CANADIAN COMPETITION LAW DEVELOPMENTS

The articles in this section were written by Lawson A.W. Hunter, John F. Blakney and Brenda C. Swick-Martin of Fraser & Beatty, Ottawa.

UPDATE ON CONSTITUTIONAL CHALLENGES

There have been no decisions in the various constitutional challenges before the courts with respect to the conspiracy provisions of the *Competition Act* or the constitutionality of the Competition Tribunal.

With respect to the conspiracy challenges, the Nova Scotia Court of Appeals has reserved decision in the case involving the Pharmacists Association of Nova Scotia *R.* v *Nova Scotia Pharmaceutical Society et al (PANS)*. The argument was heard before the Court in March. A decision is possible in late spring or early summer. No time has yet been set for the Québec Court of Appeal to hear the case *(L'Association québecoise des pharmaciens proprietaires et autres (AQPP)* v. *R.* It is likely that the Court of Appeal will hear the case in its fall sitting.

As for the challenges to the merger provisions and the Competition Tribunal, the Québec Court of Appeal has heard the appeal in the challenge arising from the meat rendering (*Couture*) case. Again, judgment was reserved and a decision is likely in the late spring or early summer. The *NutraSweet* decision raises the same issues and will be heard at the time of the Federal Court of Appeal hearing on the appeal from the Tribunal's decision. No date has been set for a hearing of the appeal. *L.A.W.H.*

DIRECTOR FILES APPLICATION WITH COMPETITION TRIBUNAL IN ACQUISITION OF CANADA PACKERS INC.

On February 15, 1991, the Director filed an application with the Competition Tribunal with respect to the acquisition by Hillsdown Holdings (Canada) Limited of 56 per cent of the common shares of Canada Packers Inc. The application relates to the resulting indirect acquisition by Hillsdown of a subsidiary controlled by Canada Packers, the Ontario Rendering Company Limited, otherwise known as Orenco. The application seeks an order from the Tribunal directing Hillsdown and Canada Packers to dispose of the business of Orenco, or to dispose of certain assets with respect to the rendering businesses as may be determined by the Tribunal.

The application has a familiar ring to it, since it once again relates to the rendering business. It will be recalled that one of the Director's first challenges under the merger provisions, the *Couture* case in Québec, was with respect to the rendering business in that province.

Prior to the acquisition of Canada Packers, Hillsdown had acquired Maple Leaf Mills, which operates a rendering business under the name Rothsay. Rothsay and Orenco are direct competitors in Ontario and are in fact the two largest renderers in the province.

The Director alleged that the appropriate market for analyzing the effect on competition was the non-captive renderable material market, excluding poultry material. With respect to the geographic market, the Director alleged it is that area within 200 miles of any rendering facility. The Director also alleged that the market from a geographic perspective was limited by geographic boundaries such as the Great Lakes and the Canada-U.S. border.

In analyzing the market participants, the Director considered a number of operations in Ontario, most of which are integrated operations in the sense that their renderable material came

from affiliated operations. The two integrated market participants, other than Orenco and Rothsay, are J.M. Schneider Inc. and F.W. Fearman Company Limited. In addition, there are two small non-integrated renderers, Darling & Company and Banner Packing Ltd. Based on non-captive processing, Orenco and Rothsay together have approximately 59 per cent of the market.

In analyzing the statutory factors in section 93 of the *Competition Act*, the Director submitted that U.S. competitors would not likely be effective competition in the market. The Director also submitted that there are significant barriers to entry into the rendering business, not the least of which is the difficulty in obtaining regulatory approval from the Ontario Ministry of the Environment. In addition, the nature of rendering operations is such that many municipalities are not inclined to allow such facilities in their jurisdictions.

The Director also found that the non-integrated competitors, Darling and Banner, would not likely provide effective competition because of their size and other limitations. In particular, Darling is having difficulty renewing its lease at its Toronto facility, and its U.S. facilities would not likely be adequate substitutes. Furthermore, certain suppliers have concerns with respect to Darling's reliability.

The Director also alleged that Orenco and Rothsay were vigorous competitors prior to the acquisition. In particular, Orenco is alleged to have engaged in aggressive price competition with other renderers to obtain suppliers. The Director alleged that the merger might allow the combined operations to materially reduce the price paid for renderable material or otherwise impose charges and terms and conditions on suppliers of renderable material that would not exist in a competitive environment.

On March 18, 1991, the respondents filed their responses in the case. They have challenged the Director's market definition, whether the firms would face vigorous competition in the future, whether there would be any substantial lessening of competition, and other aspects of the Director's application. They also allege there will be efficiency gains sufficient to offset any lessening of competition which would arise from the acquisition. Finally, the respondents challenge the constitutionality of the *Competition Act* and the *Competition Tribunal Act* as being contrary to certain sections of the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights*. They also allege that the Competition Tribunal is unconstitutional under sections 96 to 101 of the *Constitution Act 1867*.

After filing the initial application, the Director sought an interim order from the Competition Tribunal to prevent Hillsdown from merging the two businesses and, in essence, to require the businesses to be held separate pending the disposition of the case. After initial opposition, Hillsdown ultimately consented to the order being granted.

One interesting aspect of this is the apparent ease with which the Director can satisfy the requirements to obtain interim relief. It may be recalled that the law allows interim relief to be granted by a single judicial member of the Competition Tribunal on the same basis as interim relief would be available in the courts. That normally is a relatively high threshold to meet. Nevertheless, the Director does not seem to be reluctant to apply for or to have difficulty in obtaining interim relief in merger cases. If this trend continues, it obviously strengthens the Director's hand in challenging mergers before the Tribunal. *L.A.W.H.*

OIL INDUSTRY UNDER REVIEW AGAIN

The Bureau of Competition Policy has once again launched an investigation into pricing in the gasoline business. Initially this stemmed from complaints received in the Ottawa area about large price differentials between the Ottawa market and other Ontario markets. In the latter, prices had declined rapidly in recent weeks, while prices in Ottawa remained high. The *Canadian Competition Policy Record* understands that the investigation now extends somewhat beyond the Ottawa area. However, it is not clear whether it is a formal investigation or simply an informal fact-finding effort by the Bureau. It seems likely that the Bureau will gather significant information from all the major gasoline retailers as part of the review. *L.A.W.H.*

SOUTHAM (B.C. NEWSPAPERS) UPDATE

The Director's application to the Competition Tribunal to prevent the merger of certain B.C. Lower Mainland newspapers and other newspapers into the Southam group was reviewed in the December 1990 *CCPR*.

Southam filed its response on February 21, 1991. Its principal differences with the Director relate to the definition of the appropriate product market. First, Southam denies that newspaper retail advertising constitute a single product market. Rather, it contends that there are two newspaper advertising markets: one represented by daily newspapers which cater primarily to major retailers and the mass media including national advertisers, and the other represented by community newspapers, which are more location selective and more dependent upon third party printed flyer advertising inserts.

Second, Southam contends that daily and community newspapers constitute different product markets from the consumer's point of view. The basis for this submission is that the two types of newspapers have different product characteristics, including different content, frequency of publication and circulation range. Southam argues that daily newspaper content is designed to have a broad appeal and that dealers will run community stories only if they are relevant to the entire readership of the daily newspaper. In contrast, the news content of community newspapers is intentionally location-specific and not as time-sensitive.

Further, Southam contends that, using a broad definition to substitute advertising vehicles for community newspapers, the merger does not result in a lessening of competition. For major retailers and mass media advertising, community newspapers are regarded as a complement rather than a substitute to daily newspaper advertising. The Southam response emphasizes that there is vigorous existing competition to community newspapers from other print advertising sources such as flyers, hand bills, direct mail, shoppers' directories and transit ads. The submission emphasizes the increasing importance of Canada Post's AdMail service as a substitute for newspaper flyer inserts. Southam also argues that there are very low entry barriers into the community newspaper business, and notes that other existing B.C. community newspaper chains may have the capacity to set up business in the affected areas very quickly in the event that a profit appears to be available.

With respect to the Southam acquisition of the *Real Estate Weekly*, the submission contends that advertising is not the relevant product market and that the Lower Mainland is not the relevant geographic market. Southam argues that daily newspapers are not perceived as an effective advertising vehicle by realtors due to the absence of home photos and to differences in quality, coverage and cost when compared to the *Real Estate Weekly*. Accordingly, Southam contends there is a very narrow product market definition for real estate advertising that covers only targeted pictorial publications. It notes that other newspapers and other publications carry pictorial real estate ads. Finally, Southam contends that realtor buyer power will mitigate any anti-competitive effects of the acquisition since realtors as a group, or particular firms, could simply take their advertising business away from the *Real Estate Weekly* and establish their own publication, as has occurred in other markets. It also argues that other community type newspapers and specialized print media, including flyers, carry advertising which is an effective substitute for the *Real Estate Weekly*.

In early March, the Director applied to the Competition Tribunal for an Interim Order pursuant to section 104 of the *Act*, requiring Southam to maintain the newspaper businesses in issue separately from its other B.C. businesses and to maintain them as viable ongoing enterprises. The Interim Order requested went beyond the hold-separate agreement arranged prior to the Director's application to the Tribunal. New provisions requested by the Director included requirements that the businesses in question not be divested, that no action be taken that might adversely affect the competitiveness of the businesses or jeopardize their future divestiture, that the businesses be maintained as separate operations independent of each other and of the Southam chain, and finally, that the current management be maintained but that an

independent "supervisor" be appointed to ensure effective implementation of the hold-separate arrangements.

Southam opposed the Interim Order application on the grounds that it was more burdensome than was necessary in the circumstances. It focussed on the independent supervisor proposal, which it likened to the appointment of a receiver to stand in between existing management interests and operations of the companies.

However, the parties ultimately consented to an interim agreement with only a slight modification of the supervisor concept. The agreement, which was approved on March 15 by the Competition Tribunal, provides instead for the appointment of "monitors" who may come from within the Southam group but who must be approved by the Director, and who may be replaced in the event that they cannot effectively discharge their responsibility of ensuring compliance with the full separate agreement. As well, the agreement provides for a more elaborate structure of Chinese walls between Southam and the acquired companies to preclude Southam from obtaining confidential business information and also for the maintenance of established contractual relationships between the community newspapers and their principal advertisers. *J.F.B.*

NUTRASWEET UPDATE

The decision of the Competition Tribunal that elements of NutraSweet's branded-ingredients strategy marketing of its aspartame sweetener constituted abuse of dominant position was reviewed in the December 1990 *CCPR*. Both NutraSweet and the Director have appealed the decision to the Federal Court of Appeal.

To date, the only substantive submission has been the Director's Memorandum of Fact and Law addressing NutraSweet's request to the Federal Court for a stay of the Tribunal's Order pending resolution of the Appeal. In this filing, the Director contends that the Federal Court lacks jurisdiction, either express or implied, to hear this stay application; that if it has jurisdiction it should exercise its discretion not to hear the application; and that if the application is heard, the established conditions for a stay have not been met.

With respect to the Court's jurisdiction, the Director's principal argument is that the express stay powers of the Court arising from section 50 of the *Federal Court Act* and the Court's Rules do not apply, as these are addressed to matters which do not constitute a final decision. (Decisions of the Competition Tribunal are to be regarded by the Federal Court of Appeal as judgments of the Federal Court Trial Division, and the decision in question is in fact a final decision of the case on the merits.) The Director also contends that the Court does not have implied jurisdiction by virtue of the statutory appeal power, since in his view such implied jurisdiction can only be found where operation of the Order, absent a stay, would render the appeal power nugatory.

The Director has also argued that the Court should decline to exercise any stay jurisdiction that it has. The Competition Tribunal is better positioned to determine a stay question, having regard both to the complexity of the case, its issues, and the overall record, and to the fact that determination of a stay request must necessarily have reference to the confidential record established, in this case, by the Tribunal.

In the event that the Tribunal hears the stay application, the Director has argued that the facts do not satisfy the three-part test for granting a stay pending appeal advanced by the Supreme Court in *Attorney General of Manitoba* v. *Metropolitan Stores Limited* (1987), 38 D.L.R. (4th) 321, at 332. The first test is whether there is a serious issue to be tried. The Director does not dispute this point. The second test is whether failure to grant a stay would cause irreparable harm to the party appealing the decision. The Director notes that the Supreme Court required evidence on such harm to be more than speculative. He goes on to contend that NutraSweet can still compete in the aspartame market in a variety of ways while complying with the Competition Tribunal's Order and that aspartame customers, according to the record of the Tribunal's proceeding, are likely to be slow to change suppliers. Accordingly, the Director concludes that, pending the resolution of the appeal, NutraSweet may lose some market share

but that this consequence is not sufficient to satisfy the irreparable harm test. The third test is balance of convenience. Here the Director contends that NutraSweet's commercial interests must be balanced against the public interest in achieving fair competition. In this regard, he notes that a stay would allow NutraSweet to continue practices which have been found by an expert Tribunal as a matter of fact to be anti-competitive, and may even allow NutraSweet to entrench this position in the market in a fashion which would make returning to a state of fair competition all the more difficult. *J.F.B.*

DIRECTOR'S ENFORCEMENT GUIDELINES UPDATE

Over the past year, the Director has released three enforcement guidelines for consultation purposes. The first was the proposed guideline on predatory pricing, the second on price discrimination, and the most recent on merger law. All three guidelines are still under discussion at the Bureau of Competition Policy.

With respect to the predatory pricing guideline, the Director has received comments and is in the process of revising the initial draft. It is likely that the final guideline will be published in the next two or three months.

The Director received many comments on the initial draft of the price discrimination guideline and has decided to release another draft for consultation purposes. The new draft should be out in April. Mr. Wetston has indicated he wishes to have a further round of consultations because of the importance of the price discrimination guideline to buyers and sellers in the country. The Director is attending a Canadian Institute conference in Toronto on May 27, 1991, where he will discuss this guideline. Mr. Wetston has indicated he hopes to be able to use the conference as one means of obtaining further input into the issue.

With respect to the merger guideline, the Bureau is nearing completion of its work on this important document. It had been expected that it would be released to the public in early March. Unfortunately, the extensive comments made on the guideline meant that the Bureau could not complete its work in that time frame. It is likely that the final guideline will be released in early April. *L.A.W.H.*

ENVIRONMENT RELATED ADVERTISING UNDER REVIEW

Last year the Director noted the growing tendency to market products claiming that they are favourable to the environment.

Claims about products' environmental attributes are appearing with increasing frequency on packaging and in advertising media, both of which fall within the misleading advertising and deceptive marketing practices provisions of the *Competition Act*.

Consumer and Corporate Affairs Canada, in conjunction with associations representing manufacturers, distributors, retailers, and consumers such as the Canadian Advertising Foundation, the Canadian Council of Grocery Distributors, the Consumers Association of Canada, Environment Canada, the Grocery Products Manufacturers of Canada and the Retail Council of Canada, is in the process of devising guidelines for environmental labelling and advertising. The guidelines and principles are being developed within the context of the *Consumer Packaging and Labelling Act* and the *Competition Act*, both of which contain broad prohibitions against false and misleading representations. The guidelines do not attempt to establish environmental standards or definitions, nor do they attempt to provide definitive solutions to scientific and technological issues relating to the environment. Guidance is provided on the use of claims that are ambiguous or profess general benefits to the environment, and on the more specific commonly used representations of recycable, recycled and degradable.

The guiding principles are as follows:

1. Environmental claims and representations that are ambiguous, vague, incomplete, misleading or irrelevant, and that cannot be substantiated through credible information or test methods, should not be used.
2. Claims or representations should indicate whether they relate to the product or to the packaging materials.

3. Industry is ultimately responsible for ensuring that any claim or representation is accurate and in compliance with the appropriate legislation.
4. Environmental claims or representations should provide accurate and relevant information to consumers to allow meaningful comparisons to be made.

The proposed guidelines also caution against using claims purporting to help the environment unless they are based on recognized standards or prevailing scientific principles. Statements such as "environmentally friendly", "ozone friendly" or "green" should only be used if they are made meaningful by providing specific product characteristics that set out the reason for the benefit claimed. In addition, product representations that convey a message of overall environmental benefit due to the removal of a substance known to be environmentally harmful should not be used unless it can be demonstrated that the product is less damaging overall to the environment as a result of the removal of that substance. *B.S.M.*

DIRECTOR'S 1989-90 ANNUAL REPORT PUBLISHED

The Director's *Annual Report* for the year ending March 31, 1990 was tabled in the House of Commons and published in late January. Statistics published in the *Annual Report* demonstrate a continuing strong increase in the Bureau's workload in all areas of enforcement and policy development, as well as an increased generation of valuable jurisprudence centering upon the reviewable practices provisions of the *Competition Act*.

The Director's overview contains the following succinct description of the role of the Bureau and the *Competition Act* in the fabric of federal economic regulation:

> Competition law touches the everyday life of all Canadians by maintaining and encouraging competition in the marketplace and thereby providing Canadians with competitive prices and product choices. The application and administration of the Competition Act by the Bureau of Competition Policy enhances efficiency in the marketplace. This in turn leads to the creation of wealth in the economy.
>
> Competition policy is a fundamental element of the federal government's economic framework for Canada. A competitive Canadian presence in the global economy must have a solid foundation in an efficient and competitive domestic economy. This principle is intrinsic to the enforcement and administration of competition law in Canada: our country simply cannot afford the high costs that would be forced on the economy as a whole by restrictive trade practices and by mergers that substantially lessened competition.

The Director's overview highlights continued high-level merger review activity, with 219 mergers requiring at least two days of examination during the year and a marked increase in the use of the Competition Tribunal as a forum for the review of merger consent arrangements. The Director indicates that he is continuing to explore ways to expedite the consent review process and to balance the interests of timely decision-making with openness and fairness to the parties affected by the merger. With respect to other reviewable practices, the Director notes that the *Chrysler Canada* decision relating to refusal to deal has broken new ground in establishing a form of litigation privilege for complainants to the Bureau who may be competitors or customers of the firm conducting the reviewable practice. In the area of resale price maintenance, the Director observes that Manitoba courts have imposed the largest fine for a single offence ($200,000.00) in the conviction of Shell Canada Products Limited. The Director's overview highlights the steps taken to shift marketing practices enforcement away from securing criminal convictions and towards more informal case resolution. He also noted the constitutional uncertainty arising from the decision of the Manitoba courts in *Wholesale Travel Ltd.* which found that the misleading advertising offence created a form of strict liability offence contravening *Charter* protections for due process and the presumption of innocence.

As previously noted, the overall workload and output of the Bureau increased markedly in the 1989-90 year. The following table compares selected activities of the Bureau for that year and the preceding year.

Selected Activities of the Bureau of Competition Policy
(Excluding Misleading Advertising and Deceptive Marketing Practices Provisions*)

	1988-89	1989-90
Total complaints received	820	988
Preliminary examinations commenced requiring two or more days of review	371**	403
Applications for inquiries under s.9	6	4
Inquiries in progress at the end of year	55**	57
Inquiries formally discontinued	32	5
Matters referred to the Attorney General of Canada	19	7
Matters referred where the Attorney General decided no further action warranted	–	2
Matters in which prosecutions or other proceedings commenced	14***	7
Applications to the Competition Tribunal****	3	4
Interventions before federal regulatory bodies	6	5
Interventions before provincial regulatory bodies	3	5

* Comparable statistics for activities under these provisions can be found in Chapter VII of the Annual Report.
** Revised
*** Includes nine matters forming one proceeding.
**** Prior to 1986-87, this figure indicates applications to the Restrictive Trade Practices Commission.

Merger activity, as measured by merger examinations commenced, notifiable transactions examined and requests for advanced ruling certificates, increased by approximately 25 per cent as indicated by the following table:

Merger Examinations

	1988-89	1989-90
Examinations commenced (two or more days of review)	199	219
Examinations concluded		
As posing no issue under the Act	166	204
With monitoring only	10	13
With pre-closing restructuring	1	–
With post-closing restructuring/ undertakings	3	1
With Consent Order	–	–
Parties abandoned proposed merger in whole or in part, as a result of Director's position	2	2
Total examinations concluded	182[4]	223[5]
Examinations ongoing at year end	32	31
Total examinations during the year[6]	216	251
Applications and notice of application before Tribunal		
Concluded or withdrawn[7]	2	3
Ongoing	2	1
Intent to File	2	–

1 Includes 59 Advance Ruling Certificates and 20 Advisory Opinions, but excludes the two ongoing matters before the Competition Tribunal.
2 Includes 72 Advance Ruling Certificates and 17 Advisory Opinions, but excludes the ongoing matters before the Competition Tribunal.
3 Includes the examinations commenced during the year and those ongoing at the end of the previous year.
4 Matters are counted under examinations concluded.

Note: For statistics relating to the total number of mergers recorded in the Merger Register during the calendar year 1989, see Appendix II of the Annual Report.

The Bureau's merger activities included the arrangement of one post-closing undertaking and three applications to the Competition Tribunal for Consent Orders. The *Annual Report* notes that during the course of merger review two mergers have been abandoned.

With respect to criminal offences relating to competition (conspiracy, resale price maintenance, bid-rigging and unilateral pricing practices) 27 proceedings were considered by the courts during the year, of which 11 were new and 16 were carry-overs from the previous year. Sixteen proceedings were concluded, with six resulting in convictions, seven in acquittals, and three in prohibition orders. Total fines were imposed in the amount of $915,000.00. In the previous year, seven proceedings were commenced and 15 convictions obtained with seven cases resulting in non-conviction and one Order of Prohibition resulting.

The workload of the Marketing Practices Branch, measured by total complaints received and the number of the files opened, also increased substantially, as did total fines obtained by this Branch. However, to the extent that informal case resolution can be measured by the volume of information contacts and completed inquiries, it would appear that the ability of Marketing Practices Branch to develop its informal case resolution capacity in line with increasing demand and as a substitute for criminal prosecutions may have been constrained by resources in 1989-90. The following table summarizes the operations of the Marketing Practices Branch in 1988-89 and 1989-90.

Operations under the Misleading Advertising and Deceptive Marketing Practices Provisions*

	1988-89	1989-90
Total complaints received	12,237	14,610
Number of files opened	12,043	13,448
Applications for inquiries under s.9	–	2
Completed examinations/inquiries	612	493
Information contacts	1,325	1,310
Inquiries formally discontinued:		
Undertakings	–	3
Other reasons	3	4
Matters referred to the Attorney General of Canada	75	56
Matters referred whwere the Attorney General of Canada decided no further action warranted	5	6
Proceedings commenced during year	110	84
Prohibition orders without conviction	3	5
Completed cases: non-convictions**	45	22
Completed cases: convictions	77	49
Total fines	$812,980	$907,850
Fines in outstanding matters	$208,000	$115,350

*See also activities noted at the end of Chapter VIII of the Annual Report related to Information and Compliance Programs.
**Includes conditional and absolute discharges, stays of proceedings, etc.

Finally, the throughput of the information and compliance component of the Bureau's activities would suggest that awareness of competition law, by the public at large as well as by lawyers, continued to increase significantly in 1989-90. The following table summarizes the principal information and compliance activities of the Bureau for 1988-89 and 1989-90.

Information and Compliance

Requests for Information	24,983	27,192	1,241	15,95	26,224	28,787
Oral Advisory Opinions	1,007	1,124	114	139	1,121	1,263
Written Advisory Codes	377	323	42	31	419	354
Meida Contacts	235	274	280	111	515	385
Speaches/ Education Seminars/ Consultative Meetings	184	121	40	60	224	181

Notwithstanding the clear increase in measured public demand and activity levels relating to implementation of the *Competition Act*, resource levels of the Bureau of Competition Policy do not appear to have kept pace. Although the total 1990 budget of the Bureau contains an increase of approximately 10 per cent over the previous year's total budget, since 1990 the Bureau's budget has remained essentially flat. A number of branches are currently operating with professional manpower complements which are comparable to resource levels achieved during the early 1980s, prior to the revision of the *Competition Act* and the introduction of more effective prohibitions and reviewable practices.

J.F.B.

CANADIAN COMPETITION POLICY RECORD

MERGER EXAMINATIONS UNDER THE COMPETITION ACT: STATISTICAL SUMMARY

	1986-87[1]	1987-88	1988-89	1989-90	1990-91[2]
MERGER EXAMINATIONS COMMENCED[3]	40	146	191	219	194
EXAMINATIONS CONCLUDED					
Concluded as posing no issue under the Act[4]	17	120	166	204	193
Concluded with monitoring only[5]	5	7	10	13	9
Concluded with pre-closing restructuring[6]	–	2	1	–	–
Concluded with post-closing restructuring[7]	1	2	3	1	0
Concluded with Consent Order	–	–	–	3	–
Parties abandoned proposed merger in whole or in part as a result of Director's position	3	2	2	2	2
TOTAL EXAMINATIONS CONCLUDED	26	133	182	223	204
EXAMINATIONS ONGOING AT END OF PERIOD	14	25	32	31	39
INTENT TO FILE APPLICATION ANNOUNCED	–	–	2	–	–
APPLICATIONS BEFORE TRIBUNAL					
Concluded[8]	1	–	2	3	0
Ongoing	–	2	2	1	3

Notes

1 Statistics commenced on June 19, 1986.
2 Statistics to March 28, 1991.
3 Two or more days of review. Includes 305 prenotifications since July 15, 1987 of which:
– in short-form (s. 121); 1987/88 44; 1988/89 50; 1989/90 - 89; 1990/91 29.
– in long-form (s. 122); 1987/88 - 21; 1988/89 42; 1889/90 20; 1990/91 - 10.
4 Includes 198 Advance Ruling Certificates: 1986/87 2; 1987/88 26; 1988/89 59; 1989/90 72; 1990/91 39; and 22 Advisory Opinions: 1986/87 3; 1987/88 - 10; 1988/89 6; 1989/90 3; 1990/91 0.
5 All advisory opinions.
6 All advisory opinions.
7 One Advance Ruling Certificate and six Advisory Opinions.
8 These matters are counted under examinations concluded.

The Canadian Competition Policy Record was recently provided with the following verse. The author and source are unknown, but the editors felt it would be of interest to the readers of The Record.

The rule of law, in complex times,
has proved itself deficient.
We much prefer the rule of men - it's
vastly more efficient!
Now, let me state the present rules,
the lawyer then went on.
These very simple guidelines you can
rely upon.
You're gouging on your prices if you
charge more than the rest.
But it's unfair competition if you
think you can charge less.
A second point that we would make
to help avoid confusion:
Don't try to charge the same
amount - for that would be collusion!
You must compete - but not too
much, for, if you do, you see, then the
market would be yours - and that's
monopoly! Yes, don't dare
monopolize. We'd raise an awful
fuss. For that's the greatest crime of
all (unless it's done by us!).