Act, R.S.C. 1985, c. C-34, s. 28.

<sup>22</sup> For example, the Bureau collects fees for merger notifications and written opinions. More information is available online at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_00116.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00116.html).

<sup>23</sup> From 2010 to 2015, during a period of recession, the federal government reduced public sector spending in an effort to return to balanced budgets. This is reflected in a reduction in the Bureau’s budgets over this time period.

<sup>24</sup> All amounts are in Canadian dollars.

29. The Bureau reports to the Deputy Minister of ISED on administrative and financial matters, including operational and financial planning. Certain categories of spending require approval from the Department (Deputy Minister or Minister, depending on the amount) including hospitality and travel not directly related to enforcement work, such as travel to attend bilateral meetings with international counterparts, meetings of multilateral organizations and other conferences. To ensure the Bureau's independence in enforcement matters, its spending on enforcement-related travel is subject only to approval by the Commissioner.

### 3.1.3 *Human Resources*

30. The Bureau is led by a single head of agency. The Commissioner is appointed by the federal Cabinet (or "Governor in Council") on the recommendation of the Minister of ISED. The Office of the Commissioner is one of approximately 1,500 positions across the federal government staffed through Governor in Council appointments. For each appointment, selection criteria are developed to reflect the needs of the organization and the specific qualifications required for the position. Interested candidates are assessed based on the requirements of the position. Open positions are advertised through a variety of means. The tenure of an appointment can be either "during good behaviour" (may only be removed for cause) or "during pleasure" (may be removed at the discretion of the Governor in Council).<sup>25</sup> The Commissioner serves "during pleasure", however, to our knowledge, no Commissioner has ever been terminated by the Minister.

31. The selection process for Governor in Council appointments varies depending on the nature of the position. Rigorous processes are used for key appointments such as heads of agencies. The selection process for these appointments is coordinated by the Privy Council Office on behalf of the Prime Minister's Office. For all other appointments, Ministers and their offices are responsible for establishing the selection process, supported by their departments.<sup>26</sup>

32. Commissioners are appointed to a five-year term, which often spans the governments of different political parties. The term is renewable, but the sitting Commissioner would be required to undergo another full selection process, if he or she is interested in serving a second term. Commissioners also take an oath of impartiality upon their appointment, as set out in the Act.<sup>27</sup>

33. The Commissioner manages all regular staffing at the Bureau. Executive appointments at the Bureau are subject to approval by the Deputy Minister of ISED. Staffing processes are conducted following established policies common to all federal departments and agencies. The Public Service Commission is responsible for independently safeguarding the integrity of the staffing system and the non-partisanship of the public service. Responsibility for staffing is delegated to Deputy Ministers with assurances of compliance with guiding legislation and policies.<sup>28</sup> Bureau employees are ISED staff, but report to Bureau management.

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<sup>25</sup> The federal government is currently considering changes to the Governor in Council appointments process to strengthen transparency, diversity and merit in appointments. More information available online at: <http://www.appointments-nominations.gc.ca/prsnt.asp?menu=1&page=approt&lang=eng>.

<sup>26</sup> See <http://www.appointments.gc.ca/prsnt.asp?menu=3&page=Process&lang=eng>.

<sup>27</sup> Competition Act, R.S.C. 1985, c. C-34, s. 7(2).

<sup>28</sup> See <http://www.psc-cfp.gc.ca/centres/mission-eng.htm>.

### 3.2 *Bureau – Other Departments and Agencies*

34. In certain federally regulated sectors of the economy, the Bureau also interacts with other federal government departments and agencies in its enforcement, advocacy and outreach.

#### 3.2.1 *Mergers*

35. Section 94 of the Act provides for two industries – finance and transportation – where the respective federal Ministers can assume jurisdiction over a proposed merger. These Ministers generally seek the Bureau’s input on competition issues and potential remedies, and factor this information into the final decision of whether the merger is in the public interest. The confidentiality provisions of the Act allow for the sharing of confidential information with the Ministers of Finance and Transport for the purposes of such merger reviews.

36. In addition to the carve-outs in section 94 of the Act, public interest reviews by other government agencies can occur concurrently with -- but not override -- the Bureau’s review. For example, mergers that trigger a review under the *Investment Canada Act*<sup>29</sup> involve foreign acquisitions of a Canadian business and are assessed under the “net benefit” test, which gives consideration to a broad set of public interest factors, including the potential impact on competition. In addition, the Canadian Radio–television and Telecommunications Commission (the “CRTC”) and Minister of ISED have parallel jurisdiction with the Bureau to review mergers in the broadcasting industry.

#### 3.2.2 *Advocacy and Outreach*

37. In its advocacy and outreach, the Bureau often works with other government departments and agencies. For example, the Bureau undertakes ongoing outreach to government procurement agencies, including Public Services and Procurement Canada, the main contracting body of the federal government, to assist staff in identifying bid-rigging. The Bureau also participates in regulatory proceedings such as hearings of the CRTC on telecommunications and broadcasting issues to provide its views on the competitive effects of policy proposals. In 2014, at the request of the Ministers of Natural Resources and Industry, the Bureau and the National Energy Board conducted a joint review of issues in Canadian propane markets.<sup>30</sup> The Bureau’s advocacy initiatives often entail formal and informal discussions and cooperation with other parts of government. The Bureau has a number of MOUs in place to facilitate this cooperation.<sup>31</sup>

## 4. **Conclusion**

38. The balance between independence and accountability can be difficult to find and maintain. In Canada, despite the Bureau’s integration into ISED for policy development and financial and administrative matters, the legal and cultural framework results in a high degree of *de facto* independence in the Bureau’s enforcement work. This arrangement assures stakeholders that competition law enforcement decisions will not be based on changing political priorities, but on an impartial investigation. At the same time, it provides accountability to the public that the Bureau operates in a manner consistent with the public service values of impartiality and sound stewardship of resources.

<sup>29</sup> Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.).

<sup>30</sup> See <https://www.nrcan.gc.ca/energy/crude-petroleum/15681>.

<sup>31</sup> For example, the Bureau has MOUs with the CRTC, the Canadian Intellectual Property Office and Public Works and Government Services Canada (now called Public Services and Procurement Canada), available online at: [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h\\_03696.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_03696.html).

## ANNEX – RELEVANT PROVISIONS OF THE *COMPETITION ACT*

### Commissioner of Competition

**7 (1)** The Governor in Council may appoint an officer to be known as the Commissioner of Competition, who shall be responsible for

- (a) the administration and enforcement of this Act;
- (b) the administration of the *Consumer Packaging and Labelling Act*;
- (c) the enforcement of the *Consumer Packaging and Labelling Act* except as it relates to food, as that term is defined in section 2 of the *Food and Drugs Act*; and
- (d) the administration and enforcement of the *Precious Metals Marking Act* and the *Textile Labelling Act*.

### Oath of office

**(2)** The Commissioner shall, before taking up the duties of the Commissioner, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I do solemnly swear (or affirm) that I will faithfully, truly and impartially, and to the best of my judgment, skill and ability, execute the powers and trusts reposed in me as Commissioner of Competition. (*In the case where an oath is taken add "So help me God".*)

### Salary

**(3)** The Commissioner shall be paid such salary as may be from time to time fixed and allowed by the Governor in Council.

### Inquiry by Commissioner

**10 (1)** The Commissioner shall

- (a) on application made under section 9,
- (b) whenever the Commissioner has reason to believe that
  - (i) a person has contravened an order made pursuant to section 32, 33 or 34, or Part VII.1 or Part VIII,
  - (ii) grounds exist for the making of an order under Part VII.1 or Part VIII, or
  - (iii) an offence under Part VI or VII has been or is about to be committed, or
- (c) whenever directed by the Minister to inquire whether any of the circumstances described in subparagraphs (b)(i) to (iii) exists,

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

### **Information on inquiry**

(2) The Commissioner shall, on the written request of any person whose conduct is being inquired into under this Act or any person who applies for an inquiry under section 9, inform that person or cause that person to be informed as to the progress of the inquiry.

### **Inquiries to be in private**

(3) All inquiries under this section shall be conducted in private.

### **Discontinuance of inquiry**

**22 (1)** At any stage of an inquiry under section 10, if the Commissioner is of the opinion that the matter being inquired into does not justify further inquiry, the Commissioner may discontinue the inquiry.

### **Report**

(2) The Commissioner shall, on discontinuing an inquiry, make a report in writing to the Minister showing the information obtained and the reason for discontinuing the inquiry.

### **Notice to applicant**

(3) Where an inquiry made on application under section 9 is discontinued, the Commissioner shall inform the applicants of the decision and give the grounds therefor.

### **Review of decision**

(4) The Minister may, on the written request of applicants under section 9 or on the Minister's own motion, review any decision of the Commissioner to discontinue an inquiry under section 10, and may, if in the Minister's opinion the circumstances warrant, instruct the Commissioner to make further inquiry.

### **Minister may require interim report**

**28** The Minister may at any time require the Commissioner to submit an interim report with respect to any inquiry by him under this Act, and it is the duty of the Commissioner whenever thereunto required by the Minister to render an interim report setting out the action taken, the evidence obtained and the Commissioner's opinion as to the effect of the evidence.

### **Confidentiality**

**29 (1)** No person who performs or has performed duties or functions in the administration or enforcement of this Act shall communicate or allow to be communicated to any other person except to a Canadian law enforcement agency or for the purposes of the administration or enforcement of this Act

- (a) the identity of any person from whom information was obtained pursuant to this Act;
- (b) any information obtained pursuant to section 11, 15, 16 or 114;
- (c) whether notice has been given or information supplied in respect of a particular proposed transaction under section 114;
- (d) any information obtained from a person requesting a certificate under section 102; or
- (e) any information provided voluntarily pursuant to this Act.

### **Exception**

(2) This section does not apply in respect of any information that has been made public or any information the communication of which was authorized by the person who provided the information.

### **Communication to Minister of Transport**

**29.1 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Transport in accordance with subsection (3), communicate or allow to be communicated to that Minister any information referred to in subsection (2) that is specifically requested by that Minister.

### **Information**

(2) The information that may be communicated under this section is

- (a) the identity of any person from whom information was obtained under this Act;
- (b) any information obtained in the course of an inquiry under section 10;
- (c) any information obtained under section 11, 15, 16 or 114;
- (d) any information obtained from a person requesting a certificate under section 102;
- (e) whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and
- (f) any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

### **Contents of request**

(3) Requests under this section must be in writing and must

- (a) specify the information referred to in any of paragraphs (2)(a) to (f) that is required; and
- (b) state that the Minister of Transport requires the information for the purposes of section 53.1 or 53.2 of the *Canada Transportation Act* and identify the transaction being considered under that section.

### **Restriction**

(4) The information communicated under subsection (1) may be used only for the purposes of section 53.1 or 53.2, as the case may be, of the *Canada Transportation Act*.

### **Confidentiality**

(5) No person who performs or has performed duties or functions in the administration or enforcement of the *Canada Transportation Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to persons who perform duties or functions under section 53.1 or 53.2 of that Act.

## **Communication to Minister of Finance**

**29.2 (1)** Notwithstanding subsection 29(1), the Commissioner may, if requested to do so by the Minister of Finance in accordance with subsection (3), communicate or allow to be communicated to the Minister of Finance any information referred to in subsection (2) that is specifically requested by the Minister of Finance.

### **Information**

**(2)** The information that may be communicated under this section is

- (a)** the identity of any person from whom information was obtained under this Act;
- (b)** any information obtained in the course of an inquiry under section 10;
- (c)** any information obtained under section 11, 15, 16 or 114;
- (d)** any information obtained from a person requesting a certificate under section 102;
- (e)** whether notice has been given or information supplied in respect of a particular proposed transaction under section 114; and
- (f)** any information collected, received or generated by or on behalf of the Commissioner, including compilations and analyses.

### **Contents of request**

**(3)** Requests under this section must be in writing and must

- (a)** specify the information referred to in any of paragraphs (2)(a) to (f) that is required;
- (b)** state that the Minister of Finance requires the information
  - (i)** to consider a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*, or
  - (ii)** to permit the Minister of Finance to determine whether he or she should provide the Commissioner with a certificate described in paragraph 94(b) in respect of such a merger or proposed merger;

and

- (c)** identify the merger or proposed merger.

### **Restriction**

**(4)** The information communicated under subsection (1) may be used only for the purpose of making a decision in respect of the merger or proposed merger.

### **Confidentiality**

(5) No person who performs or has performed duties or functions, in the administration or enforcement of the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* shall communicate or allow to be communicated to any other person any information communicated under subsection (1), except to other persons who perform those duties or functions.

### **Exception**

**94** The Tribunal shall not make an order under section 92 in respect of

(a) a merger substantially completed before the coming into force of this section;

(b) a merger or proposed merger under the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act* in respect of which the Minister of Finance has certified to the Commissioner the names of the parties and that the merger is in the public interest — or that it would be in the public interest, taking into account any terms and conditions that may be imposed under those Acts; or

(c) a merger or proposed merger approved under subsection 53.2(7) of the *Canada Transportation Act* and in respect of which the Minister of Transport has certified to the Commissioner the names of the parties.

### **Representations to federal boards, etc.**

**125 (1)** The Commissioner, at the request of any federal board, commission or other tribunal or on his own initiative, may, and on direction from the Minister shall, make representations to and call evidence before the board, commission or other tribunal in respect of competition, whenever such representations are, or evidence is, relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining the matter.

### **Definition of *federal board, commission or other tribunal***

(2) For the purposes of this section, *federal board, commission or other tribunal* means any board, commission, tribunal or person that carries on regulatory activities and is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product.