SPECIAL BUREAU OF COMPETITION POLICY SECTION

The contributions in this section were written by George N. Addy, Margaret Sanderson, Roger Ware, and Joseph Monteiro, all of the Bureau of Competition Policy.

BUREAU OF COMPETITION POLICY ACHIEVEMENTS OF 1993; OUTLOOK FOR 1994

The following are extracts from remarks made by George N. Addy, the Director of Investigation and Research, to the staff of the Bureau of Competition Policy on January 11, 1994, and are reproduced with permission.

I want to wish a very Happy New Year to all of you. I also want to express my deep appreciation for the support you provided me while I was Acting Director, and to thank you for your best wishes and the many expressions of support I have received since my recent appointment as DIR.

Let me preface my remarks by reminding you of the enormous trust that the government has placed in all of us. The Act includes very strong powers. Just think how you would feel if someone showed up at your door with a piece of paper giving them the right to rifle through your belongings. We must never lose sight of the responsibility that comes with the ability to invoke compulsory measures. Nonetheless these powers and the mandate under the Act represent Parliament's endorsement of the importance of guarding the public interest in a competitive marketplace.

The year 1993 was in many ways a watershed for the Bureau of Competition Policy. Following a government reorganization affecting many departments, the Bureau of Competition Policy is now part of Industry Canada. As many of you are aware, the reorganization has meant that I have spent an unusually large amount of time on administrative matters as opposed to case work. I hope the situation will be returning to normal soon.

Also in 1993, my predecessor, Howard Wetston, was appointed to the Federal Court of Canada. Most, if not all of you worked closely with Howard on a case, either during his years in the Mergers Branch or while he was Director. I am sure you join me in wishing him well in his new career on the bench.

Although the past year at the Bureau of Competition Policy was characterized by a certain degree of change — some might say a degree of tumult and uncertainty — it was nonetheless one of solid accomplishment, both in terms of cases resolved and other activities of the Bureau.

The Gemini case was extremely demanding and resource intensive, as it worked its way through the Competition Tribunal, the Federal Court of Appeal and the Supreme Court of Canada, back to the Competition Tribunal, the Federal Court of

Appeal, the Tribunal and back to the Federal Court of Appeal, all in a period of 14 months. Gemini was a test of the Bureau's ability to handle a complex, difficult and high-profile case, as well as to deal effectively with other departments. I think the results speak for themselves — the Bureau passed this test with flying colors.

The Canada Post purchase of 75% of Purolator Courier was another high profile and difficult case that the Bureau dealt with appropriately in 1993, when it announced that it would not oppose the transaction. In another case, the fine of $1.25 million imposed on Sumimoto Canada for conspiracy sent a strong message that companies can expect severe penalties for engaging in such illegal activities.

In furtherance of the Director's role as an advocate of fair competition, I intervened before the CRTC Telecom hearings. A panel of Bureau staff appeared as witnesses at these hearings. Their appearance set a valuable precedent in terms of placing the Bureau's expertise at the disposal of a specialized body. Likewise, in 1993 section 11 hearings were used to good effect and should lead to more frequent use of this enforcement tool.

On the non-case front two major achievements stood out. The Bureau advanced the anti-trust agenda in the international arena through a number of successful bilateral consultations that dealt with topics such as information sharing, international enforcement, convergence and other issues. The Bureau worked closely with the Canadian Bar Association in the creation of its Competition Law Section, and was an active participant in its first annual conference, held in Vancouver in the fall.

Looking ahead, I see the Bureau addressing itself to several specific areas in 1994. I think that our new Public Education and Information Program will enable more Bureau personnel to become directly involved in educating and informing the public about the Competition Act and the benefits of a competitive marketplace. This should also enhance the visibility of the Bureau's compliance approach to enforcement.

Also in the education field, I have renewed the Director's Consultative Forum Program. The first Forum will deal with the Bureau's approach to confidential information which is provided to us. It is important that our policy in this area be made known in a clear and comprehensive fashion, given, on the one hand, the growing need for cooperation, including information sharing between domestic and foreign enforcement agencies, and, on the other hand, the concern of the private sector that their confidential information be safe with the Bureau. The Consultative Forum Program will also be used to advance other initiatives such as the Bureau's approach to strategic alliances.

In general, I would like to see the Bureau take a more pro-active role in dealing with evolving issues, as opposed to awaiting the receipt of particular cases or transactions. Our approach to strategic alliances which I just mentioned is one example; others include telecommunications, and the financial and transportation sectors. In this age of sweeping restructuring, and given the increased complexity and internationalization of the Canadian and global economies, the Bureau must let industry know what our views are of various trends as they are emerging. We should be expressing our views more frequently on issues and trends having competition policy implications which arise outside the context of specific transactions.

On the enforcement front, I would like to reiterate that I always have been, and continue to be, a strong advocate of a total compliance approach, with its emphasis on matters such as education, pre-notification and voluntary compliance. However, let me stress that a compliance program loses value when it is not balanced by strong and visible enforcement.

I intend to enforce the law vigorously. I want you to understand that, in my view, we should move forward with responsible cases without fear of recrimination if we should lose before the courts or the tribunal. Obviously, not all cases are suitable for prosecution. Our strategic approach to case selection and enforcement is the right approach.

I intend to continue to seek higher fines. There is a good reason why Parliament raised the maximum fine for conspiracy to $10 million in 1986 — conspiracy is criminal conduct, and serious criminal conduct. However, almost eight years later we have not yet had a single fine above the $2 million level, or 20 percent of the maximum. This situation has to be addressed and addressed vigorously. Similarly, I intend to continue to seek the prosecution of individuals in appropriate cases — we recently sought jail time in one of our cases, and we will do so in the future where warranted.

In closing, let me say that I am very proud to be part of the Bureau of Competition Policy. I know how hard you work to provide a strong, independent and effective competition policy enforcement program, particularly in a time of tightening resource constraints. I know that you bring all your professional skills and training to bear in the work you do, in the advice you give internally and externally, and in the decisions for which you are responsible or for which you provide input.

Mistakes will be made, and I will make some of them myself. But as long as the mistakes are honest mistakes and not the result of sloppiness or a lack of professionalism, I promise you my full and unequivocal support.

Someone asked me the other day what mark I wanted to leave on the Bureau, what I wanted to be remembered for. I'd like to be remembered as a Director who encouraged and recognized the professionalism of his staff; who had a balanced enforcement/compliance agenda; who was not afraid to bring tough cases or make tough decisions; who brought about increased international enforcement cooperation; and, optimistically, as the Director who got the first $10 million conspiracy fine.

T.D. MACDONALD CHAIR IN INDUSTRIAL ECONOMICS, BUREAU OF COMPETITION POLICY

By: Margaret Sanderson
Chief, Enforcement Economics Division
Bureau of Competition Policy

The T.D. MacDonald Chair in Industrial Economics was established within the Bureau of Competition Policy in 1990. The position is named after the late T.D. MacDonald in honour of his extensive contributions to modern Canadian competition law. Mr. MacDonald was the first Director of Investigation and Research, holding this position from 1950 until 1962.

In keeping with the reputation of T.D. MacDonald, the Bureau of Competition Policy seeks an individual with extensive economic and policy expertise for the Chair position. This individual provides the Director of Investigation and Research with expert advice on competition policy and industrial economics. He/she participates in the economic analysis of significant cases and may be called upon to testify for the Director should a case proceed to litigation. In addition to case analysis, the holder of the Chair plays an important policy and research role within the Bureau. In particular, this individual assists internal economic staff in their research of current economic theories relating to industrial organization and competition policy, as well as pursuing research of his/her own. Given the increased importance of economic analysis in making enforcement decisions under the *Competition Act*, the T.D. MacDonald Chair is intended to help stimulate interest and discussion in this increasingly complex area.

The first holder of the T.D. MacDonald Chair was Dr. Thomas Ross, currently Associate Professor of Economics at the University of British Columbia's Faculty of Commerce and Business Administration. Following Dr. Ross, the position was held by Dr. Tim Hazledine, who has since moved to New Zealand, where he is Professor of Economics at the University of Auckland. Last year, the position was held by Dr. Donald McFetridge, Professor of Economics at Carleton University in Ottawa.

The current holder of the T.D. MacDonald Chair is Roger Ware. Dr. Ware is Associate Professor within the Department of Economics at Queen's University at Kingston. Between 1980 and 1990, Dr. Ware was an Associate and Assistant Professor at the University of Toronto. He was also a visiting Associate Professor at the University of California at Berkeley in 1987-88, and a visiting Research Scholar at Carleton University and the National Bureau of Economic Research at Stanford University in 1986-87. Dr. Ware is a member of the American Economics Association, the Canadian Economics Association and the European Association for Research in Industrial Economics.

Dr. Ware's major fields of research interest include industrial organization, public economics and the economics of natural resources. Within the field of industrial organization, his interests include competition policy, strategic behaviour, research and development, dynamic modelling, and trade and industrial policy. Since 1982, Dr. Ware has been published extensively in scholarly journals such as the *Canadian Journal of Economics, Economic Journal, Economica, International Journal of Industrial Organization, Journal of International Economics, Journal of Public Economics,* and *Rand Journal of Economics.* In addition to publishing articles, Dr. Ware is currently working on a Canadian industrial organization textbook with Dr. Jeffrey Church from the Department of Economics, University of Calgary.

Dr. Ware received an Honours B.A. in Economics from Cambridge (1972) and an M.A. in Industrial Economics from the University of Sussex (1973). Between 1973 and 1977, Dr. Ware worked as an economist within the United Kingdom's Department of Industry. He received his PhD. in Economics from Queen's University in 1980.

UNDERSTANDING RAISING RIVALS' COSTS: A CANADIAN PERSPECTIVE

By: Roger Ware
Holder of the T.D.McDonald Chair in Industrial Economics
Bureau of Competition Policy[1]

Just as the Chicago-inspired tide against intervention by antitrust authorities had reached its zenith in the late 1980s, a new school of strategic behaviour emerged. In contrast to the Chicago school, the new school of thought seems to offer sinister exclusionary interpretations to practices that were becoming safely sheltered under an efficiency umbrella. The most prominent example of the new strategic thinking is represented by the slogan "Raising Rivals' Costs" (RRC). The term is in such widespread use as to have attained a viable foothold in the vocabulary of antitrust scholars. Sufficiently so, in fact, as to have inspired a vigourous counterattack on the substantive meaning and usefulness of RRC analysis.[2]

As a contributor to the literature on strategic behaviour, I thought it might be worthwhile to attempt to review this dispute. In particular, I will try to examine whether the Raising Rivals' Costs notion offers special opportunities or drawbacks from the perspective of Canadian law, that have not been adequately brought out by the debate in the United States.

Raising Rivals' Costs: The Theory

The basic idea first appeared in a 1983 paper, *Raising Rivals Costs,* by Salop and Scheffman.[3] Consider an industry with a dominant firm and one or more rivals competing for a scarce input. The dominant firm may be able to exclude the rivals from the final product market altogether by bidding up the price of the input until the rival firms can no longer produce profitably. An incumbent monopolist will always be willing to bid more for a scarce industry input than will a potential entrant, because the process of entry by its very nature acts to dissipate the monopoly rents available in the market. This is an example of the basic pre-emption paradigm which is fundamental to the understanding of strategic entry deterrence.

A second possibility is that the dominant firm may be able to raise rival firms' input costs so as to disadvantage but not exclude them. If the dominant firm is a price setter, and the rivals are price takers, as in the original Salop-Scheffman discussion, the effect is to raise the market price of the product. Such an increase in rivals' costs can be profitable for the dominant firm even though the rivals consist of a competitive fringe with perfectly elastic supply: the dominant firm possesses no "market power" in the conventional sense (although clearly it does in a strategic sense). It is easy to show that in the case where a rival competitive fringe determines the market price, a necessary condition for a Raising Rivals' Costs strategy to be profitable is that the dominant firms average costs are raised less than the increase in the rivals' marginal costs.[4]

As an example of the above case, Williamson (1968) observed that if rival firms use a more labour intensive production technology than does the dominant firm, then attempts to raise union wages could benefit the dominant firm by hurting the rivals disproportionately. The dominant firm's choice of technology may result from an earlier strategic investment decision. Krattenmaker and Salop (1986) have argued that the U.S. *Pennington* case is a good application of the above model.[5] Not surprisingly, the validity of such an application has been disputed.[6]

More subtle versions of Raising Rivals' Costs can occur where the exclusionary vertical contract itself is responsible for the higher input prices upstream, rather than any pre-existing upstream market power. This is perhaps the most interesting case of Raising Rivals' Costs, because it is difficult to apply the reflex Chicago thought experiment of looking for the horizonal market power implicit in any vertical agreement. The essence of this framework can be stated as follows. Consider an upstream industry consisting of three identical homogeneous suppliers, all of whom supply a downstream market in which three identical homogeneous firms operate. The downstream firms take the upstream inputs and convert them one-for-one into products for final sale to the consumer.[7]

Now suppose one of the upstream firms vertically integrates downstream and forecloses the downstream division to outside purchases. An exclusive contract between the two firms to deal only with each other would have exactly the same effect. Under most models of oligopolistic competition, the effect of the exclusionary arrangement would be to raise the price in the remaining upstream market, thus raising input costs to the rival downstream firms. The net effect in equilibrium will be increased profits for the dominant firm and a larger market share for the final good, and the reverse for the rival firms.

In an extensive discussion of the RRC issue, Krattenmaker and Salop (1986) classify four possible types of Raising Rivals' Costs strategies that can benefit the dominant firm.[8]

(a) *Bottleneck.* This is an example of the second mechanism cited above where a dominant firm purchases all of the low costs input, to the disadvantage of rivals. Examples might be the low extraction cost deposits of a resource or a mode of transportation in fixed supply. Obviously, for complete monopolisation to be avoided, some higher cost or lower quality substitute inputs must be available.

(b) *Real Foreclosure.* Krattenmaker and Salop use this term when the downstream firm is able to buy up part of the upstream supply, which is limited but not qualitatively different from the supply available to rivals. The effect of removing part of the supply from the market is to reduce both supply and demand for the input, but depending on the circumstances may lead to a higher price. This will be particularly true in the "Overbuying" case where the dominant firm purchases an amount of the input in excess of its requirements. In an extreme case, "naked foreclosure", the dominant firm may sign an exclusive contract with a supplier not to supply rivals when it does not intend to purchase any supply itself from that source.

(c) *Cartel Ringmaster.* The argument here is that a downstream firm is able to orchestrate the upstream suppliers into a more effective cartel, in their dealings with the Ringmaster's downstream rivals. The essence of this case is that the same suppliers are involved in supplying both the dominant firm and its rivals, but the nature of the vertical agreement with the dominant firm facilitates cartelization with respect to the rival firms. The Cartel Ringmaster case is not all that persuasive, and Krattenmaker and Salop only present examples which weakly match the criteria. In any case, this mechanism has a greater element of horizontal price fixing than most RRC practices. As a consequence

all sides agree that cases can be brought under horizontal antitrust statutes. Here, therefore, RRC adds little to either the focus or practice of antitrust enforcement.

(d) *Frankenstein Monster.* The difference between this case and (c) above is that in the *Frankenstein Monster* case the exclusive contract between suppliers and the dominant firm facilitates cartel formation between *other* suppliers, and hence leads to an increase in rivals' costs.

A Preliminary Evaluation

The attacks on the Raising Rivals' Costs concept have been virulent, and mostly of the "shoot to kill" variety. They are grouped under a series of headings.

I. Attacks on the Validity or Applicability of the Theory

(i) *Is the theory correct?* With some minor qualifications the above models are all sensible descriptions of market outcomes. As with any other theoretical model in industrial organization, the relevant question is not whether some phenomenon *might* happen, but whether it is empirically likely. In particular, does RRC describe a set of circumstances which occur often enough to warrant a particular focus in competition law? Here some skepticism is warranted. Aside from *Alcoa* in the United States and *Laidlaw* in Canada, there appear to be few major cases in which RRC activities are well documented. Finally, a well defined phenomenon in *positive* economic theory does not of itself create a need for antitrust intervention: the latter requires a *normative* assessment, which I discuss in a separate section below.

(ii) *Do the cases cited by proponents fit the RRC model?* I will restrict myself here to U.S. cases, since that is where the debate has centred. The four major cases which have been cited as fitting the RRC framework are *Klor's, Pennington, Alcoa* and *Terminal Railroad.* In the *Klor's*[9] case, several manufacturers of appliances entered into separate understandings with a rival department store not to sell their products to the Klor's store, that was next door. Two competing theories might fit the *Klor's* case: RRC and the traditional free-rider justification for vertical restraints. Given that the appliances in question were available in discount stores nearby, it is not clear why the manufacturers would gain from excluding Klor's on free-rider grounds. However, given that Klor's was supplied with competing appliance brands, the gains to the rival store from an RRC strategy would not have been large, if the brands were close substitutes for the subject brands. One would have to conclude that *Klor's* is not a strong example of either model.

In *Pennington*[10], it was alleged that capital-intensive coal producers induced a labour union to raise wages, injuring labour-intensive competitors. As others have argued, although the *Pennington* case fits the RRC model in an interesting way, there is a problem. The union itself was the source of the monopoly power, and had every incentive to raise wages. Thus, one did not need to look for a union-management conspiracy to explain the facts. In the decision the District Court found insufficient evidence of a conspiracy. Thus, although intriguing, *Pennington* cannot be considered to provide strong support for RRC.

Alcoa[11] is the major dominance case in U.S. jurisprudence, and has been cited by antitrust economists in support of many theories of non-

competitive behaviour. Krattenmaker and Salop argue that Alcoa entered into agreements with electric power companies that constituted "naked exclusion" - agreements that these companies would not supply Alcoa's rivals, when Alcoa did not itself purchase electricity from the companies. The assertion is strongly contested by Lopatka and Godek (1992)[12], who argue that the companies were supplying "mechanical power" to Alcoa if not electricity directly. The competitive implications for the market for electric power are the same, however: the supply from the companies signing these restrictive covenants was foreclosed to Alcoa's rivals. The question remains as to whether this had any effect on the rivals' costs: Lopatka and Godek present evidence that Alcoa's share of the market for electric power was small, but there is a lot of room for discretion in defining the market. Without any direct evidence on prices of electric power, it is difficult to conclude that Alcoa was able to raise its rivals' fuel costs.

On firmer ground is the allegation that Alcoa engaged in a strategy of overbuying bauxite to lock up the low cost sources and force competitors to search for higher cost reserves. There is no doubt in theory that a dominant firm could disadvantage its rivals in this way. If such a strategy allows the dominant firm to deter new entry altogether, then it likely would be profitable, using the pre-emption arguments that I discussed at the beginning of the paper. If rivals were disadvantaged but remained in the market, the situation would be similar to that discussed under "Bottleneck" above. A necessary condition for Alcoa to have profited from such a strategy would have been that its average costs rose by less than the marginal costs of its rivals. In their paper attacking the application of RRC to the *Alcoa* case, Lopatka and Godek present no evidence to suggest that Alcoa's dominant position in the market for bauxite was not aimed at strategically disadvantaging its rivals. Moreover, Lopatka and Godek seem unaware of the solid theoretical support for such a strategy.

In Terminal Railroad[13], a group of railroad operators acquired the only railroad bridges across the Mississippi River at St. Louis. The railroad operators also obtained a promise from the bridge owners that the bridges could be made available to other, non-owner, railroads on discriminatory terms. *Terminal Railroad* is a good example of the "Bottleneck" model described earlier in this article. However, of course, an identification of a relevant market as the market for railroad crossings of the Mississippi River at St. Louis, would clearly reveal monopolization in that market, perhaps rendering the RRC model redundant.

(iii) *The Welfare Economics of RRC.* The natural standard for an economist by which to judge the efficiency of some practice is to sum the net surplus gains to all parties: consumers, producers and possibly governments if they have a role. The *Competition Act* typically determines the illegality of a civil offence by the criteria of "Substantial Lessening of Competition", which emphasizes the harm to consumers (although there is room for efficiency considerations in merger cases). U.S. statutes, if anything, put an even higher relative weight on costs imposed on consumers compared to gains to producers.

With this in mind, consider the efficiency implications of RRC practices. First, almost all the examples of RRC I have discussed would lead to an increase in price to consumers, so that judged solely by a consumer standard, efficiency would fall. The only

exception would be a case in which the practice successfully deterred all rivals, were it possible that price would be no higher than if entry had taken place.

Things are not quite so clear when a total surplus standard is adopted. In the original Salop and Scheffman model of a dominant firm with a competitive fringe, net surplus will go down provided that the dominant firm does not expand output as a result of the RRC strategy. If the dominant firm does expand output, then the overall effect is ambiguous; the dominant firm's low cost production substitutes for the fringe firms high cost production, creating an efficiency gain to be balanced against the loss to consumers from higher prices. The same sort of effect could occur in the model of vertical foreclosure outlined in the "Theory" section above. If the firms upstream and downstream are symmetric with respect to costs, then the foreclosure strategy, that raises the downstream costs of the rival firms, will lower total net surplus, since the only effect is the harm to consumers. However, if the foreclosing firm has lower costs, then once again it is possible that total surplus will rise, even though the price will increase.

There has been some debate about the application of Easterbrook's "output standard" to RRC activities.[14] Easterbrook argued that offenses of monopolization should only be considered if the dominant firm's output decreased as a result of the monopoly practice. This would rule out from consideration the cases above that I noted as having ambiguous welfare effects. As Krattenmaker and Salop point out, however, the standard would miss RRC practices that increase the dominant firm's market share at the expense of rivals, and where the dominant firm does not have overwhelming low cost advantages. In fact, the majority of RRC cases that I have discussed involve the dominant firm increasing output as a result of the practice. It is fair to say in summary that more study is needed on the overall efficiency effects of RRC practices before a clear enforcement consensus emerges.

II. Attacks on the Idea as Redundant

In a useful and well written paper, Timothy Brennan has argued that although Raising Rivals' Costs is a valid theory and may identify the "correct" economic model in some cases, these cases all involve practices that are currently illegal under U.S. law. He then goes further to assert that *any* practice a Raising Rivals' Costs framework would identify as anti-competitive is already illegal, and thus the conceptual framework is essentially redundant. In addition to reviewing the validity of this claim, I will try to assess whether it might apply with equal force in Canada.

Brennan states his position as follows:

> A good test for the usefulness of any new antitrust theory is whether it identifies bad practices that are currently legal without adding to the set of good practices that are inappropriately condemned. The purpose of this article is to show that RRC fails both aspects of this test.[15]

To some extent, the above statement seems to miss the point of RRC. Jurisprudence evolves according to the standards of the current era, and these are related, in important but not exact ways, to developments in economic theory. Important changes in enforcement can and do take place with no changes in statutes. The fluctuations in the enforcement of laws pertaining to vertical restraints and contemporaneous developments in the economic views of these practices is a striking case in point. To be more specific: even if RRC fails Brennan's test, there may still be currently illegal practices that are not enforced as such, and if Raising Rivals' Costs

became an accepted theoretical framework, a new momentum towards enforcement would develop. After all, none of the proponents of RRC have argued that it defines a need for new *legislation*: rather, it has been advanced as a *focus* for intervention in cases of exclusionary practices.

A second strand to the redundancy argument is the following. The proponents of RRC, particularly Krattenmaker and Salop, have stressed that the framework adds something to the orthodox antitrust analysis of horizontal market power. Brennan disputes this, arguing that the ability to raise input prices implies the existence of horizontal market power at least in the input market. The implication is that orthodox antitrust theory ought to be sufficient for the analysis of RRC cases. While this point is well taken, there are cases where a purely horizontal perspective would miss essential aspects of an anti-competitive practice. Consider the sketch of a vertical foreclosure model which I described under "Theory" above. By entering into an exclusionary vertical contract with an upstream firm, the downstream firm is able to render the upstream market more monopolistic and hence injure its rivals. The enhanced monopoly power is not there intrinsically, it is created through the exclusionary contract. Thus, while I believe that Brennan makes an important point, the force of the argument falls short of destroying the value of RRC analysis.

III. The Market for Exclusion

A factor affecting the success of Raising Rivals' Costs strategies that has not been well discussed by its original proponents is how the market for exclusionary rights may operate to reduce or even nullify the phenomenon of Raising Rivals' Costs. The basic idea is the following: Raising Rivals' Costs requires the dominant firm to bribe some input supplier(s) to remove their supply from the market, leading to a price increase in inputs to the predator's rivals. The basic thesis holds that what would be required to compensate these suppliers would be the foregone profits which *they would have earned in the absence of exclusion.* However, if input prices rise as a result of successfully Raising Rivals' Costs, the non-exclusionary suppliers will be made better off as a result of the practice. Thus, a conflict is created between the exclusionary suppliers and the remainder, as all would prefer to "hold out", and have some other supplier agree to the exclusionary contract. There is no single model of how such "hold-out" competitions work in practice, but they could conceivably operate so as to prevent a Raising Rivals' Costs contract from being profitable. That is, the existence of competition among suppliers *not to be the firm signing the exclusionary contract* acts in the direction of preserving competition.

Raising Rivals' Costs under the *Competition Act*

The current era is an exciting one in Canadian competition policy, particularly in the area of monopolisation and exclusionary practices. The sections of the *Competition Act* that cover these practices are substantially untested, with the important exceptions of the landmark *Laidlaw* and *NutraSweet* cases. Hence, cases that are brought in the next few years by the Director of Investigation and Research, successfully or unsuccessfully, will do much to shape the framework of Canadian jurisprudence in this area.

Sections 77, 78 and 79 of the *Competition Act* cover practices which constitute an abuse of a dominant position. Practices which come within the Raising Rivals' Costs framework would have to be found to cause a substantial lessening of competition within

these sections. As illustrated by the Tribunal's findings in *NutraSweet*, there is some overlap: the same exclusive contracts between *NutraSweet* and its customers were found to be illegal under both sections 77 and 79.

In the two major cases brought under these sections of the Act, *Laidlaw*[16] and *NutraSweet*[17], the concept of Raising Rivals' Costs has played a role. RRC was given a major endorsement by the Competition Tribunal in the *Laidlaw* decision. Laidlaw was accused of a number of anti-competitive practices in the lift on board waste collection and disposal business on Vancouver Island. In addition to a number of predatory acquisitions and the use of restrictive and exclusive contracts Laidlaw was found to have exploited its superior resources to litigate against rivals and customers considering switching their business. The Tribunal agreed, finding that Laidlaw "commenced spurious litigation and threatened litigation against its competitors *to drive or attempt to drive them out of business by raising their costs of doing business. This is certainly predatory behaviour*"[18] (emphasis added). The Tribunal also quotes approvingly and at length from R.H. Bork on the use of sham litigation as a technique for predation.[19] The *Laidlaw* decision clearly suggests support from the Canadian Competition Tribunal for the modes of theorizing exemplified by RRC analysis.[20]

In *NutraSweet*, the Tribunal found that a number of anti-competitive acts had led to a substantial lessening of competition, under sections 77 and 79 of the Competition Act. The more important of these were exclusive contracts between *NutraSweet* and its major customers, and the financial inducements offered by *NutraSweet* for its customers to display the swirl logo on their products. Either of these practices could be considered examples of RRC: both raised the costs of making a successful entry into the Canadian market for aspartame (although not necessarily the marginal costs of rivals' supply). On the debit side for RRC, the *NutraSweet* decision suffers from the same kind of ambiguity as do findings of predatory pricing. While the evidence is strong that NutraSweet was able to exclude potential rivals from the Canadian market, it is much weaker on whether aspartame prices were higher than they would have been without the anti-competitive acts.

Refusals to deal, which are dealt with under section 75 of the *Competition Act*, could be construed as an attempt to Raise Rivals' Costs. The illustrative case here is *Xerox Canada*.[21] Xerox refused to continue supplying parts to a former employee who had been encouraged by Xerox to set up a business in second-hand copier machines. The independent operator was clearly a rival (albeit a very small one) to Xerox, and the rival's costs were raised (essentially to infinite levels) by the refusal to deal. Although the case is analytically close to the "Bottleneck" model described above, the terminology of RRC was not raised in the case.

Conclusions

The modelling framework of Raising Rivals' Costs is really a chapter in the much larger study of strategic interaction among firms. Broadly speaking, there are two types of strategic activity designed to improve the position of one firm, or a group of firms, at the expense of others. The first set of these are *exclusionary* strategies: strategies designed to prevent the entry of rival firms, or induce the exit of firms already in the market. The weapons available could be capacity investment, choice of product, R&D expenditures, promotional investments, network investments, and various kinds of exclusionary contracts. The same set of strategic

weapons can also be employed as *positioning* strategies, designed to disadvantage rivals but not exclude them. The study of these kinds of strategic interactions has revealed, more than anything, that it is difficult to apply a single analytical framework to them. Moreover, depending on the case, some of these strategic activities enhance efficiency (for example, by leading to the deterrence of inefficient entry) and some diminish overall efficiency (for example, by leading to higher prices). To discuss these cases in further detail is beyond the scope of this article, but the danger of RRC analysis is that it purports to represent all of this complex behaviour in a single modelling framework, with a presumption of a lessening of efficiency. Clearly, this creates the potential for misleading conclusions.

Since RRC is promoted as a theory of "non-price predation", it is not surprising that there are some parallels with the theory of predatory pricing. Predatory pricing was once viewed as the sort of activity which a competition policy should be designed to prevent. After decades of assault by the Chicago School, the orthodox position shifted to one of a presumption against intervention, and this is reflected in legislation and guidelines for enforcement in both Canada and the U.S. More recently, a number of models of "rational predation" have emerged, and have demonstrated that predatory pricing is not likely to be quite as extinct as Chicago would have had us believe. However, what these recent models have demonstrated is that there is no single model which does justice to the phenomenon. A careful analysis of individual cases is necessary before the correct underlying theory can be identified. I suspect that the same is true of RRC analysis: only an attempt to identify the correct economic model in particular cases will reveal whether an activity is anti- or pro-competitive. This being true, the RRC framework may be more of a restriction than an enlightenment.

The appearance and successful incorporation into the language of antitrust of RRC terminology is a response to a vacuum. What is revealed is the lack of an agreed antitrust framework for evaluating cases involving dominance, exclusionary practices and entry barriers. Although RRC lays claim to providing such a framework, and does provide important insights, antitrust analysis has considerably further to go before a comprehensive approach can be articulated to these complex strategic interactions.

[1] The author is an associate professor of economics at Queen's University. The views reflected in this article are solely those of the author, and do not reflect the official position of the Bureau of Competition Policy, or any of its officers.

[2] Important contributions are Timothy J. Brennan, "Understanding Raising Rivals' Costs," (1988) 33 Antitrust Bulletin 95; Malcolm B. Coate and Andrew N. Kleit, "Exclusion, Collusion, and Confusion: The Limits of Raising Rivals' Costs" (Working Paper No. 179, Federal Trade Commission, Bureau of Economics, 1990); John E. Lopatka and Paul E. Godek, "Another Look at *Alcoa*: Raising Rivals' Costs does not Improve the View," Journal of Law and Economics, vol. XXXV (October 1992).

[3] Steven C. Salop, and David T. Scheffman, "Raising Rivals' Costs," *American* Economic Review 267-271. Coate and Kleit trace the origin much earlier, to Aaron Director and Edward H. Levi, "Law and the Future: Trade Regulation", (1956) Northwestern University Law Review 281. However, the work of Salop and Scheffman has clearly provided the framework for the recent debate.

[4] See, for example, Coate and Kleit, *supra*, note 2.

[5] Williamson was using essentially the same model of strategic behaviour without, of course, the benefit of the RRC terminology.

[6] See, for example, Brennan, *supra*, note 2.

[7] The original source of this modelling framework is J.A. Ordover, G. Saloner and S.C. Salop "Equilibrium Vertical Foreclosure", (1990) 80 American Economic Review 127. A more comprehensive treatment can be found in G. Gaudet and N.V. Long, "Vertical Integration, Foreclosure and Profits in the Presence of Double Marginalization", Université du Québec à Montreal, Working Paper, 1993.

[8] T.G. Krattenmaker and S.C. Salop, "Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price", (1986) Yale Law Journal (December).

[9] *Klors', Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).

[10] *United Mine Workers* v. *Pennington*, 381 U.S. 657 (1961).

[11] *U.S.* v. *Aluminum Co. of Am.*, 148 F.2d 416 (2d Cir. 1945).

[12] Lopatka and Godek, *supra*, note 2 at 318-320.

[13] *United States* v. *Terminal R.R. Ass'n*, 224 U.S. 383 (1912).

[14] Easterbrook, "Vertical Arrangements and the Rule of Reason", (1984) 53 Antitrust L.J. 135.

[15] Brenning, *supra*, note 2 at 96.

[16] *Canada (Director of Investigation and Research)* v. *Laidlaw Waste Systems Ltd.*, [1991] 40 C.P.R. (3d) 289 (C.T.).

[17] *Canada (Director of Investigation and Research)* v. *NutraSweet Company*, [1989] 28 C.P.R. (3d) 316 (C.T.).

[18] *Supra*, note 16 at 344.

[19] *Ibid.*

[20] For a view that the Tribunal's enthusiasm for RRC is mis-applied to *Laidlaw*, see Bruce M. Graham, "Abuse of Dominance - Recent Case Law: *Nutrasweet* and *Laidlaw*", (1993) 38 McGill Law Journal 800.

[21] *Canada (Director of Investigation and Research)* v. *Xerox Canada Inc.* (1990), 33 C.P.R. (3d) 83 (C.T.).

REPRESENTATIONS BY THE BUREAU OF COMPETITION POLICY: THE FIRST FIFTEEN YEARS

By: Joseph Monteiro*
Economics and International Affairs Branch
Bureau of Competition Policy

Introduction

Fifteen years ago, the extent of government economic regulation was so widespread that one was constantly reminded of its presence.[1] While much regulation remains, its nature has evolved and several industries have been largely deregulated in the intervening period. It may not be too much of an exaggeration to suggest that this can be partly attributed to representations made by the Bureau of Competition Policy before various regulatory boards and tribunals over the past decade and a half. These representations were made possible by the addition of a new section to the *Combines Investigation Act* in 1976.[2]

This provision (now section 125 of the *Competition Act*[3]) empowers the Director to make representations and call evidence before any federal board in respect of the maintenance of competition, whenever such representations are relevant to a matter before the federal board and to the factors that it is entitled to take into consideration in determining the matter. While the Director may make such representations at the request of a federal board or on his own initiative, he may also be directed to do so by the Minister.[4]

Representations can be effective in situations where economic regulation involves the exercise of statutory powers that tend to restrict or limit competition.[5] In such situations, the Director of Investigation and Research in intervening is not in any sense taking the role of a regulator. His role is that of a public interest intervenor, attempting to provide advice and expertise to the regulating agency to ensure that, in resolving the issues brought before it, the greatest possible scope is provided for competition and free market forces.[6]

The power to make interventions is particularly important in view of the protection that regulated activities enjoy under the so-called regulated conduct defence in Canadian competition law jurisprudence.[7]

To broaden and redirect the Director's intervenor role, the wording of section 125 was revised in the 1986 amendments to Canadian competition law. The word "maintenance" was deleted from the provision to permit the Director to make interventions to stimulate and encourage competition, as it was argued that "maintenance" meant preserving the status quo in some interventions. The power of making interventions was limited to federal boards that carry on "regulatory activities." This removed the Director's statutory authority to intervene before "ad hoc" commissions of inquiry. (The Director can still appear before such commissions like other public officials on a non-statutory basis.[8]) At the same time, to enable the Director to appear before provincial boards, section 126 was added to the legislation. This new section is similar to section 125 except that the Director can only make representations at the request or with the consent of the concerned provincial board.[9]

This paper examines the nature of representations by the Bureau of Competition Policy in the period 1976-1991, the overall impacts and contributions of these representations, and new directions in the Director's regulatory interventions in recent years.

The Nature of Representations by the Bureau of Competition Policy

During the years 1976-1991, a total of 171 representations were made to federal, provincial boards, commissions and similar bodies. These are examined below by sector and type of issue.

Sectors Covered by the Director's Representations

Statistical information on the number of interventions by sector is presented in Table 1. This is further classified by subsectors as it may be of assistance analytically in determining the subsectors that require future intervention. These representations by subsectors are shown in the footnotes at the end of Table 1. At the outset, several preliminary observations may be noted. A large number of these interventions were in the communications sector (fifty-eight) and the transport sector (fifty-four), together accounting for 66% of all interventions. The remaining sectors such as resources (fifteen), agriculture (eleven), finance (ten), services (eleven), international (nine) and other (three) accounted for fifty-nine representations or 34% of the total number of representations.

Issues Addressed

The chief issues addressed in the representations presented in Table 1 pertain to licence and access applications (forty-five), modifying regulations in various sectors (thirty-four), policy representations (twenty-four), rate/tariff applications (eighteen), merger-agreement applications (nine), fee/price setting (nine), supply-management (eight) and dumping/imports (six).

CANADIAN COMPETITION RECORD

TABLE 1

INTERVENTIONS BY SECTOR AND ISSUE, 1976-1991*									
Issue	Tr[1]	Com[2]	Int[3]	Res[4]	Agr[5]	Fin[6]	Ser[7]	Oth[8]	Total
Rate/Tariff Appl.	1	15		2					18
Licence & Access Appl	23	18		3		1			45
Merger/Agreement	5	3		1					9
Supply/Management					8				8
Dumping/Imports			5	1					6
Tariff Protection			3						3
Fee/Price Setting					3	2	4		9
Space Apportionment				1					1
Regulation	14	6		4		3	5	2	34
Policy	9	5	1	2		4	2	1	24
General[9]	2	11		1					14
TOTAL	54	58	9	15	11	10	11	3	171

* **Source:** *Compiled from information in Annual Reports of the Director of Investigation and Research, 1976-1992.*

Notes to Table 1

1. Tr=Transport. 2. Com=Communications. 3. Int=International. 4. Res=Resource. 5. Agr=Agriculture. 6. Fin=Finance. 7. Ser=Services. 8. Oth=Other.

1. In transport these interventions were on: Air (28); Trucking (12); Rail (8); Bussing (4); and Shipping (2).
2. In communications these interventions were on: Telephone (30); Radio C.C. (10); Cable Tel. (8); Telesat/Sat. (5); CNCP/ Telecom. (4); and Cellular C.C. (1).
3. In the international sector these interventions were on: General (4); Sugar & Sweeteners (2); Footwear (1); Surgical Tapes (1); and Cars (1).
4. In resources these interventions were on: Natural Gas (11); Heavy Fuel Oil (2); Electricity (1); and Environment (1).
5. In agriculture these interventions were on: Potatoes (2); Eggs (2); Chicken (2); Milk (2); Maple Syrup (1); and Apples (2).
6. In the financial sector these interventions were on: Securities market (5); and Other Financial Markets (5).
7. In services sector these interventions were on: Engine. & Arch. (4); Prof. Societies (2); Health (2); Paralegals (1); Services and Industries (1); and Real Estate Brokerage Act (1).
8. In other sectors these interventions were on: Pharmaceutical Ind. (1); Copyright Act (1); and Economic Union and Development Prospects for Canada (1).
9. The General category includes issues which do not fit into the categories listed, for example an intervention could simply indicate the benefits of competition.

The Director's interventions in licence applications have typically sought to promote entry into various transportation modes. The submissions on access applications by competing carriers have sought to promote access to the terminal attachment facilities of telephone companies regulated by the Canadian Radio-Television and Telecommunications Commission and the provinces.

Submissions on regulations in transport have attempted to remove or mitigate the impact of entry, rate regulation and other economic regulations, for example by facilitating interswitching, confidential and secret rebates, etc. Representations on regulations in the cable television and telephone subsectors have addressed issues such as minimization of regulations pertaining to tiered cable service, cable subscriber fees, exemption from licensing for qualified Master Antenna Television Systems, liberalization of enhanced service regulations and removal of restrictions on resale and sharing. The basic thrust of these submissions was to minimize or eliminate regulations so as to encourage the development and provision of new services and new entrants. Further, these sought to encourage the development of free market forces of competition as an impartial regulator rather than rely on regulations and regulators to bring about competition. The submissions on regulations in the natural gas subsector were on diverse issues such as supply/price arrangements, principles of toll setting, rules for queuing and gas supply information required to be supplied in applications to the National Energy Board.

The Director's submissions on policy issues have occurred mainly in transportation, communications and the financial sector. These focussed on a wide variety of competition policy concerns and the implications of proposed policy changes. Some examples include the review of the domestic air carrier policy before the House of Commons Standing Committee on Transport in 1981, pay television policy before the Canadian Radio-Television and Telecommunications Commission in 1983, the policy on financial and non-financial institutions before the Ontario Securities Commission in 1984 and the policy on integrated intercity passenger service before the Royal Commission on National Passenger Transportation in 1991. More recent examples are the review of national transportation legislation by the National Transportation Act Review Commission in 1992 and the review of Inter-utility Electricity Trade by the National Energy Board in March 1993. The Director has generally advocated wider scope for competition in these sectors and indicated the benefits arising to the public.

Rate/tariff representations, particularly those pertaining to the telephone subsectors have examined complex issues pertaining to price comparison tests, costing methodology, cross-subsidization, etc. These representations have advocated the use of the market test for purchase of equipment from related companies and pointed out the distortion in the allocation of resources and its negative impact on competition.

Representations on merger-agreement applications[10] have generally opposed the creation of monopoly or near monopoly situations or vertically integrated situations in particular markets and have stressed the potential harm to the public that could result from higher prices, a reduction of both output and its variety, etc. from a reduction of competition.

The issue of fee-setting was addressed in a number of representations in the professional services sector. These representations indicated that sanctioned tariffs do not guarantee the maintenance of a high standard of quality but may increase price above the competitive level. Further proposals on suggested minimum fees could raise an issue under the *Competition Act* if the regulated conduct defence does not apply. The Director advocated a greater reliance on competitive market forces as the best regulator of pricing.

Submissions relating to the agricultural sector dealt mainly with supply-management issues. These submissions opposed marketing council schemes to determine the level of output and cost of production formulae on the grounds that it would reduce output, raise prices, cause income distribution problems and use inefficient prices in costing formulae.

The representations in the international sector dealt with the role of imports and alleged dumping activities. These representations emphasized the positive influence that imports have had on competition, filling a niche in the Canadian market abandoned by domestic producers. Further, these representations have pointed out that the setting of quotas has had an inimical influence on competition and resource allocation in the industry.

Impact of the Director's Representations

An examination of the decisions made by the various regulatory boards provides a rough indication of the overall contribution of the Director's representations in creating conditions for more competitive markets in Canada. In Table 2, the decisions resulting from proceedings in which the Director intervened are classified into the following categories: favourable, partially favourable, unfavourable, pending and withdrawn.[11] A decision is classified as favourable where the decision of the regulatory agency reflects most of the recommendations of the Director. Partially favourable indicates that the decision of the regulatory board reflects a few of the recommendations of the Director, while unfavourable captures decisions that are deemed to be neither favourable nor partially favourable. Pending and withdrawn indicate interventions where the regulatory decisions have not been made or reported and interventions that were withdrawn by the Director or proceedings that were terminated.

TABLE 2

Responsiveness of Decisions Of the Regulatory Agencies to Positions Taken in the Director's Submissions						
Sector	**Favourable**	**Part. Fav.**	**Unfav.**	**Pending**	**Withdrawn**	**Total**
Transport	32	8	7	4	3	54
Com.	29	11	12	2	4	58
Other	29	6	13	10	1	59
Total	90	25	32	16	8	171

Source: Author's *analysis based on information in Annual Reports of the Director of Investigation and Research, 1976-1992 and other Published Sources.*

Excluding the representations withdrawn and decisions pending on ongoing matters, the decisions in 61% of the representations were favourable. Moreover, the decisions in 17% of the proceedings were partially favourable and the decisions in 22% were unfavourable. In other words, the decisions of the regulatory boards before whom the Director made representations were generally consistent with/supportive of positions taken in the Director's arguments in the majority of cases.[12]

Due to the confluence of events, and fundamental changes occurring simultaneously, it is difficult to attribute changes in most industries solely to the interventions of the Director. Generally, the Director's interventions do not bring about change directly in an industry but assist in creating the conditions and atmosphere for change. Consequently, decisions provide some proxy as a measure of contribution. Some of the changes that have occurred in each sector are described below notwithstanding that they can be ascribed to several developments; this factor should be remembered in the description that follows.

The most profound changes have occurred in transportation. There are several examples in air transport. In the early 1980s, the traditional distinction between national, regional, local and charter airlines was removed.[13] There followed a period of "administrative deregulation" characterized by increasingly liberal interpretation of formerly restrictive regulations.[14] The late 1980s saw the rise of two large carriers (Air Canada and Canadian Airlines International) with alliances of smaller carrier families feeding into the hub and spoke networks formed partially by mergers, new authorities, amendments to add points, operating conditions, etc.[15]

In trucking, several important structural changes have occurred - mergers, expansions, acquisitions, changes in the ranking of the top trucking companies, new entrants and changing traffic patterns between truckload

and less than truckload. The NTA surveys on the trucking industry and qualitative estimates such as consolidations, changes in route structures and expansion of existing authorities designed to reduce interlining suggest an increase in overall efficiency.[16] The rail subsector witnessed internal network rationalization, redundant trackage abandonments and cutbacks in passenger service.[17]

In water transport, several changes incorporated in the *Shipping Conferences Exemption Act, 1987* reflected suggestions put forward in a 1982 submission by the Director of Investigation and Research before the Water Transport Committee of the Canadian Transport Commission. These included a statutory right of independent action on conference tariff rates and services, as well as limited provision for confidential service contracts between exporters/importers and carriers.[18] While it may be too early to tell, to date these statutory changes appear to have brought about only limited structural or behavioural changes.[19] This has been attributed partly to the lack of understanding of the legislative changes by the shipping community.

In telecommunications, though the structure of the industry did not alter dramatically during the period under consideration, major changes are currently underway.[20] Moreover, regulatory approaches in the industry continue to evolve.[21] Major regulatory milestones include interconnection with the Public Switched Telephone Network, Telecommunications Cost Inquiry Phase III, Bell Canada reorganization and the impact of intercorporate transactions, liberalization in the terminal equipment market and the promotion of alternative service providers via direct competition (through resale and sharing and in the long distance telephone services). The performance of the industry has also improved in several ways: interconnection has resulted in the development of a variety of new services;[22] alteration of the price comparison tests has led to fairer methods in evaluating the reasonableness of prices paid for the purchase of equipment from related companies; concerns about cross-subsidization have led to unbundling of rates for various services, more appropriate costing methodology, and rate unbundling of local and long distance services.[23]

In the financial sector, changes in the structure of the industry appear to be attributable more to other fundamental developments than to the Director's representations. Several of the banks reorganized in 1986. These banks entered the securities business by acquiring brokerage firms and have also attempted to enter the life insurance business.[24] The resulting increase in operational flexibility is expected to bring about more innovative forms of financial service and development of larger domestic financial institutions. The latter are due to changes in ownership rules, ownership limits on new entrants and outside investment, and the handicap to smaller institutions resulting from lack of access to capital.[25]

The resource sector has also witnessed important changes. In the natural gas subsector, the marketing structure has changed. The method of purchase witnessed new developments as individual users, commercial users and residential customers could contract with Alberta producers for the acquisition of gas.[26] Formerly, gas was purchased by a monopoly buyer, TransCanada Pipelines Limited, and resold to franchise dealers. As a result, transportation contracts have risen due to direct purchases. Producers now have a wider range of marketing options.[27] The performance of the industry also changed in a number of ways: a decline in the well head prices, greater volume of exports and an increase in domestic consumption.[28]

Overall, consumers have benefited as a result of increased competition, new and more innovative products and services, lower prices and increased output. Industries have also benefited as a result of more efficient operations, less costly regulations, reduction in X-inefficiency, increased production and greater preparedness to compete on international markets and against foreign products.

Recent Trends in the Director's Representations

Table 3 presents data on trends in the Director's interventions in three specific sub-periods since section 125 was enacted. The data suggest that the nature and incidence of the Director's interventions are changing. In particular, the number of interventions submitted peaked in the 1983-1985 period at approximately twenty-six per year. After this period, the number of interventions has declined to approximately ten per year in the 1988-1991 period.[29] The most important reason for this is probably that substantial regulatory reforms had already been achieved in the traditionally heavily regulated sectors of transport and communications by the late 1980s. Further, human and financial resources allocated to the Regulated Sector/Regulatory Affairs Branch were reduced after 1986, as the new *Competition Act* led to new priorities, in particular the need to begin implementation of the new merger and other civil provisions (e.g., abuse of dominance). Recently, responsibility for making interventions has devolved largely to the Bureau's Civil Matters Branch, with analytical support on issues of regulatory policy from the Economics and International Affairs Branch.

TABLE 3

Responsiveness of Decisions Of the Regulatory Agencies to Positions Taken in the Director's Submissions

Year	Tr[1]	Com[2]	Int[3]	Res[4]	Agr[5]	Fin[6]	Ser[7]	Oth[8]	Total
1976-1986	45	42	7	4	5	9	3	3	118
1986-1988	3	8	2	4	2	1	2	0	22
1988-1991	6	8	0	7	4	0	6	0	31

1. Tr=Transport. 2. Com=Communications. 3. Int=International. 4. Res=Resource.
5. Agr=Agriculture. 6. Fin=Finance. 7. Ser=Services. 8. Oth=Other.

Source: *Compiled from information in Annual Reports of the Director of Investigation and Research, 1976-1992.*

There are, however, reasons for considering that there could be a partial resurgence of intervention activity in the future. Recently, increasing emphasis has been placed in policy debates on the need for measures to foster the international competitiveness of Canadian manufacturing and other industries. In this regard, many of the industries that remain subject to direct regulatory controls in Canada constitute key infrastructure sectors and/or primary inputs to Canadian exporting industries. Examples include transportation, energy (especially electricity) and agriculture. There is a direct link between promoting competition and efficiency in these industries and the international competitiveness of a wide array of user industries.[30] Furthermore, in the past decade, there have been significant advances in the theory of regulatory design (e.g., the use of incentive-based rather than traditional rate of return regulation) that may have application in Canadian regulated industries.[31] In addition, a relatively new set of regulatory policy issues relating to competition and efficiency in health, education and environmental protection is emerging. These factors point towards a revival of interest in issues pertaining to regulation and competition in the remainder of the 1990s.[32]

To some extent, this change in emphasis in recent years is already reflected in the data in Table 3. The number of representations in the resource, agriculture and service sectors has increased considerably in the last four years. Several factors are responsible for this new direction. The links between these sectors and Canadian competition and competitiveness have been recognized and the focus has shifted to regulated sectors of the economy that were not previously emphasized. Further, it had become appropriate for making representations in the resource sector as major changes in policy had been introduced.[33] With regulatory reforms involving extensive deregulation having been introduced in traditionally heavily regulated sectors like transport and communications to some degree, one could expect a reduction of interventions in these sectors.[34]

In conclusion, interventions by the Director of Investigation and Research under the *Competition Act* are an important means of promoting competition in regulated or partially regulated industries. The Director's approach to competition advocacy has been marked by significant contributions to fostering more competition-based solutions.[35] Increased globalization and trade liberalization resulting in the need for competition, particularly in currently regulated Canadian sectors, the need to focus on areas that have not been deregulated or only partially deregulated, and the need to address new problems as they arise, could lead to renewed interest in intervention activity in the future.

Notes

* This article substantially extends and updates the analysis presented in a previous article by the author in *Canadian Competition Law and Policy at the Centenary*, eds. R. S. Khemani and W. T. Stanbury (Institute for Research on Public Policy 1991). The opinions expressed are those of the author and do not necessarily reflect the views of the Bureau of Competition Policy. Rob Anderson, Derek Ireland, Don Mercer and Cécile Suchal of the Bureau provided helpful comments.

[1] See the "Introduction" and "The Scope and Growth Government Regulation," in Responsible Regulation: An Interim Report by the Economic Council of Canada, November 1979, p. xi and pp. 9-25.

[2] Section 27.1 first appeared as Section 93 in Bill C-256 to amend the *Combines Investigation Act* in June 29, 1971, it was amended and finally became law with the passage of Bill C-2 in 1976.

[3] See section 125 in *An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition*, R.S. 1985, c. C-34 amended by R.S. 1985, c. 27 (1st Supp.), R.S. 1985, c. 19 (2nd Supp.), R.S. 1985, c. 34 (3rd Supp.), R.S. 1985, c.1 (4th Supp.), R.S. 1985, c. 10 (4th Supp.) 1990, c. 37. (Henceforth referred to as the *Competition Act*).

[4] The legislation refers to the Minister of Consumer and Corporate Affairs. Presumably, this will eventually be updated in light of recent changes in government organization.

[5] It has long been recognized that regulation can have the effect of limiting competition. Indeed, much industry specific direct economic regulation in both Canada and the US appears to have been adopted for the purpose of facilitating cartelization of the affected industries. See William A. Jordan, "Producer Protection, Prior Market Structure and the Effects of Government Regulation," Journal of Law and Economics, Vol. XV, No.1, April 1972, pp. 151-176, and George J. Stigler, "The Theory of Economic Regulation," Bell Journal of Economics, Vol. 2, 1971, pp. 3-21.

[6] Annual Report, Director of Investigation and Research, *Combines Investigation Act*, March 31, 1978, p. 24.

[7] For background, see W. T. Stanbury, "How Wide the Ocean? The Regulated Conduct Exemption in Canada," Antitrust Bulletin, Vol. XXIX, No. 3/Fall 1984, pp. 577-604.

[8] "...the Director also makes selected non-statutory representations to bodies such as government committees or task forces in cases where his particular expertise can bring a unique perspective to bear upon the issues." See Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1992, p. 23.

[9] Joseph Monteiro, "Regulatory Interventions by the Bureau of Competition Policy," Canadian Competition Law And Policy At The Centenary, ed. R.S. Khemani and W.T. Stanbury, The Institute for Research on Public Policy, Halifax, N.S., 1991, pp. 451-461.

[10] These were in transportation (see nos. 1, 5, 52 and 53 of Appendix I), communications (see nos. 2, 15 and 108) and resources (see no. 156).

[11] This refers to the applicant's application and/or the Directors' representation that were withdrawn during the proceedings. It also includes proceedings that were terminated.

[12] On a sectoral basis, the results in transport were better than those in communications, and the latter were better than those in other sectors. It should also be pointed out that many of the unfavourable or partially favourable decisions were with regard to the initial interventions, and initial interventions in a particular sector, and interventions opposing mergers.

[13] See "New Canadian Air Policy," in House of Commons Debates, May 10, 1984, pp. 7-30.

[14] See Minister of Transport, "Freedom to Move," (July 1985).

[15] Annual Review National Transportation Agency of Canada 1988, pp. 51-54.

[16] See Annual Review National Transportation Agency of Canada 1991, pp. 131-137, Annual Review National Transportation Agency of Canada 1988, p. 39 and Transportation Regulatory Reform in Canada: The Early Results, by KPMG Peat Marwick, 1988, p. 14.

[17] See Annual Review National Transportation Agency of Canada 1991, pp. 97-102.

[18] These developments are discussed in detail in R. D. Anderson and S. D. Khosla, "New Canadian Legislation to Govern Shipping Conferences: Provision for Competition Within the Cartel System", (1988) 9:1 Can. Comp. Rec. 49.

[19] Agency of Canada 1991, pp. 147 and 174.

[20] The most noteworthy changes are the entry of firms into the long distance telecommunications market and privatization of Teleglobe. See Telecom Decision CRTC 92-12, Competition in the Provision of Public Long Distance Voice Telephone Services and Related Resale and Sharing Issues. John F. Blakney, "CRTC authorized increased long distance competition", (1992) 13:2 Can. Comp. Rec. 52.

[21] See Bill C-62, the *Telecommunications Act*. Also see John F. Blakney, "New Federal Telecommunications Legislation - A Commentary", (1992) 13:1 Can. Comp. Rec. 64 and Telecommunications: New Legislation for Canada, (February 1992).

[22] For example, since 1979, CNCP has used Bell Canada's and B.C. Tel's local telephone loops and switches to provide public data transmission across Canada through their national microwave networks. Without interconnection, CNCP would not be able to offer its voice and data services. Interconnection is also essential for the services provided by Telesat Canada which must rely on the local telephone loops and switches of Bell Canada and B.C. Tel to reach its customers. Cantel Cellular Radio Group Inc., suppliers of mobile telephone service, is almost completely dependent on interconnection.

[23] For example, see comments on the decision of the CRTC of June 25, 1985, Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1986, p. 69. Also see Bill-13 (formerly Bill C-19) which received Royal Assent in 1987, p. 70 in the reference cited above. See comments on Telecom Decision 84-11, Annual Report, Director of Investigation and Research, Combines Investigation Act, March 31, 1984, p. 74. See comments on the Decision of the Board of Commissioners of Public Utilities for the Province of Nova Scotia, in Annual Report, Director of Investigation and Research, *Combines Investigation Act*, March 31, 1985, p. 65.

[24] See "CIBC joins ranks of banks offering brokerage services," Calgary Herald, May 15, 1987, p. D4 and "Ottawa determined to keep banks out of insurance, Minister says," Globe and Mail, May 31, 1989, p. B3.

[25] Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1987, p. 69; Annual Report, Director of Investigation and Research, *Competition Act,* March 31, 1986, p. 77; Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1987, p. 78; and Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1987, pp. 61-62.

[26] See Agreement between the Federal Government and the Provinces on Natural Gas markets and prices indicated in footnote 29 and some of the references cited thereafter. Also see Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1988, p. 27 and Annual Report, Director of Investigation and Research, *Competition Act*, March 31, 1987, p. 49.

[27] See Annual Reports of Trans Canada Pipelines Limited 1988-1989.

[28] See National Energy Board Annual Report 1988, Minister of Supply and Services Canada 1989, p. 42, p. 33 and p. 87.

[29] The latest Annual Report of the Director of Investigation and Research (1992) indicates that there were only 4 new interventions for the period 1991-1992.

[30] See R. D. Anderson and S. D. Khosla, Competition Policy As A Dimension of Economic Policy: A Comparative Perspective, (Bureau of Competition Policy, forthcoming), Chapter VI.

[31] For a useful overview of such possibilities, see Richard J. Schultz, "Regulatory Reform A Handbook of Possibilities," (Prepared for Regulatory Affairs Branch, Bureau of Competition Policy, Consumer and Corporate Affairs Canada, Government of Canada, July 1991).

[32] *Supra,* note *30.*

[33] An agreement was signed between the Federal Government and the Western Provinces on October 31, 1985, which was to go into effect as of November 1, 1986 opening up the natural gas market for the first time to a more flexible and market oriented pricing regime. See "N.E.B. Wrestles with Restriction on Competition in Natural Gas Marketing", (1986) 7:1 Can. Comp Rec. 31; "Deregulation of Domestic Natural Gas Markets - An Ontario Perspective", (1987) 8:1 Can. Comp. Rec. 28; "Natural Gas Deregulation - Recent Regulatory Developments", (1988) 9:1 Can. Comp. Rec. 29; and, "Natural Gas Deregulation - A Year of Evolution", (1989) 10:2 Can. Comp. Rec. 28.

[34] In transportation, significant regulatory reforms were introduced in Minister of Transport "Freedom to Move," (July 1985).

[35] For example, N.J. Schultz notes that "The Director's selective approach to competition advocacy has been marked with important successes and has reflected an effective use of limited financial and human resources." See "Commentary: Competition Advocacy in the Deregulation Era", (1989) 10:3 Can. Comp. Rec. 42.

Appendix I

REPRESENTATIONS BY THE DIRECTOR OF INVESTIGATION AND RESEARCH BY YEAR AND SECTOR*

(Listing mainly based on references in the Annual Reports of the Director of Investigation and Research)

1976-1977

Transportation

1. Canadian Transport Commission, Transfer of a Commercial Licence from White River Air Services Ltd. to Sports Air Ltd.

Communications

2. [Canadian Radio-Television and Telecommunications Commission] Telesat Canada, Proposed Agreement with Trans-Canada Telephone System.
3. [Canadian Radio-Television and Telecommunications Commission] Bell Canada Rate Application, April 1977.

Finance

4. Ontario Securities Commission, Hearings on Fixed Commission Rates at the Toronto Stock Exchange.

1977-1978

Transportation

5. [Canadian Transport Commission] Air Canada Proposed Acquisition of Nordair Ltd.

Communications

6. [Canadian Radio-Television and Telecommunications Commission] Bell Rate Application, 1978.
7. [Canadian Radio-Television and Telecommunications Commission] CNCP Telecommunications Application for Access to Bell Canada System for Telecommunication Traffic.[a]
8. [Canadian Radio-Television and Telecommunications Commission] Challenge Communications Ltd. vs. Bell Canada, Concerning Application for Tariff Review.
9. [Canadian Radio-Television and Telecommunications Commission] Colins Inc. vs. Bell Canada, Concerning Application for Supply Selector Level Numbers.[d]

Services

10. The Professional Organizations Committee of Ontario, concerning Statutes Dealing with Professional Organizations.[b]

1978-1979

Communications

11. [Board of Commissioners of Public Utilities for the Province of Nova Scotia] Maritime Telegraph and Telephone Company Limited Application for Tariff Approval of a Voice Page Service.

* The organization in the initial brackets indicates the forum to which the intervention was made.

12. [Board of Commissioners of Public Utilities for the Province of New Brunswick] New Brunswick Telephone Company Limited Application for Network Extension Telephone Service.

1979-1980

Communications

13. [Canadian Radio-Television and Telecommunications Commission] Bell Canada and British Columbia Telephone Company Applications for Approval of Increases in Rates for Services Provided by the Members of the Trans-Canada Telephone System (TCTS).
14. [Canadian Radio-Television and Telecommunications Commission] Bell Canada, Connection of Customer Provided Terminal Devices.
15. [Canadian Radio-Television and Telecommunications Commission] British Columbia Telephone Company Proposed Acquisition of GTE Automatic Electric (Canada) Limited and Microtel Pacific Research Limited.
16. [Public Utilities Commission of Prince Edward Island] Garden of the Gulf Motel Application for Connection of COAM PABX to Island Telephone Company Limited System.

1980-1981

Transportation

17. [Canadian Transport Commission] Domestic Advance Booking Charters, 1981 Comments on Domestic Charter Regulations.

Communications

18. [Canadian Radio-Television and Telecommunications Commission] Bell Canada, General Rate Increase, 1981.
19. [Canadian Radio-Television and Telecommunications Commission] Bell Canada, General Increase in Rates, 1980: Northern Telecom Price Comparisons Tests.

International

20. [The Tariff Board] Tariff Board Reference 159 - Modification of the Value for Duty Provisions of the Customs Act.[a]
21. [The Tariff Board] Tariff Board 158 - General Preferential Tariff Extensions and Reductions.[a]

Agriculture

22. National Farm Products Marketing Council, Consideration of a Proposal to Establish a Potato Marketing Agency for Eastern Canada.

1981-1982

Transportation

23. Canadian Transport Commission, Water Transport Committee - Shipping Conference Exemption Act.[b]
24. Standing Committee on Transportation - Domestic Air Carrier Policy.[b]
25. [House of Commons Standing Committee on Transport] Domestic Air Carrier Policy, 1981.
26. Draft General Rules of the Canadian Transport Commission - Comments.

Communications

27. [Canadian Radio-Television and Telecommunications Commission] Pay Television - Application for licences.
28. Canadian Radio-Television and Telecommunications Commission Telecom Cost Inquiry - Phase III - Costing of Existing Services.
29. Ontario Telephone Service Commission (O.S.T.C.) Concerning Terminal Attachment in Ontario.
30. Régie des Services Publics du Québec (Régie) Concerning Terminal Attachment in Quebec.
31. [Public Utilities Board of Alberta] Alberta Government Telephones - Terminal Attachment.
32. [Newfoundland and Labrador Board of Commissioners of Public Utilities] Newfoundland Government Telephone Company Limited Mobile Radio and Paging Services, Pertaining to Cross-subsidization from a Tariff.
33. [Department of Communications] DOC / Microwave Licensing.[d]

International

34. [The Tariff Board] Tariff Board Reference 157 - Tariff Items Covering Goods Made/Not Made in Canada, Phase 1.
35. House of Commons Sub-Committee on Import Policy - Comments on a Discussion Paper proposing changes to Canadian Import Legislation.

Finance

36. Ontario Securities Commission Hearings on Competitive Rates.

1982-1983

Transportation

37. [Alberta Motor Transport Board] Legan Bus Lines, Edmonton - Application for a Bus Licence.[d]
38. Canadian Transport Commission Public Hearing into "Deep Discount" Domestic Air Fare Rules.[b]

CANADIAN COMPETITION RECORD

Communications

39. [Canadian Radio-Television and Telecommunications Commission] Radio Common Carrier Interconnection with Federally Regulated Telephone Companies.
40. [Canadian Radio-Television and Telecommunications Commission] Bell Canada Corporate Reorganization.
41. [Board of Commissioners of Public Utilities for the Province of New Brunswick] New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of its General Tariff.
42. [Public Utilities Board of Alberta] Alberta Government Telephones - Selector Level Access Rates.[d]
43. [Department of Communications] Role of Telesat Review.[d]

Agriculture

44. [National Farm Products Marketing Council] Fact Finding Inquiry into Egg Production Costs.
45. Régie des Marchés Agricoles du Québec - Controls on the Wholesale and Retail Prices of Milk.
46. Régie des Marchés Agricoles du Québec - Submission on the Establishment of a Marketing Board for Maple Syrup.

1983-1984

Transportation

47. [Canadian Transport Commission] Federal Express - Application to Amend its Commercial Air Services Licence.[a]
48. [Canadian Transport Commission] Air Ontario Ltd. - Application for Scheduled Passenger Service, Hartford, Connecticut.
49. [Canadian Transport Commission] Air Ontario Ltd. - Application for Scheduled Passenger Service, Sudbury and North Bay, Ontario.
50. [Canadian Transport Commission] Voyageur Airways - Application for Scheduled Passenger Service between Toronto Island Airport and Windsor, Ontario.
51. [Canadian Transport Commission] Kelowna Flightcraft Air Charter Limited - Application for Scheduled Passenger Service.
52. [Canadian Transport Commission] Review of Proposed Canadian National Acquisition of an Interest in Cast Container Group.[a]
53. [Canadian Transport Commission] Review of Canadian National's Payments of Rebates to the Cast Container Group.
54. [Canadian Transport Commission] Canada Southern Railways Acquisition by CN Railway and CP Railway.
55. [Canadian Transport Commission] Regulations Affecting Freight Interswitching between Canadian Railways.[c]
56. Canadian Transport Commission Review of the Economic Regulation of Commercial Air Services Using Rotary Wing Aircraft.[a]
57. [Minister of Transport for Alberta] Alberta - Review of Intercity Bus and Trucking Regulation.
58. [Canadian Transport Commission] Domestic Air Fare Policy Review.
59. [Manitoba's Task Force Review of Motor Carrier Regulations] Manitoba Review of Motor Carrier Regulations.

Communications

60. [Canadian Radio-Television and Telecommunications Commission] Pay Television Policy Review.
61. [Canadian Radio-Television and Telecommunications Commission] Telesat Canada - Final Rates for 14/12 GHz Service: Resale and Sharing.
62. [Canadian Radio-Television and Telecommunications Commission] Enhanced Services Application by Bell Canada.
63. [Canadian Radio-Television and Telecommunications Commission] Services Using Vertical Blanking Interval or Subsidiary Communication Multiplex Operation.
64. [Canadian Radio-Television and Telecommunications Commission] Tiering of Cable Services and Universal Pay Television.
65. [Public Utilities Board of Alberta] Alberta Government Telephones - 1983 Rate Application.
66. [Board of Commissioners of Public Utilities for the Province of New Brunswick] Interconnection in the Telecommunications Industry in New Brunswick.
67. [Board of Commissioners of Public Utilities for the Province of Nova Scotia] Attachment of Customer-owned Terminal Equipment to the Public Switched Network in Nova Scotia.

Resources

68. National Energy Board Hearings on Heavy Fuel Oil Imports and Exports.
69. Ontario Energy Board Hearings Concerning Ontario Industries Using Natural Gas as a Feedstock.

Agriculture

70. [National Farm Product Marketing Council] Establishment of a National Agency for Broiler Type Chicken Hatching Eggs.

Finance

71. Ontario Securities Commission Review of the Role of Financial Institutions in the Brokerage Industry.

Services

72. [Standing Committee on the Administration of Justice of the Ontario Legislature] Professional Engineers Act and Architects Act, Province of Ontario - On Setting of Schedules of Suggested Fees.

1984-1985

Transportation

73. [Canadian Transport Commission] Austin Airways Intervention - Application for a Licence.
74. [Canadian Transport Commission] Pacific Western Airlines - Application to Consolidate Licences.
75. [Canadian Transport Commission] Kelowna Flightcraft - Application to Amend its Commercial Air Services Licence.

CANADIAN COMPETITION RECORD

76. [Canadian Transport Commission] Nordair - Application to serve Sudbury, Timmins and North Bay, Ontario.
77. [Canadian Transport Commission] Voyageur Airways Ltd. - Application to Consolidate Licences.
78. [Canadian Transport Commission] Eastern Provincial Airways Application to Consolidate Licences.
79. [Canadian Transport Commission] Québec Aviation Ltd. Application to Consolidate Licences.
80. [Canadian Transport Commission] Staggers Rail Act of 1980 - Implications.
81. R. McCargar Trucking Ltd. - Operating Authority Application before the Manitoba Motor Transport Board.
82. Kleysen Transport - Application for a Trucking Licence before the Manitoba Motor Transport Board.
83. V.O.T. Transport Ltd. - Application for a Trucking Licence before the Ontario Motor Transport Board.
84. Hillside Auto Carrier Limited - Application for a Trucking Licence before the New Brunswick Motor Carrier Board.
85. Multimodal Integration - Comments on Canadian Transport Commission Review.
86. [Motor Carrier Commission of British Columbia] Regional Taxicab Licensing - Lower Mainland of British Columbia.[b]

Communications

87. [Canadian Radio-Television and Telecommunications Commission] Restructuring of Pay Television Industry.
88. [Canadian Radio-Television and Telecommunications Commission] Interexchange Competition and Related Issues.
89. British Columbia Telephone Company 1984 Canadian Radio-Television and Telecommunications Commission Construction Program Review.
90. [Canadian Radio-Television and Telecommunications Commission] Cable Television Rate Indexing.
91. [Canadian Radio-Television and Telecommunications Commission] Structural Separation of Multiline and Data Terminal Equipment.

International

92. Anti-dumping Tribunal Refined Sugar Dumped into Canada.
93. Foot-wear Inquiry Intervention - The Canadian Import Tribunal, Impact of Import Quotas.[b]

Resources

94. National Energy Board Hearings - Review of Toll Design and Methodology of Trans Canada Pipelines Limited.[c]

Finance

95. [Ontario Securities Commission] Financial Markets: Ontario Security Policy Review.
96. [Ontario Securities Commission] Regulation of Financial Markets.

Other

97. [Commission of Inquiry on the Pharmaceutical Industry] Section 41(4) of the *Patent Act* and the Government Policy in the Pharmaceutical industry.[b]
98. Royal Commission on the Economic Union and Development Prospects for Canada (MacDonald Commission).[b]

1985-1986

Transportation

99. [Canadian Transport Commission] Nordair Inc. - Application to Consolidate Licences.
100. [Canadian Transport Commission] Soundair Corporation (Commuter Express), Mississauga - Request to Operate Toronto to Cleveland.
101. [Canadian Transport Commission] Air Atlantic Ltd. - Application to Operate a Commercial Air Service.
102. [Canadian Transport Commission] Wardair Canada Inc. Application to Operate Scheduled Commercial Air Service.
103. Roadway Express Ltd. - Intervention before the Ontario Highway Transport Board on Transfer of Trucking Licences.
104. [Motor Boards of Alberta, Manitoba and Sakatchewan] Prairie Provinces Joint Hearing-Trucking - On Development of Common List of Commodities.
105. [Manitoba Motor Transport Board] Proposed Regionalization of General Freight Carriers - Manitoba.
106. Freedom to Move - House of Commons Standing Committee on Transport, Comments on Regulatory Reform Paper.
107. [Committee on Airport Management Task Force] Airport Management Task Force, Review of Airport Management Policy.

Communications

108. [Canadian Radio-Television and Telecommunications Commission] Telesat Canada / Telecom Canada Connecting Agreement.
109. [Canadian Radio-Television and Telecommunications Commission] British Columbia Telephone Company - Purchasing Policy.
110. [Canadian Radio-Television and Telecommunications Commission] Resale of Primary Exchange Service.

International

111. Canadian Import Tribunal - Surgical Tapes Dumped into Canada.

Resources

112. National Energy Board - Review of the Tariffs of Interprovincial Pipe Line Limited Relating to the Apportionment of Space Among Shippers on its Pipeline System.

Finance

113. [House of Commons Standing Committee on Finance, Trade and Economic Affairs] Parliamentary Committee Hearing Concerning the Regulation of Canadian Financial Institutions.
114. [Ontario Government Task Force on Financial Institutions] Regulation of Financial Markets.
115. Corporate Defensive Tactics - Comments on Ontario Securities Commission Policy.
116. [Standing Committee on Banking, Trade and Commerce] Senate - Financial Markets - Comments on the Green Paper on Financial Deregulation.

Services

117. Office des Professions du Québec Renewal of Tariff of Fees.

Other

118. [Subcommittee of the Parliamentary Standing Committee on Communications and Culture] Revisions to Canadian Copyright Law.

1986-1987

Transportation

119. [Québec Transport Board] Populaire Express Inc. - Application to operate an interprovincial bus service.
120. [Manitoba Motor Transport Board] Manitoba Private Truck Hearing - Reforms.
121. House of Commons Standing Committee on Transport - Review of Bill C-18 and C-19.

Communications

122. [Canadian Radio-Television and Telecommunications Commission] CNCP Application for Regulatory Exemption.
123 [Canadian Radio-Television and Telecommunications Commission] Cellular Radio Cross-subsidization.
124. [Canadian Radio-Television and Telecommunications Commission] Bell Canada Revenue Requirement.
125. [Saskatchewan Public Utilities Review Commission] Saskatchewan Telecommunications' 1985 Net Income Study and Financial Targets.
126. [Newfoundland and Labrador Board of Commissioners of Public Utilities] Newfoundland Telephone Company Ltd. - Terminal Attachment.

International

127. The Tariff Board - Sweetener Policy.

Resources

128. Manitoba Public Utility Board Hearings - Cost Pass Through.
129. Ontario Energy Board Hearing - Contract Carriage.

Agriculture

130. National Farm Products Marketing Council In the Matter of an Inquiry into the Merits of Establishing a National Agency for Potatoes.
131. National Farm Products Marketing Council - Seminar on Consumer Levy.

Finance

132. Ontario Standing Committee on Finance and Economic Affairs.

Services

133. Scowan Committee - Privatization and Regulatory reforms in the industrial and service sectors.
134. Ontario Health Professions Legislation Review.

1987-1988

Communications

135. Canadian Radio-Television and Telecommunications Commission Rate Rebalancing.
136. [Canadian Radio-Television and Telecommunications Commission] CNCP Request to Bell Canada for Interconnection to Private Line Services.
137. Régie des Services Public du Québec.

International

138. Canadian Import Tribunal Hyundai Motor Company - Dumping.

Resources

139. National Energy Board - Distributor Self-displacement.
140. La Régie de l'Electricité et du Gaz - Contract Carriage.

1988-1989

Transportation

141. National Transportation Agency Hearing on VIA Rail Proposed Discounts.
142. [National Transportation Agency] VIA Rail Policy Inquiry.

CANADIAN COMPETITION RECORD

Communications

143. [Canadian Radio-Television and Telecommunications Commission] Bell Canada - De-Tariffing.
144. [Canadian Radio-Television and Telecommunications Commission] Bell Canada - Telephone Directory Data Base.
145. [Canadian Radio-Television and Telecommunications Commission] Master Antenna Television Systems: Criteria for Exemption from Licensing.
146. [Canadian Radio-Television and Telecommunications Commission] Enhanced Services.
147. [Canadian Radio-Television and Telecommunications Commission] Resale and Sharing.

Resources

148. National Energy Board Northridge Application for Transportation under Subsection 71(2) of the NEB Act.
149. Ontario Energy Board - Security of Supply.

Services

150. L'Office des Professions du Québec - Suggested minimum service rates.
151. [Ontario Task Force on Paralegals] Ontario Paralegals - Submission to Ontario Task Force.

1989-1990

Transportation

152. British Columbia Motor Carrier Commission - Application for a truck licence.

Communications

153. Canadian Radio-Television and Telecommunications Commission - Proposed Changes to the Cable Television Regulations, 1986.

Resources

154. National Energy Board - Rules for Queuing for Prospective Shippers on TransCanada's Pipelines.
155. National Energy Board - Gas Supply Information Required for Facilities Expansion Application.
156. National Energy Board Study on Inter-Utility Trade in Electricity.
157. Nova Scotia Board of Public Utilities - Wilson Fuel Oil Application to retail gasoline.
158. Ontario Environmental Assessment Board Hearing to Review Ontario Hydro's 25-Year Demand/ Supply Plan.

Agriculture

159. Submission to the Royal Commission on the British Columbia Tree Fruit Industry Supply-Management for apples.
160. Alberta Public Utilities Board Regulation of the Pricing of Milk in Plastic Containers.
161. Submission to the Ontario Chicken Producer's Marketing Board Pricing Systems.

Services

162. [Special Committee on Regulations of the Government of Saskatchewan] Saskatchewan Land Surveyors - Submission to the Saskatchewan Special Committee on Regulations.
163. B.C. Engineers - Submission to the Task Force Studying the Burnaby Roof Collapse - Schedule of minimum fees.

1990-1991

Transportation

164. Royal Commission on National Passenger Transportation - Intercity passenger service.
165. Submission to the Ontario-Québec Rapid Train Task Force - Feasibility of high speed passenger service.
166. Submission to the International Air Policy Committee - Restructuring of airline industry.

Communications

167. [Canadian Radio-Television and Telecommunications Commission] Application filed by Unitel Communications Inc. - Interconnection with networks.
168. [Canadian Radio-Television and Telecommunications Commission] Application by the B.C. Rail Telecommunications/Lightel consortium Interconnection with networks.

Agriculture

169. National Farm Products Marketing Council - Apple Marketing Agency - Creation of the Agency with Supply-Management powers.

Services

170. Québec Legislative Committee - Real Estate Brokerage Act.
171. [Royal Commission on Health Care and Costs of B.C.] Submission to the Royal Commission on Health Care and Costs.

Note: The number of formal representations listed in each year may marginally differ from those reported in the *Annual Report, Director of Investigation and Research, Combines Investigation Act*, because the basis of classification here, is the year in which the representation is reported in the annual report,[a] omissions[b] and additional submissions made in the following years.[c]

d Not recorded in the Annual Report.