

**Unclassified**

**DAF/COMP(2008)18/4**



Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

**21-Oct-2008**

**English text only**

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

**DAF/COMP(2008)18/4  
Unclassified**

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA**

**--April 1, 2007 through March 31, 2008 --**

*This report is submitted by Canada to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 2-23 October 2008.*

**JT03253475**

Document complet disponible sur OLIS dans son format d'origine  
Complete document available on OLIS in its original format

**English text only**

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN CANADA**

**-- April 1, 2007 through March 31, 2008 --**

**TABLE OF CONTENTS**

**Executive Summary**

**Introduction**

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

- 1.1 Summary of New Legal Provisions of Competition Law and Related Legislation
- 1.2 Other Relevant Measures
  - 1.2.1 Reform of Section 45 of the *Competition Act*
  - 1.2.2 Competition Policy Review Panel
  - 1.2.3 Private Members Bills
  - 1.2.4 Private Members Motions
  - 1.2.5 Bureau Representations to Parliamentary Committees
  - 1.2.6 Other
- 1.3 Government Proposals for New Legislation

**2. International Cooperation Developments**

- 2.1 Organization for Economic Cooperation and Development (OECD)
- 2.2 International Competition Network (ICN)
- 2.3 Technical Assistance
- 2.4 International Cooperation
- 2.5 Cooperation Instruments
- 2.6 Free Trade Agreements
- 2.7 Staff Exchanges
- 2.8 International Consumer Protection and Enforcement Network (ICPEN)
- 2.9 Mexico, United States, Canada Health Fraud Working Group (MUCH)
- 2.10 Messaging Anti-Abuse Working Group (MAAWG)

**3. Enforcement of Competition Laws and Policies**

- 3.1 Action Against Anti-competitive Practices
  - 3.1.1 Abuse of Dominance
  - 3.1.2 Price Maintenance
  - 3.1.3 Conspiracy
  - 3.1.4 Bid-rigging
- 3.2 Mergers and Acquisitions

- 3.2.1 Statistics on Mergers Notified and/or Controlled under the *Competition Act*
- 3.2.2 Summary of Significant Cases
- 3.3 Misleading Advertising and Deceptive Marketing Practices
  - 3.3.1 Criminal
  - 3.3.2 Civil
  - 3.3.3 Voluntary Compliance
  - 3.3.4 Activities and Awards

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

- 4.1 Transportation
  - 4.1.1 Marine Transportation: Submission to *Canada Marine Act* Review
  - 4.1.2 Air Transportation: Submission to the Competition Policy Review Panel
  - 4.1.3 Rail Transportation: An Act to amend the *Canada Transportation Act* (railway transportation)
- 4.2 The Professions
  - 4.2.1 Dental Hygienists
  - 4.2.2 Dentists
  - 4.2.3 Paralegals
- 4.3 Telecommunications
- 4.4 Pharmaceuticals

**5. Resources of Competition Authorities**

- 5.1 Resources Overall
  - 5.1.1 Annual Budget
  - 5.1.2 Number of Employees (person-years)
- 5.2 Period Covered by the Above Information

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

## **Executive Summary**

1. The number of mergers that the Competition Bureau (“Bureau”) reviewed in 2007-2008 increased from the previous year, continuing an upward trend. Mergers covered a wide range of industrial sectors, including agriculture, natural resources and pharmaceuticals.

2. The Bureau actively investigated cartels and deceptive marketing practices. For example, it successfully obtained a total fine of Cdn\$3.645 million from the Bayer Group for its role in three international price-fixing conspiracies in the rubber and chemicals industry. The Bureau also launched *Project False Hope*, an education and enforcement initiative aimed at targeting cancer-related health fraud.

3. On the international front, the Bureau continued to participate in technical assistance initiatives and undertook three staff exchange programs with counterpart agencies. The Bureau has also contributed to the work of international organizations such as the Organization for Economic Cooperation and Development (“OECD”), the International Competition Network (“ICN”) and the International Consumer Enforcement Protection Network (“ICPEN”). The Bureau also maintained and enhanced bilateral contacts with its foreign counterparts to facilitate 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 of relevance to the Bureau were introduced. The Government of Canada also announced the creation of a Competition Policy Review Panel, which was tasked with reviewing Canada’s competition and foreign investment laws and policies and recommending ways to improve Canada’s productivity and competitiveness.

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, 2007 through March 31, 2008.

### **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***

##### ***1.2.1 Reform of Section 45 of the Competition Act***

8. The reform of the conspiracy provision (section 45) of the *Act* has been a topic of much debate in recent years. In the fall 2005, the Bureau formed internal and external working groups of lawyers and economists to help consider various models to assess potential features of an amended conspiracy

provision. With the results of this work, the Bureau drafted a proposal to reform section 45. In December 2007, the Bureau held workshops with experts across Canada to consider the text of the Bureau's proposal. The proposal was revised to address concerns expressed during the technical workshops and is nearing completion.

### 1.2.2 *Competition Policy Review Panel*

9. On July 12, 2007 the Government of Canada announced the creation of a Competition Policy Review Panel ("Panel"), which was tasked with reviewing Canada's competition and foreign investment laws and policies, and recommending ways to improve Canada's productivity and competitiveness. On January 11, 2008 the Bureau submitted written representations to the Panel, in which it made three broad recommendations:

- (1) the Government of Canada should consider the effect of its own regulations and laws on Canadian competitiveness by establishing an independent assessment process responsible for reviewing and identifying the effects of proposed new laws and policies on competition;
- (2) the Panel should recommend the reduction or elimination of foreign ownership restrictions in sectors vital to the economy, such as telecommunications and airlines; and,
- (3) the Panel should support the recommendations of the 2002 House of Commons Industry Committee Report and the OECD recommendations regarding amendments to the *Act*, namely (i) reforms to the current criminal anti-cartel provision to ensure that it captures only clearly egregious conduct and does not chill potentially beneficial alliances or agreements among firms, (ii) repeal of the criminal provisions on predatory pricing and price discrimination so these acts would be treated as reviewable practices under the civil provisions only, (iii) introduction of meaningful incentives for compliance with the abuse of dominance provisions through, for example, administrative monetary penalties, or a wider right of private action for enforcement, and (iv) where possible, industry-specific provisions and carve-outs should be eliminated so that the *Act* is returned to a law of general application.

10. The Panel received more than 140 submissions and will release its final report in June 2008.<sup>1</sup>

### 1.2.3 *Private Members Bills*

11. In 2007-2008, eight private members bills of relevance to the Bureau were introduced. None have yet received Royal Assent.

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

This bill was first introduced on June 6, 2006 and was reintroduced on October 16, 2007. The bill proposes the establishment of an Energy Price Commission to regulate the wholesale and retail price of motor fuels, heating oil and electric power. Under the bill, any investigation of an alleged

---

<sup>1</sup> The Panel released its final report on June 26, 2008. The report contained 65 recommendations, including amendments to the *Investment Canada Act* and the *Competition Act*, and the creation of a Canadian Competitiveness Council. At the time this report was prepared, the Government had not yet released its response to the Panel's recommendations.

offence under the *Act* that is related to energy pricing is referred by the Competition Tribunal (“Tribunal”) to the Commission for investigation. The Commission would report to the Tribunal before a determination or order is made on the matter.

- Private Members Bill C-335: An Act to amend the *Bank Act* (bank mergers)

This bill was first introduced on June 6, 2006 and was reintroduced on October 16, 2007. The bill 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 the 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 the House of Commons.

- Private Members Bill C-414: An Act to amend the *Competition Act* and the *Food and Drugs Act* (child protection against advertising exploitation)

This bill was first introduced on March 22, 2007 and was reintroduced on October 16, 2007. The bill proposes to expressly restrict advertising and promotion, for commercial purposes, of products, food, drugs, cosmetics or devices, directly to children under 13 years of age.

- Private Members Bill C-425: An Act to amend the *Competition Act* and the *Environmental Protection Act 1999* (right to repair)

This bill was first introduced on April 17, 2007 and reintroduced on October 16, 2007. Among other things, the bill would add a definition of “product” in section 75 of the *Act* to make it clear that “product” includes technical information that is required by a person in order to provide a service to a customer. This would enable the Tribunal to require a supplier to provide this information to a customer in accordance with section 75 in cases where the supplier has previously refused to do so.

- Private Members Bill C-426: An Act regulating telecommunications facilities to facilitate the lawful interception of information transmitted by means of those facilities and respecting the provision of telecommunications subscriber information (*Modernization of Investigative Techniques Act*).

This bill was first introduced on March 23, 2007 and was reintroduced on October 16, 2007. The bill would require that telecommunications service providers put in place and maintain certain capabilities that facilitate the lawful interception of information transmitted by telecommunications, and to provide basic information about their subscribers to certain law enforcement agencies, including the Commissioner of Competition (“Commissioner”).

- Private Members Bill C-441: An Act to amend the *Competition Act* (protection of purchasers from vertically integrated suppliers)

This bill was first introduced on May 15, 2007 and reintroduced on October 16, 2007. The bill would amend the *Act* to provide for the enforcement of fair pricing by a supplier

who sells a product at retail (either directly or through an affiliate) and also supplies the product to a purchaser who competes with the supplier at the retail level. This would give the purchaser a fair opportunity to make a similar profit. The bill also provides that a supplier who coerces or attempts to coerce a customer in relation to the establishment of a retail price or pricing policy may be dealt with as having committed an anti-competitive act.

- Private Members Bill C-442: An Act to establish the Office of the Oil and Gas Ombudsman to investigate complaints relating to the business practices of suppliers of oil or gas

This bill was first introduced on May 15, 2007 and reintroduced on October 16, 2007. The bill would establish the Office of the Oil and Gas Ombudsman, which would receive and investigate complaints about the business practices of oil and gas suppliers, make recommendations, and report to the Minister of Industry if it was not satisfied with the response of the oil or gas supplier.

- Private Members Bill C-454: An Act to amend the *Competition Act* and make consequential amendments to other Acts

This bill was first introduced on June 7, 2007 and reintroduced on October 16, 2007. The bill would amend the *Act* to repeal the airline-specific provisions; decriminalize the price discrimination and predatory pricing provisions; introduce administrative monetary penalties (“AMPs”), private access to the Tribunal, and damages for abuse of dominance; increase AMPs for deceptive marketing practices and provide for restitution to consumers harmed by those practices; remove the word “unduly” from the anti-cartel provision; confer a broad power on the Commissioner to study sectors of the economy using formal powers; introduce the test of “abusive exploitation of a dominant position” as a condition that must be satisfied when demonstrating that an act is anti-competitive; and, increase the notification threshold for certain mergers.

#### 1.2.4 Private Members Motions

12. In 2007-2008, there were three private members motions of relevance to the Bureau. None have yet been debated in Parliament:

- Private Members Motion 119: Petroleum Monitoring Agency

This motion was first introduced on April 4, 2006 and reintroduced on October 16, 2007. The motion 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 first introduced on May 8, 2006 and reintroduced on October 16, 2007. The motion 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*.”

- Private Members Motion 435: Food and Product Safety

This motion was introduced on January 24, 2008. The motion states: “That, in the opinion of the House, the government should address the current import safety crisis by: (a) reviewing and fixing existing trade deals that limit the ability of safety agencies to inspect imported food and products; (b) requiring importers of record to post a safety bond to ensure accountability for recalls and defective products; (c) giving authority under the *Food and Drug Act* and the *Consumer Packaging and Labelling Act* to examine and approve the regulatory systems of our trading partners as meeting Canadian safety standards before imports from a country can enter the Canadian market, and ensuring that they have the adequate authority to effectively halt imports; (d) implementing country-of-origin labelling (“COOL”) on meat, fruits and vegetables and requiring COOL on processed foods and ingredients; (e) authorizing mandatory recall authority; (f) improving the collection, analysis, sharing and delivery of all pertinent information with respect to all relevant sources; and (g) imposing meaningful civil penalties for violators.”

#### 1.2.5 Bureau Representations to Parliamentary Committees

13. Bill C-11 - An Act to amend the *Canada Transportation Act* and the *Railway Safety Act* and to make consequential amendments to other Acts - was introduced on May 4, 2006. The bill contained provisions that pertain to mergers in the transportation sector. The Bureau expressed concern about language in the legislation that could create an overlap of authority between government departments and Ministers when reviewing the effects of mergers. On November 2, 2006 the Bureau wrote a submission to the House Standing Committee on Transportation, Infrastructure and Communities during their review of the bill to express those concerns. On May 14, 2007, a subsequent submission was sent to the Senate Standing Transport and Communications Committee. The bill was amended to direct Transportation Canada to work with the Bureau to develop merger guidelines. The bill received Royal Assent on June 22, 2007.

14. On April 19, 2007 Bureau officials appeared before the House of Commons Standing Committee on Finance regarding automated teller machines and electronic payments, and the fees charged by financial institutions. The Bureau briefly explained its mandate, role and the purpose of the *Act*. The Bureau also discussed the 1996 Interac consent order that prohibited certain anti-competitive acts and opened up access to the Interac network to other operators of Automatic Banking Machines (“ABM”s).

15. On June 11, 2007 Bureau officials appeared before the House of Commons Standing Committee on Industry, Science and Technology regarding gas prices and refining margins. The Bureau explained its overall mandate, enforcement tools, and support for reliance on market forces to enhance competition and consumer welfare. The Bureau explained that high prices and refining margins are not, of themselves, contrary to any provisions of the *Act*. However, when high prices are the result of anti-competitive conduct that is circumscribed by the *Act*, the Bureau will take appropriate action

#### 1.2.6 Other

16. The Bureau issued its draft *Predatory Pricing Enforcement Guidelines* for public consultation in October 2007. First published in 1992, the revised guidelines reflect recent jurisprudence and economic theory in outlining when below-cost pricing may raise issues under the *Act*. The 2007 guidelines contain three major policy changes in the Bureau's approach to predatory pricing. The first is that the Bureau will generally examine predatory pricing under the abuse of dominance provision of the *Act* (section 79) and



will reserve criminal investigation under section 50, for instances where conduct is egregious, such as pursuant to cartel activity or recidivist. The second is that the Bureau will use an average avoidable cost standard when conducting price-cost analysis. Finally, "meeting competition" has been added as a potentially reasonable business justification for pricing below cost. The final version of the guidelines will be published in 2008.

17. In 2007-2008, to inform Canadian consumers, businesses and other stakeholders about its work, the Bureau issued 43 news releases and 17 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 almost 3,700 print, radio, television and online media reports on Bureau-related matters.

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

### **1.3 Government Proposals for New Legislation**

19. 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 Tribunal would have been able to order telecommunications service providers to pay an administrative monetary penalty of up to Cdn\$15 million in cases where the telecom service provider abused its dominant position. This bill died on the Order Paper when Parliament prorogued on September 14, 2007.

## **2. International Cooperation Developments**

### **2.1 Organization for Economic Cooperation and Development**

20. The Commissioner continues to act as a member of the Bureau of the Organization for Economic Cooperation and Development ("OECD") Competition Committee ("CC"). This year, the Bureau participated actively in the work of the CC as well as its Working Party 2 and Working Party 3 and provided input and submissions on the following topics: dynamic efficiencies in merger analysis, evaluation of competition authorities, refusal to deal, restrictions in legal professions, competition assessment toolkit, public procurement, potential pro-competitive and anti-competitive aspects of trade/business associations, antitrust issues involving minority shareholdings and interlocking directorates and techniques for presenting complex economic theories to judges.

21. 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.

22. The CCP met in Paris in October 2007 and February 2008. The meetings focused on building consumer confidence in the global economy through work on the economics of consumer policy, including the development of a toolkit for policy matters which takes into account research on how consumers make decisions in the marketplace; the 2008 Ministerial on the Future of the Internet Economy; consumer education; and the examination of consumer policy regimes, which includes work on sustainable consumption and industry-led regulation.

23. The CCP took part in the February 2008 Global Forum on Competition. The chair of the CCP helped to introduce and close the second day of the Forum.

## **2.2 International Competition Network**

24. The Bureau continues to be an active member of the ICN. The Commissioner acts as the Chair of the ICN Steering Group and assumed this role in February 2007.

25. The Bureau assumes other leadership roles in the ICN including co-chairing the ICN Cartel working group, subgroup on Enforcement Techniques and the Operational Framework working group, which develops proposals concerning the structure and operation of the ICN steering group. The Bureau also acts as the *de facto* secretariat of the ICN.

26. In 2007-2008, the Bureau contributed to the ICN Cartel working group, subgroup on Enforcement Techniques by assisting in preparations for the ICN Cartel Workshop held in late 2007 in San Salvador. Bureau representatives moderated the leniency programs panel; spoke and moderated a breakout session for the interviewing role-play session; and participated in the mock oral submission. The Bureau also participated in the drafting of chapters on investigative strategy and interviewing for the *Anti-Cartel Enforcement Manual* and contributed to the ICN Annual Conference in Kyoto.

27. The Bureau contributed to work products of the ICN Cartel working group subgroup on General Legal Framework.

28. The Bureau actively participated in the ICN Unilateral Conduct working group (“UCWG”). The UCWG finalized a number of papers that were presented at the ICN Annual Conference in Kyoto including papers on predation, exclusive dealing and single branding. The working group also continued work on guidance papers on dominance and state-created monopolies.

29. Representatives from the Bureau participated in a panel at the March 2008 ICN Merger Workshop on Implementing the Recommended Practices for Merger Notification and Review Procedures in Prague. The focus of this panel was inter-agency coordination of merger remedies.

## **2.3 Technical Assistance**

30. This year, the Bureau provided technical assistance to several countries, including India, the Netherlands, Costa Rica and the Russian Federation. Such assistance included the provision of information on the *Act*; welcoming visiting delegations from foreign governments and competition authorities; providing comments on draft policies; and helping to develop and refine foreign competition laws.

31. In March 2008, the Bureau provided comments on India’s new merger notification and filing system.

32. In September 2007, representatives from the Costa Rican competition authority (“COPROCOM”) received training from the Bureau. Topics focused on the criminal provisions of the *Act*; the economic analysis and impact of anti-competitive conduct and treatment of exceptions/exemptions under the *Act*; merger notifications; the Bureau’s advocacy work in the telecommunications sector; and the Bureau’s compliance program. The training program is part of the technical assistance project entitled “The Role and Importance of Competition Policy in Promoting Investment, Growth, Competitiveness and Poverty Reduction in Costa Rica” and is in partnership with the Canadian International Development Agency (“CIDA”), the Foreign Investment Advisory Service (“FIAS”), the Private Sector Development

Vice-Presidency of the World Bank Group and COPROCOM. 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.

33. In December 2007, the Bureau welcomed a visiting delegation from the Federal Antimonopoly Service of the Russian Federation (“FAS Russia”). Presentations focused on the Bureau’s expertise and experience in merger review; merger notification and filing; criminal and fair business practices matters; the Bureau’s immunity program; economic analysis; and abuse of dominance. The visit was organized under the auspices of the Governance Advisory and Exchange Program (“GAEP”), a five-year program funded by CIDA. The main goal of the program is to assist Russian leaders and decision-makers in their effort to contribute to the establishment of a stable and democratic Russia with a well-developed market economy and efficient, responsive institutions.

34. Throughout this fiscal year, the Bureau participated in an ongoing OECD anti bid-rigging initiative in Latin America (in particular Chile). The project serves to assist competition authorities to develop anti-cartel measures. The project focuses specifically on diminishing corruption and bid-rigging in the public procurement process.

#### **2.4 International Cooperation**

35. Jurisdictions that cooperated with the Bureau on ongoing international cartel and merger cases included the United States, the European Commission, Japan, Korea and the Netherlands.

#### **2.5 Cooperation Instruments**

36. In an effort to advance cooperation and coordination between Canada and the European Communities, the Bureau and representatives from the European Commission Directorate General of Competition (“EC DG Competition”) met in Washington in April 2007 to consider options for building upon their existing agreement “The Agreement Between the Government of Canada and the European Communities Regarding the Application of their Competition Laws”. The bilateral meeting was a continuation of that which took place in February 2007 in Brussels.

37. From August 1 to 19, 2007 the Commissioner traveled to New Zealand and Australia for bilateral meetings with the New Zealand Commerce Commission (“NZCC”) and the Australian Competition and Consumer Commission (“ACCC”). In Australia, meetings were held with various ACCC senior staff along with a visit to the Brisbane and Sydney regional offices. The Commissioner also met with the Productivity Commission, the National Competition Council, the Australian Communications and Media Authority and some business groups. During the visit, the Commissioner spoke at the Trade Practices Workshop, which took place from August 10 to 12, 2007 in Brisbane.

38. On March 28, 2008 the Bureau signed a cooperation arrangement with the United States Postal Inspection Service (“USPIS”) to improve competition law enforcement in areas such as mass marketing fraud and other deceptive marketing practices with a cross-border component.

#### **2.6 Free Trade Agreements**

39. The Bureau, in partnership with the Department of Foreign Affairs and International Trade Canada (“DFAIT”), develops competition policy and competition provisions in bilateral and regional free trade agreements (“FTA”s) and takes on the role of lead competition law and policy negotiator for these matters on behalf of the Government of Canada. This year, the Canadian government continued

negotiations with Peru and Columbia and on January 26, 2008, signed an FTA with the European Free Trade Association.

## **2.7 *Staff Exchanges***

40. Beginning in August 2007, the Bureau undertook a six-month staff exchange with the EC DG Competition in the area of mergers. This exchange between the agencies provided a means to improve communication and cooperation, develop an understanding of each other's enforcement and policy initiatives, and identify best practices.

41. This year, the Commissioner and the Director General of France's Direction Générale de la Concurrence et la Consommation et de la Répression des Fraudes ("DGCCRF") agreed to a trial program of staff study visits. The first such exchange occurred in October and November 2007.

42. In October 2007, the Bureau sent an officer on a five-month assignment to the United States Federal Trade Commission ("USFTC") as part of the International Fellows program.

## **2.8 *International Consumer Protection Enforcement Network***

43. In April 2007, Bureau representatives participated in the bi-annual meeting of the International Consumer Protection Enforcement Network ("ICPEN"), held in Krakow. ICPEN is a voluntary organization of trade practices law enforcement authorities from 38 countries and the Bureau is a member of the Advisory Group under the Polish Presidency. A Bureau representative delivered a presentation on Canada's Fraud Prevention Month; explained how the Bureau decides to enforce cases using a civil or a criminal track; spoke about the Bureau's Targeted Enforcement Approach to Markets (TEAM strategy); and provided an update on the development of a national strategy to combat mass marketing fraud originating from Canada.

44. From September 24 to 28, 2007 the Bureau participated in a joint Internet sweep with members of ICPEN to expose Web sites that make deceptive health claims for products and services. This action is part of the Bureau's enforcement strategy to target health fraud scams due to the serious harm they can cause to Canadians and legitimate businesses. During the sweep, thousands of Web sites and e-mails were examined by agencies from over 20 countries. Through ICPEN's coordinated enforcement action, participating agencies searched the Internet to identify potentially deceptive sites, helping to ensure that scam artists do not undermine the credibility of legitimate online retailers.

45. In November 2007, Bureau representatives participated in the bi-annual meeting and the Best Practices Training session of ICPEN, held in Santiago. The Bureau is a member of the ICPEN Strategic Planning and Best Practices in Enforcement working group. At the best practices training session, a Bureau representative gave a presentation on Internet surveillance techniques, including a demonstration the software used by the Bureau for Internet monitoring and intelligence gathering; and a presentation on priorities and resource allocation. The presentations were followed by a discussion aimed at identifying common enforcement priorities that members could pursue in collaboration.

46. In March 2008, the Bureau participated in the ICPEN Fraud Prevention Month. As chair of the Fraud Prevention Forum, the Bureau works with its partners to raise awareness among consumers and businesses about the dangers of fraud by educating them on how to recognize it, report it and stop it.

## **2.9 Mexico, United States, Canada Health Fraud Working Group**

47. Since April 2007, the Mexico, United States, Canada Health Fraud working group (“MUCH”) has focussed its efforts on dealing with fraudulent cancer claims through various enforcement and outreach initiatives. On March 12, 2008 the Bureau launched *Project False Hope*, an education and enforcement initiative aimed at targeting cancer-related health fraud.

48. On the education and outreach side of *Project False Hope*, the Bureau has unveiled two interactive Web tools to educate consumers on how to recognize these scams: the “Anatomy of an Online Health Scam” and a “Health Fraud Awareness Quiz”. On the enforcement side, *Project False Hope* has uncovered dozens of Canadian targets offering cancer-related products, in clinics, stores or online, which raise concerns under the false or misleading provisions of the *Act*.

## **2.10 Messaging Anti-Abuse Working Group**

49. Over the last year, the Bureau attended the Messaging Anti-Abuse working group (“MAAWG”) meetings in Dublin and Washington. 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. 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 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.

50. The Bureau participated in a Steering Committee to develop the MAAWG Law Enforcement Collaborative Workshop entitled “Cybercrime Investigations for Law Enforcement Agencies”, which took place at the meeting in Dublin.

## **3. Enforcement of Competition Laws and Policies**

### **3.1 Action Against Anti-competitive Practices**

#### **3.1.1 Abuse of Dominance**

51. In April 2007, the Bureau concluded its investigation of a six resident complaint from a business product distributor alleging that a copier, printer and toner manufacturer had engaged in anti-competitive activity contrary to several sections of the *Act*. These sections include price discrimination, resale price maintenance, refusal to deal, tied selling, and abuse of dominant position. The Bureau concluded that the manufacturer had not engaged in anti-competitive behaviour.

52. On December 19, 2007 the Bureau reached a consent agreement with Canada Pipe Company Limited (“Canada Pipe”) concluding the Bureau’s enforcement action in that case. In the consent agreement registered with the Tribunal, Canada Pipe agreed to implement a new rebate program that does not require distributors to purchase cast iron drain, waste and vent products exclusively from Canada Pipe in order to qualify for discounts and rebates. The Bureau initiated its inquiry following complaints that Canada Pipe was abusing its dominant position in markets across Canada through its loyalty program. Distributors were required to purchase all of their cast iron pipe, cast iron fittings and mechanical joint

couplings for drain, waste and vent applications exclusively from Canada Pipe to obtain substantial discounts and rebates.

53. On March 31, 2008, The Bureau concluded its investigation of the National Hockey League's ("NHL") policies on ownership transfers and franchise relocations. The Bureau's inquiry focused on whether these policies constituted an anti-competitive practice. The Bureau initiated its inquiry following media reports that raised concerns as to whether the NHL was engaging in anti-competitive conduct in respect of Canadian businessman Jim Balsillie's attempted acquisition of the Nashville Predators. It was determined that the NHL's policies do not contravene the *Act*.

### 3.1.2 Price Maintenance

54. In July 2007, the Bureau addressed allegations that a processor/distributor of packaged fluid milk products refused to supply a retailer because of its low pricing policy. Bureau staff met with representatives of the company in question to address its concerns under the price maintenance provision of the *Act* (section 61). A company representative indicated the decision not to sell to the retailer was due to quality concerns that could affect their brand image. Without admitting that they engaged in price maintenance, the company committed to future compliance with the *Act*.

### 3.1.3 Conspiracy

55. In July 2007, a U.S. company, Du Pont Performance Elastomers L.L.C. ("DPE"), pleaded guilty to violating section 45 of the *Act*. The court fined DPE Cdn\$4 million for its role in an international criminal conspiracy to fix prices of polychloroprene rubber sold into Canada. Polychloroprene rubber, a specific type of synthetic rubber, is used in the manufacture of a wide range of consumer products in the automotive, adhesive and construction industries. From August 1999 to April 2002, DPE and co-conspirators agreed to fix the prices of polychloroprene rubber sold in the North American market. Although it is difficult to quantify the impact of this conspiracy on the Canadian market, the sales of this product were approximately Cdn\$50 million for the relevant period and DPE's share of the market represented approximately 70 percent.

56. In September 2007, Ibiden Company Limited of Japan ("Ibiden") pleaded guilty to aiding and abetting a conspiracy to fix the price of isostatic graphite, a fine grain carbon product commonly used in electrical discharge machinery to make dies for the continuous casting of metals and in the manufacture of semi-conductor chips and other mechanical applications. Despite the serious nature of the offence, lenient treatment was recommended owing to Ibiden's significant and early cooperation in connection with the inquiry. The Federal Court of Canada fined the company Cdn\$50,000. During the conspiracy, approximately US\$300,000 of Ibiden's isostatic graphite block was sold in Canada. Ibiden was the third company to plead guilty in relation to this anti-competitive conduct. In 2003, Toyo Tanso USA Incorporated pleaded guilty to charges of attempting to maintain prices and was fined Cnd\$200,000. In 2001, Carbone of America Industries Corporation pleaded guilty to fixing prices and was fined Cnd\$300,000. Ibiden's guilty plea concluded the Bureau's investigation into the isostatic graphite conspiracy.

57. In October 2007, the Bureau obtained a total fine of Cnd\$3.645 million from the Bayer Group for its role in three international price-fixing conspiracies in the rubber and chemicals industry. Bayer AG was fined Cnd\$2.9 million for its part in a rubber chemicals conspiracy and \$400,000 for its role in a nitrile rubber conspiracy. Bayer Corporation, the wholly owned US subsidiary of Bayer AG, was fined Cnd\$345,000 for participating in a conspiracy to fix the price of aliphatic polyester polyols made from adipic acid. These products are used in an array of consumer products including furniture, synthetic leather and surface coatings. In each matter, Bayer pleaded guilty to violating section 45 of the *Act*.

58. In November 2007, the Bureau concluded a lengthy investigation into a conspiracy in the graphite electrodes market when SEC Carbon Limited (“SEC”) of Japan pleaded guilty to participating in a cartel and was fined Cnd\$250,000 by the Federal Court of Canada. Graphite electrodes are an essential component in the steel production process. Between 1992 and 1997, the world’s major graphite electrode manufacturers, including SEC, agreed to fix prices and volumes sold in various markets and to divide world markets. SEC supported this international conspiracy in Canada by not selling graphite electrodes to Canada during this period. SEC is the eighth party to be convicted in Canada for participating in the graphite electrodes cartel. Nippon Carbon Company Limited, UCAR Incorporated, SGL Carbon Aktiengesellschaft, Tokai Carbon Company Limited, Mitsubishi Corporation and two former UCAR International Incorporated executives, Robert P. Krass and Robert J. Hart, were previously fined a total of nearly Cnd\$25 million for their roles in this international conspiracy.

59. The Society of Obstetricians and Gynecologists of Canada (“SOGC”) requested a written opinion from the Bureau to determine whether a proposed agreement to reduce oral contraceptive (“OC”) samples distributed to health professionals, between the SOGC and four major pharmaceutical companies in Canada would raise concerns under the *Act*. The Bureau assessed the proposed agreement under the conspiracy provisions of the *Act*. The Bureau concluded that the Agreement would not likely restrict competition in the OC market or cause significant change to the effective price of OCs for consumers in Canada.

60. As part of its active monitoring of Canadian retail gasoline markets, the Bureau became aware of allegations of price-fixing at gas stations in Victoriaville, Quebec. The evidence gathered during the Victoriaville investigation led to further probes in other local markets in Quebec, namely Thetford Mines, Sherbrooke and Magog. In conducting its investigation, the Bureau uncovered evidence of agreements between competitors to fix the price at the pump at which gasoline was sold to consumers. The evidence indicated that participants in the targeted markets carried out the conspiracy mainly by phoning each other to agree on the price of gasoline and about the timing of price increases, contrary to section 45 of the *Act*. A number of investigative tools were used, including wiretaps, searches and the Bureau’s Immunity Program. Following the execution of search warrants, corporations approached the Bureau to co-operate in the investigation.<sup>1</sup>

#### 3.1.4 Bid-rigging

61. In October 2007, a preliminary inquiry was held in the case against Electromega Limited and its president, Alain Lamoureux, as well as Les Technologies Tassimco Canada Incorporated and its vice-president, Conrad DiPietro, who 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 as part of an energy efficiency global plan initiated by Hydro-Quebec. The purpose of the plan was to replace all incandescent signal lights on public roads with light-emitting diode (LED) technology lights. All accused were committed for trial on the charges as laid.<sup>2</sup>

62. In March 2008, there was a stay of proceedings in the case against Joël Perreault, appraiser for Les Entreprises Promécanic Limited (“Les Entreprises Promécanic”), who had been charged under sections

---

<sup>1</sup> On June 12, 2008 the Bureau announced that criminal charges were laid against 13 individuals and 11 companies accused of fixing the price of gasoline at the pump in Victoriaville, Thetford Mines, Magog, and Sherbrooke. Three companies and one individual pleaded guilty for their part in criminal conspiracies to fix the price of gasoline in these communities.

<sup>2</sup> The trial is scheduled for November 2008.

64 and 65 of the *Act* with obstructing the course of an investigation and destroying documents during the execution of a search warrant in the offices of Les Entreprises Promécanic.

### **3.2 Mergers and Acquisitions**

#### *3.2.1 Statistics on Mergers Notified and/or Controlled under the Competition Act*

63. During the 2007-2008 fiscal year, the Bureau's Mergers Branch concluded 340 merger examinations, with 18 examinations still ongoing at year-end. With respect to the concluded examinations, three concluded with agreed remedies, including two examinations that resulted in consent agreements and one examination where the Bureau was satisfied that remedies required by foreign agencies resolved Canadian competition concerns; one transaction was abandoned by the parties as a result of the Commissioner's concerns about the competitive effects of the merger; and 270 examinations posed no issues under the *Act*, 222 of which resulted in the issuance of advance ruling certificates.<sup>3</sup>

#### *3.2.2 Summary of Significant Cases*

64. On January 29, 2007 Abitibi-Consolidated Incorporated ("ACI") and Bowater Incorporated ("Bowater") announced their intention to merge. ACI is a global forest products company headquartered in Montréal, Québec, and Bowater is a forest products company headquartered in Greenville, South Carolina. Over the course of its review, the Bureau identified potential competition issues in several markets, including the sale of newsprint and certain grades of uncoated groundwood paper. While the Bureau had a number of concerns, it concluded that there were then insufficient grounds to support initiating proceedings before the Tribunal under the merger provisions of the *Act*.<sup>4</sup>

65. On February 1, 2007 Labatt Brewing Company Limited ("Labatt") announced that it intended to acquire Lakeport Brewing Income Fund ("Lakeport"). Both firms were brewers in the Ontario beer market, with Lakeport being a major influence in the discount segment of the market. In March 2007, the Commissioner brought an application to the Tribunal under 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. After a two day hearing, the Tribunal issued an order dismissing the Commissioner's application, and the parties completed the merger. The Commissioner appealed the Tribunal's decision. The appeal was heard on January 22, 2008 and the Federal Court of Appeal dismissed the Commissioner's appeal.

66. In November 2007, the Commissioner sought 15 production orders under section 11 of the *Act*, which were granted by the Federal Court. Two respondents subsequently challenged these orders and arguments. On January 28, 2008 the Court set aside two of its orders on the basis of its finding that certain material facts were not disclosed. This ruling was made without prejudice to the Commissioner's right to bring fresh applications for further orders under section 11 of the *Act* on notice to the respondents. Following the ruling, the Bureau consented to vacating the orders of the remaining 13 respondents. At year-end, the Bureau's inquiry into the Labatt/Lakeport merger continues.

---

<sup>3</sup> 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 unless new information is received that is substantially different from that which formed the basis for issuing the certificate.

<sup>4</sup> For more information on this case, please refer to the Technical Backgrounder published on the Bureau's Web site at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).



67. On March 12, 2007 Schering-Plough Corporation (“Schering-Plough”) announced its intention to acquire Organon BioSciences N.V. (“Organon”) from Akzo Nobel N.V. Schering-Plough is a global health care company organized around three business segments: prescription pharmaceuticals, consumer health care and animal health. Organon is a global pharmaceutical company that develops and markets drugs targeting both human and animal therapeutic uses. Over the course of its three month review, the Bureau interviewed more than 60 industry stakeholders, and worked in cooperation with other jurisdictions, including the USFTC and the EC DG Competition. The parties overlapped in two main categories: human health and animal health products. While the Bureau was initially concerned, further analysis revealed that the proposed transaction was not likely to lead to a substantial lessening or prevention of competition in any relevant market.<sup>5</sup>

68. In May 2007, Thomson Corporation and Reuters Group PLC announced their plans to merge to create a major global provider of financial market information services. European and American antitrust authorities required the divestiture of copies of historical market data accumulated by the merging parties to enable a competitor to provide comparable services, thereby resolving their competition concerns. The databases to be divested did not discriminate on a national basis and the global scope of the remedy was sufficient to alleviate the Bureau’s competition concerns, as accompanied by written commitments concerning the implementation of the divestitures in Canada.

69. On July 5, 2007 the Bureau announced the finalization of a series of remedies to maintain and promote competition in the grain handling industry in Western Canada. Those transactions resolved competition concerns that arose from a series of mergers in the grain industry. The Bureau concluded that the following divestitures were required to eliminate the substantial lessening of competition resulting from Saskatchewan Wheat Pool’s (“SWP”) acquisition of Agricore United (“AU”)<sup>6</sup> in June 2007:

- (i) AU completed the divestiture of its grain-handling terminal in the Port of Vancouver to Alliance Grain Terminal Limited. This divestiture was made in accordance with the October 2002 consent agreement made between the Commissioner and United Grain Growers Limited (“UGG”), and was required to eliminate the substantial lessening of competition resulting from UGG’s acquisition of Agricore Cooperative.
- (ii) SWP completed the sale of nine inland grain elevators and a port terminal elevator in the Port of Vancouver to Cargill Limited. This transaction was completed as required by the March 2007 consent agreement between the Commissioner and SWP. In addition, SWP terminated the Pacific Gateway Terminal Limited, a joint venture with James Richardson International (“JRI”), and as a result of this withdrawal, the Commissioner withdrew the pending application before the Tribunal formally challenging this joint venture.
- (iii) As regards to JRI’s acquisition of certain AU inland grain elevators from SWP, the Commissioner and JRI also entered into a consent agreement in July 2007, whereby JRI divested two inland grain elevators in order to eliminate the substantial lessening of competition in local markets resulting from the transaction.

---

<sup>5</sup> For more information on this case, please refer to the Technical Backgrounder published on the Bureau’s Web site at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).

<sup>6</sup> Agricore United is the merged entity of United Grain Growers Limited and Agricore Cooperative.

70. On August 13, 2007 Akzo Nobel N.V. (“Akzo”) announced that it would acquire all of the issued and outstanding shares of Imperial Chemicals Industries PLC (“ICI”). The Bureau launched an investigation along with other competition authorities including the EC DG Competition. Based on information obtained from the parties and other industry participants, the Bureau concluded that the proposed acquisition was likely to result in a substantial lessening and/or prevention of competition in the wholesale (upstream) supply of decorative coatings in Quebec. To resolve these competition issues, a consent agreement between the Commissioner and Akzo was entered on December 13, 2007 which required Akzo to divest its Crown Diamond and Para brands. On June 13, 2008 Sico Incorporated (a subsidiary of Akzo) entered into an asset purchase agreement to sell the required assets used with the Para and the Crown Diamond brands to General Paint Corporation.<sup>7</sup>

71. On December 20, 2007 American Iron & Metal Incorporated (“AIM”) submitted a complete Long Form Filing pursuant to section 114 of the *Act* with respect to the Proposed Acquisition of SNF Incorporated (“SNF”). This merger involved the two leading scrap metals collectors and processors in Eastern Canada. On January 28, 2008 the Bureau applied to the Tribunal pursuant to section 100 of the *Act*, seeking to prevent the closing and/or implementation of the transaction. Subsequent to this application, the Bureau negotiated and obtained a consent agreement requiring AIM to preserve certain assets for a period of 60 days while the Commissioner completed the review. The proposed transaction closed under the consent agreement on February 5, 2008.<sup>8</sup>

### **3.3 *Misleading Advertising and Deceptive Marketing Practices***

#### **3.3.1 *Criminal***

72. On April 27, 2007 the Bureau announced that the Superior Court of Quebec had imposed an eight year prohibition order under the *Act* on the former President of NSV Nutrinautes Incorporated, Richard Guertin, which prohibits him from engaging or becoming involved in any future multi-level marketing plans.

73. On May 29, 2007 the Bureau announced that Michael Mouyal, of Montreal, Quebec had been fined Cdn\$1 million for his role in a deceptive telemarketing scam that generated over Cdn\$136 million in deceptive sales during a six year period. In addition, Mr. Mouyal received two years probation, 240 hours of community service and a ten year prohibition order. Mouyal operated the scam under a number of names, including Commercial Business Supplies, Merchant Transaction Supplies, Merchant Supply Services and International Business Directories.

74. On June 12, 2007 the Bureau announced that criminal charges had been laid against three individuals allegedly involved in deceptive telemarketing activities in Montreal, Quebec. The scam targeted businesses, not-for-profit organizations and government agencies across Canada, and invoiced them for toner cartridges that they did not order nor want. The accused are Emilio Ciciola, Johanne Marzitelli, and Ronald Macdonald all of Montreal. Also charged are the companies: Laser Depot (9128-6815 Quebec Incorporated), Corporate Supply Center (9070-6136 Quebec Incorporated) and Marketing Vision Directe Incorporated.

75. On August 20, 2007 the Bureau announced that a Toronto, Ontario telemarketing operation working under the names Business Supply Centre and National Supply Centre (company 1462986 Ontario Incorporated) had been fined Cdn\$804,308 for its role in a deceptive telemarketing scam that sold toner to

---

<sup>7</sup> The Commissioner approved the divestiture on June 27, 2008, allowing it to proceed.

<sup>8</sup> The consent agreement expired on April 5, 2008 and at year-end, the Bureau’s inquiry was ongoing.

businesses, not-for-profit organizations, churches, schools and government agencies across Canada. Andrew James Wilson, the registered Director of the company, pleaded guilty on behalf of himself and the company to contraventions of the telemarketing provisions of the *Act*. The Ontario Court of Justice handed Wilson a 15 month conditional sentence and both Wilson and the company are prohibited from engaging in any form of telemarketing for a period of ten years. The scam generated over Cdn\$4 million in revenues during a six year period.

76. On September 5, 2007 Oleg Alex Oks and Aleksandr Oks of Richmond Hill, Ontario pleaded guilty to criminal charges of deceptive telemarketing under the *Act*. Oleg Oks, the principal director behind the pre-approved credit card scam, was sentenced to one year in jail and two years probation. Aleksandr Oks, also a director, received a six month conditional sentence and 12 months probation. Both accused are prohibited for a ten year period from engaging in any form of telemarketing. The Oks' schemes involved targeting low-income Americans advising them that they had been pre-approved for Visa and/or MasterCard credit cards, for an up-front fee varying from US\$199 to US\$399.

77. On October 2, 2007 the Bureau announced that following an investigation with its Toronto law enforcement partners, Luigi Arieh Rozin, operator of Government Policy Research Group Incorporated, pleaded guilty to violating the false and misleading provisions of the *Act*.

78. On February 21, 2008 the Bureau announced that following a search conducted with its law enforcement partners in the Toronto Strategic Partnership, two operators of an alleged "Secret Shopper" scam had been arrested. Christopher Nduka and Alicia Obermuller of Brampton, Ontario operated an alleged cheque scam by mailing letters to US residents stating that they had won a lottery or were selected to be a secret shopper. The two accused had been allegedly operating fraudulent schemes since January 2005.

79. On March 17, 2008 the Bureau announced that criminal charges had been laid against four individuals, working for Global Management Solutions and Commutel and Marketing USA, allegedly involved in deceptive telemarketing activities in Quebec. These activities are estimated to have generated approximately Cdn\$9.3 million in revenue during the alleged scam, which targeted small and medium sized businesses by charging them for compact disk directories that they did not order.

### 3.3.2 *Civil*

80. On April 12, 2007 the Federal Court of Canada granted the Bureau a default judgment against Polar Spas, a Calgary-based hot tub dealer, and Ken Nickel, company president, for breaking their commitments to pay monetary penalties in settling an inquiry under the deceptive marketing provisions of the *Act*.

81. On May 8, 2007 the Bureau applied to the Tribunal for an order requiring Premier Career Management Group and its president, Minto Roy, to cease engaging in deceptive marketing practices and to pay an administrative monetary penalty.

82. On July 31, 2007 the Bureau reached an agreement with ADL Tobacco, Similar Tobacco Corporation, Kretek International Incorporated, Walking Smoke Distribution Incorporated, Bastos Du Canada Limitée and Abenakie Enterprises/Choice Tobacco to discontinue the use of descriptors "light" and "mild" on their cigarette packaging by December 31, 2007.

83. On November 27, 2007 the Bureau announced that it had reached a consent agreement with Premier Fitness Clubs, resolving its concerns over some of the company's advertising practices from 1999 to 2004. The agreement was filed with the Tribunal.

84. On February 11, 2008 the Bureau announced that the Tribunal had ordered Imperial Brush Company Limited and Kel Kem Limited (carrying on business as Imperial Manufacturing Group – “IMG”) to stop making claims that its chimney cleaning and conditioner products reduce creosote or prevent chimney fires. The Tribunal ruled that IMG had contravened the *Act* by making performance claims relating to its products that were not supported by adequate and proper tests and ordered the company to pay an administrative monetary penalty of Cdn\$25,000.

### 3.3.3 *Voluntary Compliance*

85. On August 1, 2007 a Bureau inspection of ultraviolet protective clothing found that most, but not all, such garments live up to their stated levels of protection. The Bureau encourages consumers to read product labels carefully and to educate themselves about the information they provide.

86. On November 16, 2007 the Bureau announced that Vancouver-based Lululemon Athletica Incorporated had agreed to remove all claims alleging therapeutic benefits from its VitaSea line of clothing products, which had been marketed throughout its 40 retail store network.

87. On December 6, 2007 the Bureau undertook an initiative to ensure that consumers receive proper disclosure of any terms and conditions that affect the value and use of prepaid long distance telephone calling cards. The Bureau will be contacting providers of prepaid telephone cards across Canada to ensure that these businesses disclose more information on the cards themselves and in related advertising material.

### 3.3.4 *Activities and Awards*

88. On September 21, 2007 the Bureau announced that it had received the 2007 Edward Mazak Advancement in Public Awareness Award in recognition of its efforts to focus consumer attention on important health fraud issues through its Fraud Prevention Forum work.

89. On November 7, 2007 the Community of Federal Regulators recognized the outstanding work of the Bureau's Project FairWeb with an award for innovation. Project FairWeb was launched in 2004 as the Bureau's first dedicated Internet surveillance and enforcement program aimed at combating misleading and deceptive advertising found on the Internet.

90. On March 19, 2008 the Bureau launched the Fraud Awareness for Commercial Targets Campaign (“FACT”), an outreach and education initiative that provides businesses and not-for-profit organizations with the tools necessary to avoid becoming victims of fraud. The campaign provides practical Web-based tools to these businesses so that they can recognize and stop fraud before they are scammed.

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

91. In 2007-2008, the Bureau made a number of interventions in various sectors including transportation, telecommunications, the professions and pharmaceuticals. The following pages summarize these interventions, their outcomes and potential benefits for Canadians.

## 4.1 *Transportation*

### 4.1.1 *Marine Transportation: Submission on Canada Marine Act Review*

92. 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 service; and shipping in domestic waters (coasting trade). Regarding CPAs, the Bureau made the following recommendations: adopt a for-profit objective for the CPAs; select the Board of Directors for each CPA competitively by designated groups or appoint Directors according to the interests they represent; eliminate regulatory constraints that reduce the freedom of CPAs to engage in non-port activities (restrict CPAs from borrowing money, prevent CPAs from merging, do not further extend the financial responsibilities of the Crown, give consideration to privatize CPAs in the medium term to ensure profit maximization, restrain the competitive advantages of the CPA subsidiaries when competing for CPA business and legislate access to CPAs); and ensure that no exemption from the *Act* is introduced with regard to CPAs and marine terminal operators. Regarding pilotage, the Bureau advocated introducing competition in the provision of pilotage services. The recommendations were to abolish the statutory monopoly of the pilotage authorities in providing pilotage services; create and accreditation body for licensing pilots; allow tariffs to be determined by competitive forces; and apply the present limited requirements to all accredited pilots.

93. Bill C-23, An Act to amend the *Canada Marine Act, Canada Transportation Act, the Pilotage Act* and other Acts in consequence” was introduced on November 16, 2007. This bill would strengthen the operating framework for CPAs by modifying the current borrowing regime, providing for access to contribution funding, and clarifying some aspects of governance. The amendments would also include provisions regarding amalgamation of CPAs and introduce new provisions to make the enforcement of minor violations easier to manage. A number of policy initiatives were also introduced to modernize the National Marine Policy by: promoting the success of ports for the purpose of contributing to the competitiveness, growth and prosperity of the Canadian economy; streamlining the process for borrowing limits; and enhancing flexibility in management of port lands.<sup>9</sup>

94. Bill C-64, An Act to amend the *Pilotage Act*, was first introduced on June 19, 2007 was reintroduced as Bill C-4 on October 26, 2007. The five key amendments help to ensure the financial self-sufficiency of pilotage authorities while maintaining high levels of safety. More specifically, the amendments include the following: the objectives that an Authority has to consider as a requirement of financial self-sufficiency; to ensure flexibility to conduct an investigation to the Minister when a notice of objection 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 Authority 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 provision of pilot services.

### 4.1.2 *Air Transportation: Submission to the Competition Policy Review Panel*

95. On January 11, 2008, the Bureau made a submission to the Competition Policy Review Panel. In its submission, the Bureau supported the reduction or elimination of foreign ownership restrictions on Canadian air carriers. It indicated that there does not appear to be any compelling economic reason why the air transportation sector should continue to have such restrictions. It supported the elimination of ownership restrictions, raising it to 49.9 percent from 25 percent as a first step. To enhance competition in domestic routes, the Bureau advocated a ‘Canada-only

---

<sup>9</sup> On June 18, 2008 amendments to the *Canada Marine Act* received Royal Assent.

carrier' model licensed to serve only domestic routes which could be entirely foreign-owned. The Bureau also proposed unilateral cabotage (i.e., rights of a foreign carrier to operate within the domestic borders of another country).<sup>10</sup>

#### 4.1.3 *Rail Transportation: An Act to amend the Canada Transportation Act (railway transportation)*

96. Since 2000, the Bureau has made several submissions to the *Canada Transportation Act* Review Panel on how to improve the competitive access provisions in the rail sector. On October 29, 2007 Bill C-8 - An Act to amend the *Canada Transportation Act* (Railway Transportation) - pertaining to amendments to the rail freight provisions of the *Canada Transportation Act*, was tabled in the House of Commons. The amendments in the bill included removing the substantial commercial harm test for inter-switching rates and competitive line rates; increasing the notice period provisions for rates; permitting the Agency, upon complaint by a shipper, to conduct its investigation on charges and incidental charges and to establish new charges; ensuring that the discontinuance process applies to railway lines that are leased to local railway operators and subsequently revert to a federal railway; requiring railways to publish a list of rail sidings available for grain producer car loadings together with a 60 day notice period before removing such sidings from operation; extending the final offer arbitration to groups of shippers; and allowing for the suspension of any final offer arbitration process, if agreed to by the parties to mediation. Bill C-8 received Royal Assent on February 29, 2008.

## 4.2 *The Professions*

97. The Bureau completed its *Study of Self-Regulated Professions* in December 2007<sup>11</sup>, which found that rules that limit advertising, set prices for services and restrict who can offer professional services may go further than necessary to protect the public interest. These rules can lead to higher prices, limit choice and restrict access to the type of information consumers need to make decisions. The Bureau's study focused on five professions: accountants, lawyers, optometrists, pharmacists and real estate agents. While the examples contained within the study are based on these five professions, the principles and findings can be applied to any self-regulated profession. Since its completion, several professional groups have contacted the Bureau to discuss the study. While some are still in the process of studying the recommendations, others have indicated that they are in the process of revising their regulations and some have already put new ones in place as a result of the Bureau's study. In two years time, the Bureau plans to assess what progress the five professions studied have made in implementing the recommendations.

### 4.2.1 *Dental Hygienists*

98. The Bureau continues to monitor progress in the provision of dental hygiene services. As of September 2007, dental hygienists in Ontario have been able to practice without a dentist, subject to certification by their regulatory body. This change in the legislation was in accordance with representations made by the Bureau in the previous year. The Bureau remains interested in the development of the market as these new participants seek entry. In December 2007, a letter to the Dental Industry Association of Canada was published expressing the Bureau's hope that dental suppliers were gaining the benefit of increased competition. There was concern that they may have been reluctant to supply hygienists when their traditional customers had long been primarily dentists.

---

<sup>10</sup> The Competition Policy Review Panel released its report on June 26, 2008. It urged the Federal Government to consider allowing foreign companies to establish airlines in Canada that operate only within the country and to ender a decision on so-called "right of establishment" airlines by December 2009.

<sup>11</sup> The Study is available on the Bureau's Web site at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).

99. Also in December 2007, Nova Scotia passed the legislation upon which the Bureau made representations which permits independent practice by dental hygienists. The legislation has yet to be proclaimed and the Bureau continues to monitor the development of this situation with interest.

100. Since the publication of the Bureau's *Study of Self-Regulated Professions*, the Bureau has assisted various dental hygiene regulators in their attempts to apply the principles of that report to the regulation of hygienists and will continue those efforts with the forthcoming publication of a study on dentistry.

#### 4.2.2 *Dentists*

101. In March 2008, the Bureau announced that it would be conducting a study of the Canadian dentistry profession, which is self-regulating. Following on the heels of the 2007 publication of the Bureau's *Study of Self-Regulated Professions*, this study will look at restrictions that impede competition in the market for dentistry and related markets. Like the preceding study, the work will be based on an analysis of legislation, regulations, codes of practice as well as responses to a questionnaire and interviews with regulating bodies and associations. The study will also be informed by the knowledge gained in the Bureau's advocacy efforts regarding the emergence of dental hygienists as a competing profession to dentists for the provision of dental hygiene services.

#### 4.2.3 *Paralegals*

102. On May 1, 2007 the Law Society of Upper Canada became responsible for regulating the paralegal profession, as a result of amendments to the *Law Society Act* brought about by Bill 14. In this regard, the Bureau made a submission to the Paralegal Standing Committee on January 25, 2007. The Bureau's intention was to inform the committee of the Commissioner's role in the Canadian economy, as Bill 14 was proposing to bring the regulation of paralegal services under the auspices of the Law Society of Upper Canada. The Bureau's representations outlined the Commissioner's position on self regulated professions in general, and implored the Paralegal Standing Committee to consider the competitive effects of imposing potentially restrictive policies on their membership.

### 4.3 *Telecommunications*

103. On April 4, 2007 the Governor in Council issued its final Order Varying the Canadian Radio-television and Telecommunications Commission ("CRTC") Telecom Decision CRTC 2006-15 - Forbearance from the Regulation of Local Exchange Services. In addition to participating in the original proceeding leading to the decision in 2005, the Bureau had participated in the public consultation process relating to the order, recommending amendments to enhance jurisdictional certainty between the CRTC and the Bureau in forborne local telephone markets. The final order contained two sets of criteria for local forbearance, one being the Bureau's proposed criteria from the original proceeding, and the other being a more streamlined test based on the presence of competing facilities-based providers. The CRTC has subsequently forborne from regulating both residential and business local exchange services in most major urban areas in Canada.

104. On May 25, 2007 and June 27, 2007 the Bureau made public written representations to the Spectrum Management and Telecommunications Branch of Industry Canada concerning the appropriate framework for the upcoming Advanced Wireless Services ("AWS") spectrum auction. Industry Canada had asked whether, given the state of the mobile wireless telephony market in Canada with three large incumbent providers, it was necessary to provide measures to encourage new entrants, such as setting aside spectrum. The Bureau's representations focused on identifying market power that might give incumbents the incentive to "hoard" spectrum and noted that if these conditions existed, a removal of foreign ownership restrictions on telecom carriers to allow large new entrants to compete would be preferable to

setting aside spectrum. The final framework set aside 40 MHz nationally for new entrants and the 2008 auction saw two to three new entrants purchase spectrum in most parts of Canada.

105. Throughout 2007, the Bureau participated in the CRTC's regulatory framework proceeding for wholesale and "essential" services. The CRTC had initiated a review of its definition of an essential service, to which access by competitors is mandated, based on the Bureau's framework for when denial of access to a facility could raise issues under the *Act* in its draft *Information Bulletin on the Abuse of Dominance Provisions as Applied to the Telecommunications Industry*.<sup>12</sup> The Bureau's position in the proceeding was that given the emergence of facilities-based competition from cable providers in most retail markets, the CRTC's wholesale access regime should have been circumscribed considerably. In its decision of March 3, 2008 the CRTC adopted a modified version of the Bureau's definition of an essential service and subsequently reduced the set of facilities and services to which it mandated wholesale access, although not to the extent the Bureau had recommended.

#### **4.4 Pharmaceuticals**

106. On September 28, 2006 the Bureau announced that it would be undertaking a study of the generic drug sector as part of its mandate as a competition advocate. The Bureau initiated this project in response to several studies that found the price of prescription generics to be high in Canada compared to other countries. In conducting the study, the Bureau relied on publicly available information, data purchased from data providers and information obtained from sector participants in interviews and contacts conducted between January and April 2007.

107. The *Generic Drug Sector Study* found that strong competition exists in the supply of many generic drugs, but that the benefits of this competition are not reaching the Canadian public in the form of lower prices. The Bureau found that, to compete for space on pharmacies' shelves, generic manufacturers offer rebates or other payments to pharmacies in most provinces. Under the present system, in most provinces, pharmacies have limited incentive to pass on these cost savings to those who pay for them - public and private plans, people paying out of pocket, and taxpayers.

108. The study concluded that shifting the focus of generic competition from the pharmacies to public and private insurers and consumers could provide Canadians with large savings. The Bureau is continuing its work in the generic drug sector by examining possible options for obtaining the benefits from competition and the impediments to their adoption. Further research and advocacy will focus on the design of generic drug plans, which has been identified as a major impediment to the realization of the benefits from generic drug sector competition. The Bureau released its *Generic Drug Sector Study* on October 29, 2007.<sup>13</sup>

## **5. Resources of Competition Authorities**

### **5.1 Resources Overall**

#### **5.1.1 Annual Budget**

109. In the 2007-2008 fiscal year, the Bureau received \$Cdn47.3 million in base budget.

#### **5.1.2 Number of Employees (person-years)**

---

<sup>12</sup> The Information Bulletin is available on the Bureau's Web site at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).

<sup>13</sup> The Study is available on the Bureau's Web site at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).



- 19 Economists
- 22 Lawyers and 2 Paralegals (employees of the Department of Justice and Public Prosecution Service Canada)
- 18 Paralegals (employees of Industry Canada -- Competition Bureau)
- 23 Executives, 250 Competition Law Officers (various professional backgrounds: lawyers, economists, etc.)
- 132 Support Staff (includes employees carrying out informatics, administrative services and support functions)
- 442 Bureau staff combined (excluding employees of the Department of Justice and Public Prosecution Service Canada)

### **5.1 *Period Covered by the Above Information***

April 1, 2007 to March 31, 2008

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

Civetinni, Sofia and Monteiro, Joseph, "Taxi and Limousine Industry in Canada", Canadian Transportation Research Forum Proceedings of the 2007 Annual Conference, Winnipeg, Manitoba, May 11 - May 14th, 2007, pp. 249-263.

Monteiro, Joseph and Gerald Robertson "Leading the Way - European Commission Proposes Repeal of Liner Shipping Conferences Exemption ", Canadian Transportation Research Forum Proceedings of the 2007 Annual Conference, Winnipeg, Manitoba, May 11 - May 15th, 2007, pp. 357-371.

Monteiro, Joseph and Gerald Robertson, "Canadian Transportation Networks", Canadian Transportation Research Forum Proceedings of the 2007 Annual Conference, Winnipeg, Manitoba, May 11 - May 14th, 2007, pp. 678-693.

Monteiro, Joseph and Gerald Robertson, "Milestones in Canadian Transportation - Rail and Air - Part I", Canadian Transportation Research Forum Proceedings of the 2007 Annual Conference, Winnipeg, Manitoba, May 11 - May 14th, 2007, pp. 565-579.

Monteiro, Joseph and Gerald Robertson, "Milestones in Canadian Transportation - Water and Highway - Part II", Canadian Transportation Research Forum Proceedings of the 2007 Annual Conference, Winnipeg, Manitoba, May 11 - May 14th, 2007, pp. 580-594.

Monteiro, Joseph, "Competitive Line rates/Competitive Connection Rates - Competitive Access II", Canadian Transportation Research Forum Proceedings of the 2007 Annual Conference, Winnipeg, Manitoba, May 11 - May 14th, 2007, pp. 784-798.

Brennan, Timothy J. and Alan Gunderson, "2006 in Competition Policy and Enforcement: An Economic Perspective", Canadian Competition Record, Summer 2007, pp. 67-93

Canadian Generic Drug Sector Study, Competition Bureau Canada, October 2007.

DAF/COMP(2008)18/4

Self-regulated professions: Balancing competition and regulation, Competition Bureau Canada, December 2007.