

CANADIAN COMPETITION LAW DEVELOPMENTS

Articles in this section were written by Lawson A. W. Hunter and John F. Blakney,
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DIRECTOR'S OFFICE FACED WITH MAJOR DECISIONS

In the first quarter of 1989 the Director's office has been faced with an unprecedented number of announced mergers which clearly have important implications for competition. The three most significant of these, all of which are still under review by the Director's office, are the Imperial Oil Limited acquisition of Texaco Canada Inc., the announced acquisition by Pacific Western Airlines Ltd., of Wardair Canada Inc., and the proposed joint venture between The Molson Companies Limited and Carling O'Keefe Breweries of Canada Limited in the brewery industry.

The announcement of these mergers has raised the profile of the Director's office with the public as there has been extensive media comment on the acquisitions. This comment has centered not only on the effects on competition, but also the implications of the *Free Trade Agreement* as a reason for the acquisitions and a concern about concentration of ownership in the Canadian economy. The New Democratic Party has announced its concern and indicated its intention to seek an emergency debate in Parliament when the House of Commons resumes sitting on April 3, 1989.

The Director issued a press release on January 20, 1989, announcing that his office would monitor all merger activity closely. Mr. Goldman stated:

I would like it to be clear that the *Competition Act* provides the authority to my office to examine mergers of all sizes in all sectors of the economy, and I will not hesitate to take whatever action is required to protect competition in the Canadian marketplace.

Mr. Goldman further stated that:

The Bureau of Competition Policy will use the necessary resources to ensure the review of these

matters is conducted in a careful, thorough and professional manner. In this regard, the Bureau will continue to make use of in-house expertise as well as industry experts retained on a case by case basis.

The attention these cases attracted in the media prompted the Director to issue a statement to the public about his intentions and the review process under the *Competition Act*.

It is noteworthy that all three of the above-noted transactions are also subject to review by other governmental agencies. The Imperial-Texaco acquisition has already been approved by Investment Canada, although based on the undertakings Imperial gave to the Director to take whatever action was necessary to alleviate the Director's concerns in the downstream sector in the petroleum business. A decision by the Director on the Imperial case is expected in mid-April. It appears likely at this time that at a minimum, the case will result in, a consent proceeding before the Competition Tribunal.

The Molson-Carling merger is also being reviewed by Investment Canada. It is not expected that a decision will be made in this case, by either agency, for a month or two.

The airline merger is subject not only to review under the *Competition Act*, but also under the *National Transportation Act*. The National Transportation Agency (NTA) has already announced that it does not believe the merger would operate to the public detriment because, in the absence of the merger, it was likely that Wardair would cease operating. There has been some negative reaction to the NTA decision, and it may be that the decision will be appealed by the Consumers' Association of Canada.

L.A.W.H.

CANADIAN COMPETITION POLICY RECORD

RESERVEC UPDATE: INTERVENERS' ROLE SETTLED

As a result of the finding of the Federal Court of Appeal that the Competition Tribunal had erred in its interpretation of section 9 of the Competition Tribunal Act which provides that interveners may make representations before the Tribunal, the Tribunal, at a prehearing conference held January 9, 1989 reheard the submissions with respect to the role of interveners in the Reservec computer reservation system merger proceeding (see December 1988 CCPR for discussion of the Federal Court of Appeal Decision).

Prior to deciding the interveners' motions for representation rights, the Tribunal first considered a motion of Air Canada/CAIL for postponement of consideration of this matter pending determination of their application for leave to appeal to the Supreme Court of Canada. That application for leave was heard on January 23 and leave was granted with the appeal date set down as March 1, 1989. After hearing the appeal on that date, the Supreme Court dismissed the Appeal from the bench.

In addition, the respondents requested postponement of examinations for discovery which the Tribunal, in its November 1988 procedural Order, had stated were to be completed by January 23, 1989.

The respondents' motion for postponement of the determination of the interveners' role was denied by the Tribunal on the ground that the respondent would incur no prejudice by a decision at that time. In dealing with this motion the Tribunal again took the opportunity to criticize the parties for the time consumed prior to the commencement of the hearing of the Director's case:

As was noted to counsel at the prehearing conference and as has been noted on several occasions previously, there has been far too much delay by counsel in proceeding with this application. The pursuit of complex litigation should not be an exercise in guerilla warfare with one side or the other protracting the proceedings by failing to treat the pursuit of the litigation as a priority matter. The Tribunal is not speaking of delay which amounts to an abuse of process but of the kind of delay which many counsel think that it is their automatic right to provoke or tolerate as part of the normal litigation process.

The Tribunal is speaking of delay which is occasioned by counsel who consider that the speed of litigation through the courts is to be determined by their personal competing commitments rather than by the need of the expeditious completion of particular cases. None of the parties in this case are without the required resources: all of them surely can marshal sufficient legal assistance to allow the case to be proceeded with expeditiously. Delay which is created by litigation conducted in a non-expeditious manner is the main cause of the dissatisfaction which exists generally with court proceedings and adjudicative processes. The Tribunal does not want to leave the impression that all counsel involved in this litigation have been proceeding in this fashion. Some have not. However, the Director's application was filed on March 3, 1988. If it is held as presently scheduled, on April 3, 1989, thirteen months have elapsed. It is now eleven months since the application was first filed. What is more, that application was not a surprise to any of the parties at the time it was filed. The parties had been in communication during the previous year for the purpose of trying to negotiate a settlement of the dispute between them. In the circumstances the basic issues, the areas of dispute and most of the relevant documentation would have been known to both parties before the commencement of the litigation. One only has to review the respective affidavits of documents of the parties to realize that this is the case.

In dismissing the respondents motion for delay of discoveries, the Tribunal concluded that although some documents were produced to the respondents by the Director only shortly before the January preconference hearing, no undue prejudice to the respondents would arise by this late production period. However, the Tribunal did accept a delay of completion of discoveries to February 17, 1989, which had been previously agreed to by counsel.

With respect to the role of interveners, first, the Tribunal concluded that the decision of the Federal Court stating that interveners must have an opportunity at the discretion of the Tribunal to introduce evidence to underpin their arguments does not require in this case the involvement of interveners in the discovery process. Rather the Tribunal concluded that the Federal Court's decision would be complied with if interveners are given a right at some stage of the proceedings to apply to adduce factual evidence. However, the Tribunal restricted intervener applications to

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adduce factual evidence to specific situations where interveners determine that there is a lacuna in the evidence produced by the Director or the respondent. Those interveners who support the Director's position are permitted to apply to submit factual evidence after the Director has produced his evidence. Such an application must be in writing and must state what witness or witnesses the intervener desires to call; what questions the intervener anticipates asking those witnesses; to what issue the evidence sought to be adduced is relevant; that the evidence deals with the matter that has not been adequately covered in the evidence to date; that the Director had been asked to adduce such evidence and had refused; and that the evidence relates to a matter affecting the interveners. Intervenors supporting the respondents are permitted to reply in a similar fashion after the respondents have adduced their evidence and after they have first asked counsel for the respondents to adduce the evidence and have been refused.

On the other hand, the Tribunal decided that interveners may file affidavits of expert evidence in the same manner as parties, that is, served on the Tribunal and other parties 30 days prior to the commencement of the hearing. Such experts will not be examined in chief unless the Tribunal otherwise orders but must be made available at the hearing for cross-examination.

The Tribunal rejected the request of the respondents for discovery against interveners adducing evidence. The Tribunal concluded that any disadvantage or unfairness which the respondents perceived they might suffer as a result of interveners being able to file affidavits of expert evidence or being given an opportunity to adduce factual evidence can and should be addressed at the stage in the proceedings when there is some concrete evidence that such a disadvantage is occurring or is likely to occur. Specifically, the Tribunal suggested that it would be prepared to consider providing the respondents with an opportunity to deal with surprise or "ambush" evidence for example by providing an adjournment.

The Tribunal's Order emphasized the Tribunal's view that is adjudicating a *lis* between the Director and respondents:

The interveners play only a secondary role. It is anticipated that in most cases they will act through the Director so far as there is any evidence within their ken which is relevant to the matters before the Tribunal. That may not always be the case but it seems most probable that this is how the proceedings in general will unfold.

Finally, the Tribunal indicated that it would assess any request for cross-examination rights by an intervener in accordance with the same principles which it indicated it would apply to calling witnesses. Accordingly, it indicated that it was premature to issue a direction with respect to the role of interveners in cross-examination.

J.F.B.

CEMENT ACQUISITION RESTRUCTURED

CBR Cement Canada Limited sold two of 22 ready-mix concrete plants it proposed to acquire from Revelstoke Concrete Investment Inc., to satisfy the Director's concerns that the acquisition would not substantially lessen competition.

The acquisition involved CBR which already operates ready-mix concrete plants in Western Canada and Revelstoke which operated 22 ready-mix concrete plants in the three western provinces. The two companies competed directly in only five markets. In three of these, Saskatoon, Calgary and Edmonton, the Director concluded that because of low levels of concentration and effective competition remaining, there would not likely be a substantial lessening of competition. However, in Grande Prairie, Alberta, the merger would have combined the only two ready-mix operations. In Red Deer, the number of competitors would have been reduced from three to two, raising concerns about the effectiveness of remaining competition.

In light of these concerns, CBR divested of one ready-mix plant in Grande Prairie and one in Red Deer to Lafarge Construction Materials, a division of Lafarge Canada Inc. As a result of these divestitures, the Director is not challenging the acquisition.

L.A.W.H.

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**TRAILMOBILE COMPLETES
UNDERTAKINGS TO DIRECTOR**

The Director of Investigation and Research announced on January 9, 1989, that the Brantford Group of Companies Ltd., formerly known as The Trailmobile Group of Companies Ltd., had fulfilled its undertakings to sell all right to, title to and interest in the Trailmobile name and associated drawings and designs in the manufacture of highway trailer vans. The trade name and rights were acquired by Durabody and Trailer Ltd. of Bondhead, Ontario. Durabody manufactures truck bodies and trailer vans. It intends to continue the production and sale of Trailmobile trailers in Canada.

L.A.W.H.

**SCOTT ACQUISITION OF E.B. EDDY
TISSUE DIVISION ALLOWED TO
PROCEED**

On February 10, 1989, Calvin Goldman announced that he would not, at this time, challenge the acquisition by Scott Paper Limited of the Sanitary Tissue Division of E. B. Eddy Forest Products Limited.

After a thorough inquiry, the Director found that although the transaction would remove Eddy as an effective competitor and increase Scott's market share, the Director was satisfied that a number of other competitors should be able to provide effective competition in the market.

The Director, in reaching his decision, also took account of recent entry by other companies in the business, the influence of foreign suppliers and their proximity to the Canadian border, and the removal of tariffs from the United States by the end of 1992. He therefore found that "there were no significant barriers to entry into this market either by domestic or foreign producers."

In reaching his decision, Mr. Goldman also observed that most retail customers and competitors had expressed no concern about the merger. He also commented on Scott's expectations of achieving a number of important efficiencies as a result of the acquisition which should improve the company's domestic and international competitiveness.

**COMMODORE CONVICTED UNDER
COMPETITION ACT**

On January 31, 1989, the District Court of Ontario convicted Commodore Business Machines Limited of four offences under the *Competition Act* and imposed a fine of \$95,000 in total.

A fine of \$25,000 was imposed for disproportionate promotional allowances under section 51 of the *Act*. This is the largest fine ever imposed under this section, although there have been very few charges yet laid. The facts behind this charge stem from Commodore's offer of additional co-operative advertising allowances to Atlantique Video and Sound Centre Ltd. in Montréal, while not offering the same terms to Eaton's and F. W. Woolworth's.

A second conviction related to price discrimination. On this count Commodore granted volume rebates to Sears Canada Inc., and Zellers Inc., that were not offered to The T. Eaton Company Canada Limited and Hudson's Bay Company, even though the latter two companies purchased larger quantities of Commodore products than did Sears or Zellers.

The resale price maintenance convictions related to Commodore's attempt to influence a Fredericton, New Brunswick, retailer and a Québec-based buying group to raise their prices to levels suggested by Commodore.

The charges arise from activities which took place in 1982 and 1983. The employee in charge of marketing at that time is no longer employed by Commodore. The trial had also been delayed because of constitutional challenges to the seizure of the documents as a result of the adoption of the *Charter of Rights and Freedoms*. Commodore agreed to plead guilty to the charges and so the convictions were entered without contest.

L.A.W.H.

**ONTARIO COURT OF APPEAL
UPHOLDS ACQUITTAL OF
INDEPENDENT ORDER OF FORESTERS**

In a decision of the Ontario Court of Appeal released February 7, 1989, the court upheld the acquittal of the Independent Order of Foresters of

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15 charges of false advertising allegedly committed between the years 1981 and 1983. The court set out the facts as follows:

The facts are not really in dispute. To recruit the deputies, I.O.F. placed advertisements in newspapers throughout Canada. Generally speaking, these advertisements sought people for "sales supervision and management" positions "with potential commission earnings of \$25,000 and up in the first year". (Sometimes the advertisements would refer to "\$30,000 and up" or "\$25,000 - \$40,000" or "\$30,000 - \$50,000".) The advertisements asked the applicant to telephone a certain number and, when he did, he was given a recorded message from one of the officers of the company, who described certain "exclusive features" of the organization including "no canvassing", "no competition", no "lead problems", a "50% close ratio" and stated "you'll be assured of the opportunity to earn five to eight hundred dollars a week". The recording ended by inviting those interested to leave their names and telephone numbers.

Upon taking up that invitation the applicants were given an appointment for an interview and there they received background information about I.O.F. and were shown video cassette films. One was entitled "The Challenge of Forestry", which again made reference to potential earnings and "an unlimited source of prospects" and the opportunities for advancement. One film was called "You'll Never Walk Alone" and described the social activities of the members, the assistance available in adversity and the benefits of membership including "Forester Havens" in Florida and California, which were available as retirement homes. These homes were for members in good standing for fifteen years, aged 65 or over, who were in reasonably good health. It was stated: "there has never been a waiting list to enter these havens".

The court then reviewed the trial judge's consideration of the factual basis of the case and came to the following conclusion:

The trial judge was perhaps generous to the accused in his interpretation of the facts and the inferences to be drawn from the advertisements, but they were inferences drawn from facts he was entitled to find and, on the test propounded by Arnup J.A. in *Lowe, supra*, I cannot say he was wrong.

The court therefore dismissed the appeal.

In addition to dealing with the factual conclusions to be drawn from the evidence, the Court of Appeal also dealt with two other issues that had been raised in the judgment of Judge Whealy when he acquitted the accused in the first

instance. Judge Whealy had found that subsection 52(1), when it referred to representations made to "the public" meant only the consuming public and not advertisements directed to applicants for employment. The Court of Appeal stated in overturning this finding:

I cannot see any ground for so limiting the application of the section. It seems to me that any representation to potential salesmen to recruit them in order to recruit others to membership is very much "for the purpose of promoting, directly or indirectly, any business interest, by any means whatever." Nor can I see any reason for excluding potential salesmen who hitherto had no connection with the company from "the public" to whom the representation is made.

The Court of Appeal also dealt with the findings of the trial judge on the "regulated industries doctrine." Judge Whealy had found that because the Independent Order of Foresters is subject to provincial control or regulation under the *Insurance Act of Ontario* it could not be subject to the restrictions with respect to misleading advertising contained in the federal *Competition Act*. The Court of Appeal, relying on the Supreme Court of Canada judgment in the *Jabour* case said that the regulated industries doctrine means:

...that a person obeying a valid provincial statute may, in certain circumstances, be exempted from the provisions of a valid federal statute. But there can be no exemption unless there is a direction or at least an authorization to perform the prohibited act.

The court then found that there was no suggestion in the present case that "the *Insurance Act* authorizes, much less directs, I.O.F. to give false or misleading representations or to make any representations that might be deemed false or misleading, to the public."

The Court of Appeal, therefore, on these important legal principles, overturned the findings of the trial judge, although the court did sustain the ultimate acquittal based on the factual findings.

L.A.W.H.

DIRECTOR'S ANNUAL REPORT TABLED

Consumer and Corporate Affairs Minister, Harvie André, tabled the Director of Research and Investigation's *Annual Report* for the year ending March 31, 1988, in the House of Commons and

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the Senate in December. Copies of the report were made available in January 1989.

The format of the report has been substantially revised and focuses, to a large degree, on the intense level of activity in the merger area. In commenting on this, Mr. Goldman, the Director, noted that the effective and expeditious manner in which his staff was able to carry out this function was largely due to a compliance-oriented approach, an open-door policy and a commitment to timely, fully-informed decisions.

Mr. Goldman also stated that the compliance-oriented approach was being used in the enforcement of other sections of the *Competition Act* as well, including the criminal provisions. He noted that several major inquiries were resolved through the use of prohibition orders on consent rather than contested litigation. He said that the use of such orders provides an effective remedy for consumers and results in considerable savings to tax payers. As two examples of this approach, he cited the prohibition orders issued against two county law associations in Ontario with respect to allegations of fixing legal fees for real estate transactions, and an order issued against Sears Canada in a case concerning performance claims for radial tires.

The Director also commented on his "selective and strategic approach" to regulatory intervention work. In particular, he commented on the Director's intervention in the Canadian Import Tribunal's hearing into allegations of dumping by Hyundai Motor Company of Korea. Mr. Goldman stated that "Hyundai is a good example of the kind of proceeding on which the Bureau should be focusing resources because of its wide-ranging effects."

The report, as usual, contained statistical information on the activities of the Director's office. In reviewing those statistics, it is evident that the number of examinations carried out under the *Act* (examinations are matters where two or more days of review are required in any enforcement matter, except misleading advertising) increased in 1987-88, presumably because of the large number of mergers now being reviewed. It is also interesting that the number of applications for six-resident inquiries under the *Act* increased in both 1986-87 and 1987-88 over previous periods. On the other hand, the number

of matters in which prosecutions or other proceedings were commenced in 1987-88 was somewhat lower than in previous years. This may reflect the change from criminal to civil provisions in the recent amendments to the *Act*. Interventions before federal and provincial regulatory tribunals has also declined, perhaps in part because of the more selective approach being used by Mr. Goldman and perhaps also because the opportunities for intervention at the federal level have decreased as deregulation of the Canadian economy increases.

Statistics with respect to the operation of the misleading advertising and deceptive market practices provisions also show some trends. First, the total number of complaints continues to increase. However, the number of matters referred to the Attorney General of Canada was at its lowest level in a number of years. Similarly, the number of proceedings commenced during the year, and the number of convictions, were the lowest numbers in recent years.

As a new feature, the *Report* contained a list of all mergers which were examined by the Director during fiscal year 1987-88. The *Report* lists only those mergers requiring two or more days of examination. It also reports only on mergers that were public knowledge. This list is highly informative in that it describes briefly the industry, the action taken by the Director, and the process the Director's office followed. For example, it indicates those transactions in which Advance Ruling Certificates were issued.

As usual, the *Report* lists inquiries which were discontinued during the year. Perhaps the most interesting of these was the announcement that the long-standing inquiry into newsprint was discontinued. This inquiry, which was being conducted under both the conspiracy and merger provisions of the *Act*, had started at the time of the Abitibi-Price merger in the mid seventies. Describing the discontinuance, the report states that "while no offence was disclosed, the possible existence of an agreement among newsprint producers was brought to light. After full inquiry, the Director determined that the existence of such an agreement could not be proven."

The *Report* also noted that the inquiry into the suppliers of rock salt was discontinued. Many municipalities complain frequently of a possible

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conspiracy among rock salt suppliers. The Director found that there was "no evidence that the practice of two firms in following the pricing of a third in posting freight-on-board prices for rock salt was the result of an agreement."

The *Report* also noted the discontinuance of the inquiry commenced at the direction of a former minister into allegations that three competing airlines in Canada had entered into a market sharing agreement. The *Report* states that "the existence of such an agreement could not be established, nor could it be shown that such an agreement, if established, would lessen competition unduly."

L.A.W.H.

SHELL CANADA CONVICTED OF RESALE PRICE MAINTENANCE

In a decision given orally by Mr. Justice Kennedy on February 27, 1989, the Manitoba Queen's Bench Justice convicted Shell Canada Products Limited of one count of resale price maintenance, contrary to paragraph 38(1)(a) of the *Competition Act* as it then was.

The facts of the case involved the relationship between Shell Canada representatives in Winnipeg, Manitoba, and an independent retailer operating under the name of Jet Car Wash. Shell Canada, along with certain other major Canadian petroleum companies, had instituted a rack price system for distributing refined gasoline products in 1986. As part of Shell's introduction of that policy, they had briefed their independent gasoline network, including Jet Car Wash representatives, as to how the new policy would work. The court found some uncertainty as to the implications of Shell's announced new policy, but it also found that the management of Jet Car Wash "knew that the independent dealers such as the Jet Car Wash had the autonomy to set their own prices either up or down."

Jet Car Wash, which sold gas along with a car wash service, was located approximately two blocks off a major Winnipeg thoroughfare, Portage Avenue. Jet Car Wash management was concerned with finding means of increasing sales during periods of inclement weather when its car

wash business was less active. They decided to experiment with a practice of lowering their prices during periods of inclement weather. On doing so for the first time, they were shortly thereafter contacted by Shell representatives. The nature of the interchanges between the Shell representatives and the Jet Car Wash operators was crucial in the court's final determination. In most major instances, the court found the testimony of the Jet Car Wash officials more reliable. The court found that in the course of these conversations, the Shell representatives "were attempting to influence upward and...discourage the reduction of the Jet Car Wash prices."

Having made that finding, it was necessary for the court to consider whether it was done by means of a threat as would be necessary to found a conviction. The court stated:

In ordinary language, the word threat is easily understood. It is an urged course of action which carries with it some sanction or penalty if not carried out. It is a form of intimidation, fulmination, harassment or warning which carries with it some form of penalty.

Counsel for Shell argued that the Shell representatives' conduct was nothing more than business counselling and not a threat. The court, however, found that in the circumstances, and given the fact that one Shell representative had taken time from his vacation to deal with the matter, it would not be illogical to conclude that the Jet Car Wash representatives might fear alienating Shell Canada and somehow prejudice their relationship with Shell. He also found that the Shell representative when speaking to the Jet Car Wash officials, used terminology such as "acting irresponsibly" and told them to "get the price back up." This language, especially in light of the easy means of terminating the lease with Jet Car Wash, "cannot be construed as anything other than a threat within the meaning of the *Competition Act*."

Mr. Justice Kennedy therefore convicted Shell Canada Products Limited of engaging in resale price maintenance.

In the subsequent hearing to determine sentence, Mr. Justice Kennedy imposed a fine of \$100,000, citing the significance of the events to a state of competition in Winnipeg.

L.A.W.H.

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**DIRECTOR ANNOUNCES
INTERMEDIATE DECISION ON ASEA
BROWN BOVERI INC. ACQUISITION**

On February 13, 1989, Calvin S. Goldman, Q.C. announced that he had concluded that the proposed acquisition of the electric power transmission distribution business of Westinghouse Canada Inc. by Asea Brown Boveri would likely substantially lessen competition in the market for large power transformers in Canada. As a result of this, the Director announced his intention to seek a remedial order under the *Competition Act* from the Competition Tribunal.

Asea Brown Boveri and Westinghouse, through its subsidiary Transelectrix Technology Inc., are the only manufacturers in Canada of very large transformers with a power rating greater than 400 MVA. In the range of 40 to 400 MVA, the two companies and Federal Pioneer are the only manufacturers in Canada.

In announcing his decision, the Director also disclosed that he is continuing his discussions with the party with respect to the transaction. The Director's announcement of his intention to file an application with the Competition Tribunal while he is continuing his discussions with the party reflects a change in policy on the Director's part. Previously, the Director made announcements only at the point when the matter was resolved, or an application was filed with the Tribunal. The Director's announcement of intermediate decisions provides the public with more information as to the review process under the *Competition Act*. It also places the parties to the transaction in the situation where they must respond to any concerns the Director may have if they are to avoid a hearing before the Tribunal. As no application has yet been made to the Competition Tribunal, it must be assumed that discussions continue between the parties and the Director at this time.

L.A.W.H.

**MERGER EXAMINATIONS UNDER THE COMPETITION ACT
STATISTICAL SUMMARY**

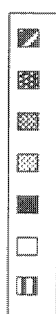
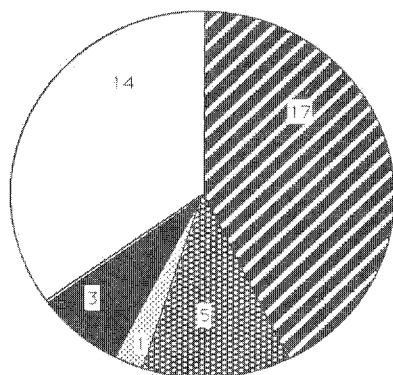
	1986-87 ¹	1987-88	1988-89 ²
MERGER EXAMINATIONS COMMENCED ³	40	146	193
EXAMINATIONS CONCLUDED			
Concluded as posing no issue under the <i>Act</i> ⁴	17	120	167
Concluded with Monitoring only ⁵	5	7	8
Concluded with pre-closing restructuring ⁶		2	1
Concluded with post-closing restructuring ⁷	1	2	3
Parties abandoned proposed merger in whole or in part as a result of Director's position	3	2	2
TOTAL EXAMINATIONS CONCLUDED	26	133	181
EXAMINATIONS ONGOING AT END OF PERIOD	14	25	35
APPLICATIONS BEFORE TRIBUNAL			
Concluded ⁸	1		1
Ongoing		2	2

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Notes

1. Statistics commenced on June 19, 1986.
2. Statistics to April 6, 1989.
3. Two or more days of review. Includes 132 prenotifications since July 15, 1987 of which:
 - in short-form (s.121): 1987/88 - 44 and 1988/89 - 35;
 - in long-form (s.122): 1987/88 - 24 and 1988/89 - 29.
4. Includes:
 - 75 Advance Ruling Certificates
 - 1986/87 - 2; 1987/88 - 26; 1988/89 - 47
 - 19 Advisory Opinions
 - 1986/87 - 3; 1987/88 - 10; 1988/89 - 6
5. All advisory opinions.
6. All advisory opinions.
7. 1 Advance Ruling Certificate and 5 Advisory Opinions.
8. These matters are counted under examinations concluded.

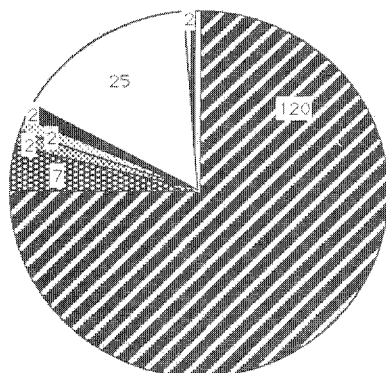
1986-87



Concluded as posing no issue under the Act	17
Concluded with Monitoring only	5
Concluded with pre-closing restructuring	0
Concluded with post-closing restructuring	1
Parties abandoned merger in as a result of Director's position*	3
Ongoing Examinations	14
Applications before Tribunal - Ongoing	0

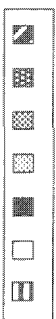
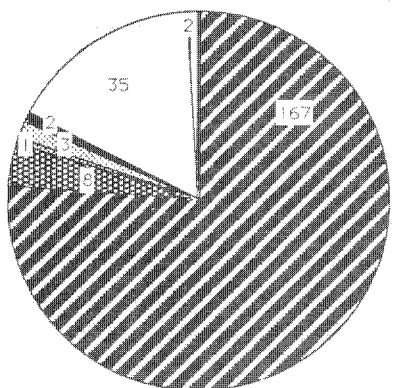
*One matter was the subject of an application before the Competition Tribunal.

1987/88



Concluded as posing no issue under the Act *	120
Concluded with Monitoring only	7
Concluded with pre-closing restructuring	2
Concluded with post-closing restructuring	2
Parties abandoned merger as a result of Director's position	2
Ongoing Examinations	25
Applications before Tribunal - Ongoing	2

1988/89



Concluded as posing no issue under the Act *	167
Concluded with Monitoring only	8
Concluded with pre-closing restructuring	1
Concluded with post-closing restructuring	3
Parties abandoned merger as a result of Director's position	2
Ongoing Examinations	35
Applications before Tribunal - Ongoing	2

*One matter, the subject of an application before the Competition Tribunal, was discontinued by the Director after provincial regulatory authorities prohibited parties from proceeding with the merger.