CANADIAN COMPETITION LAW DEVELOPMENTS

The articles in this section were written by John F. Blakney, Paul K. Lepsoe, Susan M. Hutton and David P. Little of Fraser & Beatty, Ottawa.

COMPETITION TRIBUNAL DECIDES SOUTHAM B.C. NEWSPAPERS MERGER CASE

On June 2, 1992 the Competition Tribunal delivered its *Reasons and Order* arising from the Director's applications for divestiture orders against Southam Inc. in relation to its acquisition of two community newspapers and a real estate publication: the *Vancouver Courier*, the *North Shore News*, and the *Real Estate Weekly*. The Director contended that the joint control of these publications coupled with Southam's existing control of two Vancouver dailies substantially lessened competition in the supply of newspaper advertising and real estate advertising services in various markets in the Vancouver area.[1]

The Tribunal concluded that Southam's acquisition of the *Vancouver Courier* and *North Shore News* community newspapers will not likely harm competition for advertising between Southam-owned dailies and the community newspapers in the Vancouver area. In this respect, the Tribunal noted that it was not convinced that the daily and community newspapers competed with each other for the same advertisers. Rather, it found that each type of newspaper offers its own distinct set of characteristics to advertisers.

On the other hand, the Competition Tribunal found that the acquisition of both the *North Shore News* and the *Real Estate Weekly* (which also serves the North Shore) will substantially lessen competition for real estate advertising in that market. Counsel have been directed to submit further evidence and argument on an appropriate remedy to address the matter. While the Tribunal found that the *Real Estate Weekly* and the real estate section of the *North Shore News* offered a similar product, it was not prepared to act on its finding until further evidence was provided, given that the North Shore edition of the *Real Estate Weekly* and the real estate section of the *North Shore News* comprised only a portion of each publication.

The principal issue in assessing the impact on competition in this case was the definition of the relevant product market. The parties agreed on the various newspapers' geographic markets.

The Director argued that dailies and community newspapers are close substitutes, while the Respondent argued that they are not. The Respondents contended that if dailies and community newspapers were regarded as close substitutes then, logically, all sources of advertising including television, radio, flyers, yellow pages, etc. should be regarded as part of the overall product market, because they would be of equivalent substitutability when compared to dailies and community newspapers.

The Tribunal concluded that dailies and community newspapers are not substitutes in the lower mainland market of British Columbia. It found that the Director was not able to show that buyers of advertising space regard dailies and community newspapers as very similar, or that small changes in relative price would cause a significant shift in advertising volume between the two vehicles. The Tribunal further noted that the evidence disclosed that advertisers use one or the other advertising vehicle mainly because of the characteristics of the vehicle rather than price. The Tribunal stated that there was no evidence that advertisers are highly sensitive to the relative prices of the dailies and the community newspapers:

> With community newspapers throughout the mainland, with two and sometimes three editions per week, with apparently good overall

quality including secure distribution, the community newspapers appear to have become the preferred vehicle for many advertisers that formally relied solely on dailies. The evidence is that the ability to obtain very high household penetration in the areas from which they draw customers is a major advantage that advertisers find in community newspapers. They are unlikely to be willing to give that up simply because the cost of advertising in dailies goes down. With their present product configurations, the dailies and community newspapers are at best weak substitutes for some advertisers.

The Tribunal also found that a high proportion of advertisers in the community newspapers are not candidates for the dailies because their trade is too local.

However, the Tribunal acknowledged a somewhat static approach to its evaluation of substitutability and recognized that, in a dynamic sense, newspapers as advertising vehicles are essentially fungible products with highly variable formats and wide potential geographic reach. Nevertheless, the Tribunal found that these considerations were not sufficient to overcome its impression that the market was at present stratified:

> [E]xamined solely as an unchanging product at a given point in time, the dailies and the community newspapers are too weak substitutes to be considered part of the same market. Yet, there is little doubt that they have been striving to attract many of the same advertisers. This competition has taken the form of modifications to public offerings to take advantage of the changes in market conditions. With Flyer Force and as a North Shore Extra, the Sun and the Community Newspapers were in the same market with respect to flyer delivery to much of the lower mainland and in the same market with respect to display advertising in the North Shore.
>
> The evidence with respect to the electronic media is that they are too weak a substitute to be considered part of the same retail advertising market as newspapers. Flyers delivered by Canada Post or by independent distributors that have achieved a reputation for reliability are clearly in the same market as inserts in community newspapers and the dailies with Flyer Force.

On the other hand, the Tribunal found that the real estate section of the *North Shore News* and the *Real Estate Weekly* publication were close substitutes and that there was little or no competition between the *Real Estate Weekly* and community newspapers other than on the North Shore. However, the Tribunal found that the substitutability between the *Vancouver Sun* and the *Real Estate Weekly* was significant only with respect to the advertising of new homes.

The Tribunal concluded that the acquisition of the *North Shore News* and the *Real Estate Weekly* resulted in the elimination of all existing competition in real estate advertising vehicles, and that the premium paid for the acquisition of the *Real Estate Weekly* by Southam suggested that the economies of scale and barriers to entry in this market were significant. The Tribunal found that there are no other acceptable substitutes for print real estate advertising and, accordingly, whether one focuses on the *North Shore News* or the *Real Estate Weekly*, an effective competitor had been eliminated and no effective competition remained. Taking into account its finding that there were some economic barriers to entry and a mixed history of efforts to introduce alternative real estate advertising vehicles into this market, the Tribunal found that there is likely to be a substantial lessening of competition in the print real estate advertising market on the North Shore.

At the time of writing, the Tribunal had not yet set a date for hearing further evidence and argument from counsel on an effective remedy tailored to its findings concerning real estate advertising.

J.F.B.

Notes

1 For discussions of the relevant transactions and the Director's application, see (1991) 12:1 *C.C.P.R.* 3, (1991) 12:2 *C.C.P.R.* 7, (1991) 12:3 *C.C.P.R.* 3, (1991) 12:4 *C.C.P.R.* 8.

FINAL PREDATORY PRICING GUIDELINES RELEASED

On May 21, 1992, the Director of Investigation and Research (DIR) released the *Predatory Pricing Enforcement Guidelines.*[1] These *Guidelines* had gone through two previous draft releases[2] before appearing in their current and final form. They now represent the DIR's last word in his attempt to help businesses to recognize and avoid predatory pricing practices, while at the same time encouraging the aggressive pricing behaviour needed to foster competition and efficiency in the Canadian marketplace.

The final *Guidelines* continue to reflect this balancing act between encouraging competitive price cuts and policing price cuts which cross the line and tend instead to harm competition. On the surface, competitive and anticompetitive pricing behaviours are difficult to distinguish. The few reported cases to date[3] have grappled with the problem, but the jurisprudence is not yet rich enough to provide prospective guidance to businesspeople and their legal advisers. To that end, therefore, the *Guidelines* take the reader through the same steps that the DIR will follow in coming to a conclusion as to whether or not certain behaviour constitutes predatory pricing—in the hope that businesspeople and their legal advisers will then apply the same approach on their own, and set prices and/or lodge complaints accordingly.

As in the previous drafts, the DIR's analysis of a complaint emphasizes the central role played by market power. Section 50(1)(c) of the *Competition Act*[4] does not require that the DIR show that an alleged predator possesses sufficient market power to enable it to eventually raise prices and recoup the losses incurred from the predation. The section, being part of the criminal law, seeks to sanction behaviour which is implicitly seen as being inherently objectionable. The problem is that aggressive pricing behaviour and cut-throat competition is not inherently objectionable, but rather is usually beneficial to society.

The *Guidelines* recognize this fact by proposing a two-stage approach to the question of whether prices are "unreasonably low." Not only must the alleged predator be pricing at a level which appears not to cover its costs adequately, but it must also possess sufficient market power to make recouping its losses a realistic possibility. Market power refers to the ability to maintain industry prices above competitive levels for a significant period of time. According to the Guidelines:

> The first stage analysis is undertaken to determine whether it is plausible that this pricing could achieve the anti-competitive effects described in section 50(1)(c) of the [Competition] Act. If the Director concludes that this is unlikely, no further investigation occurs.[5]

As will be seen below, however, the DIR has not rewritten the predatory pricing provision, and the *Guidelines*—despite broad statements to the contrary—leave room for the DIR to prosecute under section 50(1)(c) even in the absence of evidence of significant market power.

The Guidelines' market power analysis begins with product and geographical market definitions to define the limits within which the alleged predator must be able to control prices in order to effectively recoup its losses. The reader is referred to the *Merger Enforcement Guidelines* for direction in determining the relevant product and geographical markets.[6]

Once the market is defined, the relative market shares of the alleged predator and its competitors are calculated and used as a rough test for market power. The *Guidelines* state, "It is unlikely that an alleged predator with a market share of less than 35 percent would have the ability to unilaterally affect industry pricing."[7] This statement is qualified in the footnotes, however, and even if the alleged predator's market share is less than 35 percent, one must still examine the conditions of entry into the relevant market to determine whether or not sufficient market power will be seen to exist.

To that end, the *Guidelines* refer the reader once again to the *Merger Enforcement Guidelines*, this time for a detailed explanation of the approach the DIR takes in determining whether conditions of entry are such that the predator will be successful in keeping out rival competitors once they have been driven from the market, while at the same time raising prices to levels which would entice re-entry if such were possible. The relevant time period for the analysis was extended from eighteen months in the initial draft to two years in the September 1991 draft, and remains at two years in the final *Guidelines*. The DIR therefore tries to determine if there are factors, such as the presence of cost advantages and/or sunk costs, which would prevent sufficient new entry and re-entry into the market to ensure that supra-competitive price increases could not be sustained for a period of more than two years.

The *Guidelines'* approach to an incumbent firm's absolute cost advantages makes it clear that any cost advantage which the alleged predator enjoys, regardless of its provenance, will be seen as a factor which could make pricing strategies more likely to harm consumer welfare in the long run. Thus, tariff and non-tariff barriers to international and interprovincial trade, regulatory control over entry, low-cost captive sources of inputs, exclusive patent rights and other technological advantages would all contribute to lower costs for the alleged predator and therefore greater market power. Economies of scope and scale can also contribute to lower costs for the established incumbents. However, the *Guidelines* deal with such economies not as sources of cost advantages but as sources of sunk costs, due to the fact that sunk costs will be magnified in the presence of significant economies of scale and scope.

In that regard, any start-up cost which cannot reasonably be expected to be recovered if a business should fail is regarded by the DIR as a sunk cost and therefore as an indicator of market power. The common example of investment in market specific assets is cited, as are the advertising expenditures necessary to overcome entrenched consumer brand loyalties. "Strategic behaviour" encompasses tactics through which even firms with less than 35 percent market share position themselves to dominate the market, such as expanding capacity merely to "discipline" competitors, investing huge amounts in R&D in order to keep product technologies out of competitors' grasps, and entering into exclusive dealing or tied sales arrangements.

It should be noted that *any* cost advantage, sunk cost or strategic behaviour that increases the initial investment required to gain competitive entry into the market will be regarded by the DIR as one which increases the likelihood of successful predation, regardless of the relative efficiencies of the incumbent producer and its present or potential competitors.

The apparent emphasis in the *Guidelines* on the necessity for market power as an essential element of the offence is weakened somewhat by the statement that, even if it does not appear that the alleged predator possesses sufficient market power to eventually recoup its losses, the DIR may nonetheless continue his investigation and consider the alleged predator's price/cost relationship to see if this alone can provide evidence that the prices are "unreasonably low."[8] Later, the Guidelines reiterate the possibility that, despite a lack of evidence of market power:

> the Director may ... infer the likelihood of unreasonably low prices from the totality of the circumstances, including such factors as evidence of predatory intent or the manner and extent of elimination or exclusion of competitors by pricing practices.[9]

The cost-price analysis involves a comparison of the alleged predator's prices with its costs of production to determine if prices are objectively "reasonable." The DIR assumes that, absent unforeseen circumstances, a firm will continue to operate only if it makes a contribution to its fixed costs of operation. In keeping largely with the two-part economic test for predatory pricing proposed by Joskow and Klevorick,[10] the three rules of thumb which appeared in the draft guidelines are repeated: (1) prices above average total costs are not likely to be seen as unreasonable; (2) prices below average variable costs are not likely to be seen as reasonable; and (3) prices in between average total and average variable costs will be reasonable or not depending upon the circumstances. Relevant factors in this "grey" market, and whether the firm's intent was to drive out its competitors or merely to increase its market share.

The DIR's definition of cost in the drafts is somewhat clarified in the final *Guidelines*, as it is acknowledged that reasonably anticipated costs, as opposed to book costs, are to be used where possible. It appears, however, that the DIR is wary of businesses inventing "anticipated" costs after the fact in order to justify anti-competitive behaviour. Thus, the *Guidelines* go on to say that it is only where "well-developed costing methodologies which identify forecast-based costs" are accepted as an industry standard that the DIR will accept them in preference to historical, or book, costs.

"Variable" costs are again defined as those such as labour, materials, energy, promotional allowances, use-related plant depreciation and all other costs that vary with the level of output. It is still not clear whether the DIR is referring to long-run or short-run variability in his cost definitions; economic theory would suggest the long-run is more appropriate as it is this time frame which is relevant to pricing decisions, but the *Guidelines* do not comment on this point.

Essentially, the *Guidelines* lay out a two-step approach to determining whether or not prices are "unreasonably low." The first step involves examining the potential anti-competitive impact of the prices. The second step involves determining whether the incumbent's pricing policy is rational, i.e., whether it can be explained by some competitive strategy other than predation. In most cases, the DIR will only investigate the alleged predator's prices in relation to its costs if there is evidence that the firm possesses enough market power to manipulate prices to its own advantage over a period of two years or more. Since the statute makes no explicit mention of the market power requirement, however, the DIR is careful to maintain flexibility and to avoid precluding altogether the possibility of investigating and prosecuting in the absence of evidence of substantial market power. To this end, the *Guidelines* seem to indicate that evidence of predatory intent itself could, in some cases, warrant an investigation,[11] despite the clear difficulty the courts have had in distinguishing between a "healthy" desire to drive a competitor out of business and a "criminal" desire to accomplish exactly the same goal.

Thus, while making an essential contribution to the development of predatory pricing enforcement in Canada, the *Guidelines* seem at times to be caught uneasily between the economist's recognition that it is the market structure in which the predator acts rather than its intent which determines whether or not certain pricing strategies are harmful, and the criminal law notion that certain actions are harmful in and of themselves.

Perhaps in recognition of the uneasy place held by predatory pricing in the criminal law, the *Guidelines* do indicate that predatory pricing can also be dealt with under section 79 of the *Competition Act*. This "abuse of dominant position" section provides the Competition Tribunal with the authority to impose remedies to overcome the anti-competitive effects of many behaviours, including some, like predatory pricing, which are otherwise quite legal. In fact, predatory pricing was just one of the anticompetitive acts alleged in the recent *Nutrasweet* case[12] tried under section 79.

Clearly, in order to come within section 79, a prerequisite is that the alleged predator must be the dominant firm in the market. Thus, the two-stage analysis, with its emphasis on market power which the *Guidelines* seem to prefer, is more applicable to actions under section 79 than those caught up in the strange criminal law notions inherent in section 50(1)(c) cases.

S.M.H.

Notes

1 Minister of Supply and Services: Ottawa, 1992.

2 Director of Investigation and Research, *Predatory Pricing Bulletin: Draft for Discussion Only* (April 1990). See commentary in 11:2 *C.C.P.R.* 9. Followed by Director of Investigation and Research, *Predatory Pricing Enforcement Guidelines: Draft* (Minister of Supply and Services: Ottawa, September 1991).

3 *R.* v. *The Producers Dairy Ltd.* (1966), 50 C.P.R. (2d) 265 (Ont. C.A.); *R.* v. *Hoffman-LaRoche Ltd.* (1980), 109 D.L.R. (3d) 5, 28 O.R. (2d) 164 (Ont. H.C.), *aff'd.* (1981), 125 D.L.R. (3d) 607, 33 O.R. (2d) 694 (Ont. C.A.); *R.* v. *Consumers Glass Co. Ltd.* (1981), 124 D.L.R. (3d) 274, 33 O.R. (2d) 228 (Ont. H. C.).

4 R.S. 1985, c. C-34, as amended.

5 *Supra*, note 1 at 6.

6 Director of Investigation and Research, *Merger Enforcement Guidelines* (Minister of Supply and Services: Ottawa, March 1991).

7 *Supra*, note 1 at 6-7.

[8] *Ibid.* at 8.
[9] *Ibid.* at 11.
[10] P. L. Joskow, A. K. Klevorick, "A Framework for Analyzing Predatory Pricing Policy" (1979) 89 *Yale Law J.* 213.
[11] *Supra*, note 1 at 13.
[12] *Canada (Director of Investigation and Research)* v. *Nutrasweet Co.* (1990), 32 C.P.R. (3d) 1 (Comp. Trib.). See discussion at 43-45.

SUPREME COURT UPDATE

Since the last issue of the *C.C.P.R.*, there have still been no decisions on three important cases at the Supreme Court of Canada concerning provisions of the *Competition Act*. One challenge to a decision of the Competition Tribunal has been dismissed.

The appeal from the Nova Scotia Court of Appeal decision in *R.* v. *Nova Scotia Pharmaceutical Society*[1] was argued before the Court on December 4, 1991. Judgment was reserved, and the Court has not yet indicated when it will be rendered. The case concerns the constitutionality of the conspiracy provisions of the *Competition Act*.[2]

The appeal of *Chrysler Canada Ltd.* v. *Canada (Competition Tribunal)*,[3] a decision of the Federal Court of Appeal concerning the power of the Competition Tribunal to enforce its final orders though contempt proceedings, was heard on January 31, 1992. Judgment was also reserved. In this appeal, the Director challenged the limitations placed on the power of the Tribunal by the judgment of the Court of Appeal.

The case arose from a proceeding against Chrysler at the Competition Tribunal concerning a refusal to deal. In a separate appeal to the Federal Court of Appeal, Chrysler challenged the substance of the decision of the Tribunal that obligated Chrysler to accept someone as a dealer.[4] That appeal was dismissed.[5]

On April 9, 1992, the Supreme Court denied Chrysler's application[6] for leave to appeal the latter decision of the Federal Court of Appeal. No reasons are stated for the refusal of leave applications. But given that the appeal turned on rather technical grounds essentially concerning the interpretation of market factors, the Supreme Court's refusal to grant leave is not surprising.

The documents concerning the application for leave to appeal the decision of the Quebec Court of Appeal in *Procureur général du Canada* c. *Alex Couture Inc.*[7] were sent to the judges by the Registry on February 3, 1992 (applications for leave to appeal no longer require an oral hearing). The case concerns primarily the constitutional validity of the merger provisions of the *Competition Act*, in terms of both the Charter and the division of powers.[8] The Quebec Court of Appeal upheld the validity of the *Act*. The companies affected by the original merger proceeding applied for leave to appeal the Quebec decision in November 1991. The Supreme Court's decision about whether to grant leave has now taken longer than the average period of five to six months.

P.K.L.

Notes

[1] (1991), 80 D.L.R. (4th) 206.
[2] For a casenote, see (1991) 12:2 *C.C.P.R.* 1.
[3] [1990] 2 F.C. 565 (F.C.A.). For a discussion of the case, see (1990) 11:3 *C.C.P.R.* 5.
[4] *Canada (Director of Investigation and Research)* v. *Chrysler Canada Ltd.* (1990), 27 C.P.R. (3d) 1. For a discussion of the case, see Warren Grover, "Refusal to Deal" (1991) 12:2 *C.C.P.R.* 34 at 35-36.
[5] *Canada (Director of Investigation and Research)* v. *Chrysler Canada Ltd.* (1992), 38 C.P.R. (3d) 25 (F.C.A.).
[6] Court file no. 22746.
[7] [1991] A.Q. No. 1604, reported in translation as *Alex Couture Inc.* v. *Canada (Attorney-General)* (1991), 83 D.L.R. (4th) 577.
[8] See (1991) 12:4 *C.C.P.R.* 5.

AMENDMENTS TO PYRAMID SELLING PROVISIONS OF THE COMPETITION ACT

Amendments to section 55 of the *Competition Act*, the provision prohibiting unlicensed pyramid sales schemes, received Royal Assent on June 4, 1992. The new legislation repeals the existing section and replaces it with measures to counter what are considered deceptive practices related to multi-level marketing.

Among the highlights of the amendments are bans on compensation for recruitment; on inventory loading (i.e., selling products to recruits in unreasonable quantities); on required purchases as a condition to entry; and on exaggerated claims with respect to earning potential based on non-representative disclosures of remuneration. The new legislation also requires scheme organizers to provide participants with a right to return products that cannot be sold.

The amendments to the *Act* effectively recognize that there is a difference between multi-level marketing, a sales practice used by many reputable companies, and pyramid selling, which is more of a scam used to attract sales staff with promises of exaggerated earnings.

The new section 55 defines multi-level marketing as any plan where a participant receives compensation for supply of a product to another participant, who in turn will receive compensation for supplying the product to other participants, and so on. By itself, this practice is not prohibited as long as any representations regarding potential earnings for participants constitute reasonable and timely disclosure of all the information known by the person making the representation, given the nature of the product and its market, the type of plan and the experience of the participant. There is also a duty imposed on operators of multi-level marketing schemes to ensure that any representation regarding compensation made to prospective participants by persons already involved in the plan constitutes reasonable and timely disclosure of all information known to the actual operator. Section 55(2.2) provides a defence of due diligence to persons accused of an offence under the section if they can demonstrate that they took precautions to ensure that unreasonable statements regarding compensation were not made or that the statements were, in fact, reasonable.

Section 55.1 specifically addresses pyramid sales schemes which are defined as multi-level marketing plans in which a participant receives compensation for recruiting other participants; where a participant must purchase a specified amount of product as a condition of participation in the plan, other than product which is bought at the seller's cost price for the purpose of facilitating sales; where a person knowingly supplies product in an amount that is commercially unreasonable; or where participants are not given the right to return product they are unable to sell. There is no defence of due diligence available to a person who violates this new section.

The Crown may elect to treat a violation of section 55 or section 55.1 as an indictable or a summary conviction offence. If convicted on indictment, a person could be faced with a fine in the discretion of the court and/or sentenced to a maximum prison term of five years. On summary conviction, a person could be faced with a maximum fine of $25,000.00 and/or sentenced to a maximum prison term of one year.

Consumer and Corporate Affairs estimates that approximately 750,000 Canadians involved in the multi-level marketing industry will benefit from the amended legislation. However, although the new provisions have been passed by Parliament, they will not come into force until January 1, 1993. This delay should give affected companies ample time to alter existing marketing practices so that they will not violate the amendments to the section.

D.P.L.

OTTAWA PAVERS MAY FACE POTHOLES

Charges have been filed against three Ottawa area paving companies and two individuals for alleged bid-rigging activities between June 1986 and July 1987. The defendants to the charges, which consist of seven separate counts, are George Wimpey Canada Ltd., Dibblee Construction Ltd., Interprovincial Paving Company Ltd., Dale Stewart and Sergio DiGioacchino. The alleged offences involve tender calls for asphalt paving contracting services from the Regional Municipality of Ottawa-Carleton, the City of Ottawa, the City of Vanier and the Township of Cumberland.

The offence of bid-rigging is defined in section 47 of the *Competition Act* as an agreement or arrangement between two or more persons in which:

(a) one or more of those persons agrees or undertakes not to submit a bid in response to a call for tenders, or

(b) the submission of a tender is arrived at by agreement between two or more bidders,

where the agreement or arrangement is not made known to the person calling for the tenders at or before the time the bids are made by any person who is party to the agreement. The section effectively creates an absolute prohibition against the offence, since there is no requirement that the activity result in any lessening of competition, as is the case with some other offences under the *Act*, notably conspiracy under section 45.

Pre-trial proceedings in the paving matter are ongoing and any trial would likely not get under way until some time in 1993. If convicted, each corporation could be faced with a fine in the discretion of the court, while each individual could be fined and/or sentenced to a maximum prison term of five years.

D.P.L.

CANADIAN COMPETITION POLICY RECORD

MERGER EXAMINATIONS UNDER THE COMPETITION ACT
STATISTICAL SUMMARY

	1986-87[1]	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93[2]
MERGER EXAMINATIONS COMMENCED[3]	40	146	191	219	193	194	50
EXAMINATIONS CONCLUDED							
Concluded as posing no issue under the Act[4]	17	120	166	204	170	171	18
Concluded with monitoring only[5]	5	7	10	13	10	5	n/a
Concluded with pre-closing restructuring[6]	–	2	1	–	-		n/a
Concluded with post-closing restructuring[7]	1	2	3	1	2	1	n/a
Concluded with Consent Order	–	–	–	3	–		n/a
Parties abandoned proposed merger in whole or in part as a result of Director's position	3	2	2	2	1	1	n/a
TOTAL EXAMINATIONS CONCLUDED	26	133	182	223	183	178	29
EXAMINATIONS ONGOING AT END OF PERIOD	14	25	32	31	39	41	n/a
APPLICATIONS BEFORE TRIBUNAL							
Concluded[8]	1	–	2	3		1	1
Ongoing	–	2	2	1	3	2	–

Notes

1 Statistics commenced on June 19, 1986.
2 Incomplete preliminary statistics for April 1, 1992 to June 25, 1992.
3 Two or more days of review. Includes 415 prenotifications since July 15, 1987 of which:
– in short-form (s. 121); 1987/88 - 44; 1988/89 50; 1989/90 - 89; 1990/91 - 49; 1991/92-61.
– in long-form (s. 122); 1987/88 21; 1988/89 - 42; 1889/90 20; 1990/91 24; 1991/92 15.
4 Includes:
Advance Ruling Certificates: 1986/87 3; 1987/88 - 26; 1988/89 - 59; 1989/90 - 72; 1990/91 70; 1991/92 - 64.
Advisory Opinions: 1986/87 8; 1987/88 - 21; 1988/89 20; 1989/90 - 17; 1990/91 17; 1991/92-7.
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.