

## CANADIAN COMPETITION RECORD

**CANADIAN COMPETITION LAW  
AND POLICY DEVELOPMENTS**

The articles in this section were written by Bruce M. Graham of Smith, Lyons, Torrance, Stevenson & Mayer, Linda R. Bergeron and David Shoobert of the Bureau of Competition Policy and staff of the Bureau of Competition Policy.

**NEW T.D. MacDONALD CHAIR FOR  
THE BUREAU OF COMPETITION  
POLICY BELIEVES IN AN OPEN-  
DOOR APPROACH**

Professor Abraham Hollander, of the University of Montreal, joins the Bureau of Competition Policy as the 1994/95 occupant of the T.D. MacDonald Chair in Industrial Economics. He replaces Professor Roger Ware of Queen's University.

"I am very pleased with this assignment" said Professor Hollander, "and hope that I can contribute to the Bureau's work. My door is always open to my new colleagues to discuss the economic issues of their cases."

Professor Hollander has a Ph.D. from the University of Minnesota. His research has covered a wide range of topics in competition policy, including entry restrictions, agricultural quota systems and international trade restrictions. Along with his research and teaching responsibilities, Professor Hollander has acted as a consultant for numerous companies, governments and international organizations.

Professor Hollander will be working for the Bureau on a part time basis in the Economics and International Affairs Branch.

L.R.B.

**NIELSEN ABUSE OF DOMINANCE  
CASE DEVELOPMENTS****Prior Developments**

On April 5, 1994, the Director of Investigation and Research filed an Application with the Competition Tribunal pursuant to the abuse of dominance provisions of the *Competition Act*. The Application seeks an order requiring Nielsen (The D & B Companies of Canada Ltd.) to cease engaging in a practice of alleged anti-competitive actions which prevent access by Nielsen's competitors to Universal Product Code scanner-based sales information generated by large Canadian retailers and to customers for scanner-based market tracking services.

By Order dated June 18, 1994, IRI (Information Resources, Inc.), a significant competitor of Nielsen and the complainant, was granted leave to intervene in the proceedings and was directed to file an affidavit of documents relevant to specified subject areas. By the same Order, the Tribunal denied Nielsen's motion for a further and better affidavit of documents from the Director and for a list of the individual documents described in the Director's affidavit for which privilege was claimed. Subsequently, Nielsen brought a motion for an order requiring the Director to produce certain

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documents for which claims of public interest privilege and litigation privilege were made in the Director's affidavit of documents (notes, materials, statements and correspondence relating to the complaint of IRI and to information obtained from Canadian and U.S. packaged goods retailers and manufacturers). By decision dated June 24, 1994, the Tribunal concluded that the motion was premature prior to the completion of discovery but in the meantime ordered the Director to provide a summary of the material facts contained in the documents sought, subject to appropriate confidentiality restrictions. Also on June 24, 1994, the Tribunal established a schedule for pre-hearing procedures, including examinations for discovery and the filing of expert reports, and ordered the hearing of the Application to commence in Ottawa on October 17, 1994. The Application and related pleadings and the foregoing proceedings are described in the last issue of the *Record*.<sup>1</sup>

### **Additional Intervenor Application**

In a hearing conducted by conference call, the Tribunal considered an application for leave to intervene by two lawyers, one of whom is the Director of the Centre for the Study of Regulated Industries at McGill University. The applicants sought leave to file written submissions in the form of an *amicus curiae* brief to address the importance of linking anti-competitive conduct to market structure when interpreting the abuse of dominance provisions of the Act. The Director and Nielsen opposed the application and IRI took no position regarding the request.

In Reasons And Order dated July 7, 1994, the Tribunal denied the request because there was no demonstration that the applicants were affected in

any manner by the proceeding and it was doubtful that the proposed submissions would assist the Tribunal (see section 9 of the *Competition Tribunal Act*). While the applicants demonstrated a particular interest in the competition law area, this was not in and of itself a ground for granting leave to intervene.

### **Terms of Access to Protected Documents**

At a pre-hearing conference on July 14, 1994, the Tribunal considered various motions relating to documents over which confidentiality was claimed. It was agreed that all such documents would be subject to a protective order restricting access. Challenges to claims of confidentiality, or the level of confidentiality accorded, with respect to individual documents would be deferred to a pre-hearing conference to be held in early October. By that time, the parties and the intervenor were expected to have a better idea of which documents would likely be entered as evidence. The remaining issues, related to the terms of access to documents by the parties, the intervenor and their counsel and experts, were dealt with by the Tribunal in Reasons and a Confidentiality Order dated July 26, 1994.

In their affidavits of documents, Nielsen claimed confidentiality over and sought to restrict access to the majority of 840 documents, IRI claimed the majority of 152 documents and the Director claimed 1 document and the material fact summaries produced to Nielsen pursuant to the June 24, 1994 Order of the Tribunal.

Nielsen sought to restrict access to its documents to counsel for the Director and to the Director, his staff and experts. Nielsen opposed any disclosure of its documents to IRI, its counsel or experts. The Director and IRI argued that Nielsen's documents should be

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disclosed to IRI's counsel and experts. IRI did not ask that the documents be provided to company representatives.

Nielsen argued that IRI was an intervenor, not a co-applicant or party. Its request for leave to intervene set out its position which in most respects was identical to the position of the Director who has access to all Nielsen documents. To the extent that the proposed representations of IRI might differ from those of the Director, IRI would not need access to Nielsen documents to recount its experiences.

The Tribunal ruled that IRI's counsel and expert witnesses would be provided access to Nielsen's documents. The test to be applied is the balancing of the harm to Nielsen and the ability of IRI to make representations effectively having regard to the scope of intervention granted to IRI in the Tribunal's Order of June 18, 1994. Nielsen had not argued that any harm to it would flow from disclosure to IRI's counsel and experts. The Tribunal concluded that non-disclosure would, however, affect IRI's ability to effectively intervene and assist the Tribunal with its intervention. While it was appropriate to recognize and maintain a distinction between a party and an intervenor, an intervenor has certain, albeit limited, rights to participate. The Director represents the public interest whereas IRI clearly has a private interest in the outcome of the Application. To some extent, these different interests may coincide but IRI had been granted intervenor status in order to effectively represent its own interest. The Tribunal considered that IRI's right to call expert evidence would be largely nullified if it were kept in ignorance of the factual basis of the proceeding until the moment when evidence was tendered at the hearing. As well, it would hamper the process if IRI had to apply to call factual evidence relevant to its interest

without knowledge of the factual case to be presented by the parties; preparation by counsel for IRI for final argument would also be facilitated. The Tribunal emphasized that it was not granting access to IRI so that it could assist the Director but rather so that it could fulfill its particular role as an intervenor.

IRI sought to restrict access by Nielsen to its documents based upon their categorization. There was no dispute as to Level B and C documents which would be made available to Nielsen counsel and experts and two designated individuals on behalf of Nielsen. However, there were differences of opinion respecting documents classified by IRI as Level A, comprising marketing, public relations, sales and business plans of IRI. IRI sought to restrict access to those documents to counsel and experts for Nielsen arguing that even with a confidentiality agreement, and without assuming any bad faith, Nielsen representatives to whom the documents would be disclosed would be placed in an intolerable situation of conflict of interest; it would be difficult, if not impossible, for them not to consider what they had learned in making subsequent decisions which they were obligated to make in the best interests of Nielsen. The Director supported IRI's position on the basis that access by Nielsen representatives could lead to adverse competitive consequences notwithstanding the outcome of the Application. Nielsen did not dispute the confidential nature of the documents but argued that fairness to Nielsen should be the overriding concern; representatives of Nielsen must have access to them in order to instruct counsel for Nielsen properly in preparing to respond to the Director's Application. The Tribunal concluded that, even placing additional emphasis on fairness to Nielsen facing the prospect of an order issuing against it, it was not prepared to issue a ruling that

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Nielsen representatives should have access to these documents. The Tribunal expressed concern with the "blanket" nature of the request and was not convinced that denial of access to Nielsen representatives would be a bar to effective preparation or that the argument applied to every document with equal force. The Tribunal decided to leave open to Nielsen the option of returning to the Tribunal to ask for disclosure of particular documents or parts of documents to identified representatives of Nielsen. The Tribunal was of the opinion that it would be better able to balance the competing interests at stake when faced with a particular fact situation.

Regarding access to the Director's factual summaries taken from documents which were the subject of privilege claims, it was agreed that the summaries could be disclosed to IRI on a counsel and expert only basis and to Nielsen counsel, experts and three designated representatives. Experts and designated representatives would be required to execute confidentiality agreements with respect to all confidential documents to which they were granted access.

Finally, the Director asked the Tribunal to reconsider a previous decision that an implied undertaking not to use material obtained on discovery for purposes other than the conduct of the litigation in which it was produced applies in Tribunal proceedings. As the prior decision had been affirmed by the Federal Court of Appeal, the Tribunal ruled that it was not open to it to reconsider the question of the implied undertaking.<sup>2</sup>

### Further Discovery Issues

A pre-hearing conference was held on September 14, 1994, to consider, among other matters, additional discovery issues raised by Nielsen which were dealt with by the Tribunal in Reasons And Order dated September 22, 1994.

Having examined the Director's representative, an order was sought to allow Nielsen to examine for discovery a representative of IRI. Nielsen pointed out that the Director's representative had given approximately 106 undertakings, 90% of which required the representative to go to IRI for the information sought. Nielsen argued that the Director's representative had no personal knowledge of the facts of the case, had never interviewed anyone about the case, nor taken witness statements. Nielsen submitted that based on the documents produced to date there was reason to question the veracity of aspects of the complaint made by IRI. The Tribunal was directed to certain IRI documents that on their face were said to raise questions relevant to Nielsen's defence; these questions were submitted to be of sufficient importance that the answers should be provided directly by an IRI representative so that they could be tested through cross-examination. The Tribunal granted this motion on the basis that questions would be limited to the possible entry of IRI into the relevant market or markets.

Nielsen also sought an order for production of the documents over which the Director claimed public interest or litigation privilege, summaries of which had been given to Nielsen by the Director. Nielsen relied on the decision of the Supreme Court of Canada in *R. v. Stinchcombe*<sup>3</sup>, which requires the Crown to disclose all of the "fruits of the

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investigation” to the defence, and subsequent non-criminal case law applying such a standard of disclosure. Nielsen also submitted that in the past, public interest privilege and litigation privilege were assigned to materials by the Tribunal on an *ad hoc* basis and that no general principles of privilege had been established. The Tribunal rejected these submissions on the grounds that the *Stinchcombe* case law did not extend to an administrative tribunal with economic regulatory functions and that prior decisions of the Tribunal had established privilege for a class of documents. The issue to be considered was whether the system of discovery now in place in applications before the Tribunal afforded Nielsen with both information to know the case it has to meet and with information that can be used in its defence.

The Tribunal noted that Nielsen already had both documentary and oral discovery of the Director and that the Tribunal had granted Nielsen discovery of IRI. Under the procedures established by the Tribunal in previous cases, Nielsen had been provided with summaries of the documents sought which included more than 30 summaries of the information that the Director had received from industry participants. Furthermore, the Director had agreed to supply lists of witness names and summaries of the evidence to be presented through these witnesses three weeks prior to their appearance at the hearing of the Application. There had been no suggestion by Nielsen that the summaries provided were incomplete save that the names of firms whose representatives supplied information had been deleted, as had information that could lead to the firms being identified.

The Tribunal accepted the argument of the Director that the Bureau starts a case in virtual ignorance

of the industry unless there has been a recent case concerning it and must depend upon the cooperation of industry participants to gain general background information as well as to evaluate a complaint. There are good reasons for ensuring that the Director is able to obtain such cooperation by ensuring that, unless they are called as witnesses, individuals called upon by the Director are protected from having their names divulged which could result in an unnecessary possible souring of commercial relations with Nielsen. The Tribunal found there was no reason to doubt the importance to the Director of voluntary cooperation by industry participants.

The Tribunal also observed that while it might be argued that IRI is a sophisticated litigant who is using the machinery of the Director towards its own ends, and some of the IRI documents tended to confirm this, all complainants undoubtedly seek to convince the Director to adopt their view and to thereby improve their circumstances. In the Tribunal’s view, it is up to the Director to take adequate measures to ensure that a complaint has merit since the Director has responsibility for the carriage of a case and, in any event, it is the Director’s case that Nielsen must meet and not the complaint of IRI.

For these reasons, and particularly given the amount of disclosure already afforded Nielsen, the Tribunal decided that Nielsen should not be entitled to production of the documents requested. The Tribunal stated that if Nielsen believed that the summaries of the documents supplied were incomplete, a review of the documents and summaries by a judicial member of the Tribunal who was not part of the case could be arranged.

Finally, Nielsen made a request for access by two of

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its representatives to most of IRI's Level A documents. The Tribunal observed that while, as a general rule, it is always preferable for counsel to be able to share information with a client, this general preference has to be tempered when the information is confidential. The standard for confidentiality set out in the *Competition Tribunal Rules* is that of "direct commercial forum".<sup>4</sup> The Tribunal stated that it was relevant, in considering Nielsen's motion, to recognize that Nielsen's documents were protected from the kind of disclosure sought of IRI's documents. Counsel for IRI, an intervenor, was foreclosed from showing any confidential material to his client. While the role of an intervenor is necessarily smaller than that of the parties, IRI did have the right to present argument and to call evidence where it was not duplicative of that called by the Director. While the rights of Nielsen were somewhat greater by reason of being a party, they must be considered in light of the needs of all counsel and in relation to the harm that could be caused to IRI.

The Tribunal noted that Nielsen was repeating a request made at the pre-hearing conference held on July 14, 1994, without providing the detail requested by the Tribunal save for discussion of a particular document. The Tribunal reiterated that it could not accede to such a blanket request; to disclose recent marketing and business plans of IRI to a Vice-President of Marketing of Nielsen, as proposed, could clearly be very harmful to IRI and, as claimed by the Director, potentially to the competitive process as well since IRI was the most likely entrant into the industry.

In the end, Nielsen withdrew part of its motion as to certain documents. The Tribunal refused to permit access to certain other documents but decided that the certain remaining documents would be released

to Nielsen representatives after a pre-hearing conference scheduled for October 3, 1994, unless IRI, at that time, provided the Tribunal with further information as to why they should not be released.

### Appeal

By Notice Of Appeal dated September 28, 1994, Nielsen appealed to the Federal Court of Appeal the decision of the Tribunal dismissing its motion that the Director produce the privileged documents sought. As Nielsen was unable to obtain a stay of further proceedings pending its appeal, the hearing of the Director's Application before the Tribunal commenced in Ottawa on October 17, 1994, as originally scheduled.

B.M.G.

### Notes

<sup>1</sup> Bruce M. Graham, "Director Files Application against Nielsen under Abuse of Dominance Provisions" (1994) 15:2 Can. Comp. Rec. 6.

<sup>2</sup> *Director of Investigation and Research v. Southam Inc.* (1991), 38 C.P.R. (3d) 395 (Comp. Trib.), aff'd (May 6, 1993), A-634-91 (F.C.A.).

<sup>3</sup> [1991] 3 S.C.R. 326.

<sup>4</sup> SOR/94-290, s. 16(3).

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## LIFESTYLES CANADA FINED IN FIRST PROSECUTION UNDER AMENDED MULTI-LEVEL MARKETING PROVISIONS OF COMPETITION ACT

On August 4, 1994, the Director of Investigation and Research announced that Lifestyles Canada Limited had been fined \$35,000 in Provincial Court for

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violating section 55 of the multi-level marketing and pyramid selling provisions of the *Competition Act*. This section came into force on January 1, 1993, and Lifestyles is the first company charged under the new provisions.

The matter arose as a result of a complaint received by the Director's office indicating that representations relating to compensation were being made by Lifestyles in promotional material distributed to prospective participants.

Lifestyles was fined after it pleaded guilty to a charge that related to a number of representations contained in its quarterly publication "The News of Success". The representations provided readers with information on compensation earned by selected distributors in the multi-level marketing plan. The publication, however, did not disclose the amount of compensation earned by selected distributors in the multi-level marketing plan. Section 55(2) of the Act requires the latter type of disclosure if representations relating to compensation are made to prospective participants.

Lifestyles promotes the sale of dietary food supplements through a multi-level marketing distribution system. Multi-level marketing is a method of distributing products whereby participants in the plan receive compensation for the supply of products to other participants who, in turn, receive compensation for the supply of the same or another product to other participants.

The Director, George N. Addy, stated that the "case sends a strong message to multi-level marketing companies that make representations relating to compensation and fail to disclose the amount of income actually received by average participants in

such plans. Such representations mislead prospective participants into believing that it is easy to earn large amounts of money."

D.S.

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### THE BUREAU OF COMPETITION POLICY'S NEW PUBLIC EDUCATION INITIATIVE TARGETS SMEs

"Competition is good for business" is the slogan for the Bureau of Competition Policy's new Public Education Initiative. As part of this initiative, the Bureau recently published its first issue of the *Competition Communiqué*, an information newsletter that targets small and medium-sized enterprises ("SMEs") across the country and will deal with recent competition law and policy developments that may affect the day-to-day operations of the SMEs.

The first issue of the information newsletter discussed the significance for business of a recent price maintenance case in the real estate industry. The case involved a Calgary real estate brokerage company that was found guilty of violating the price maintenance provisions of the *Competition Act* by having refused to cooperate with a competing discount broker.

Another issue, scheduled for release this December, will deal with ordinary price claims that compare the offered or "sale price" of a product with a higher "regular price". The newsletter will explain to businesses the circumstances in which "regular price" claims can be used when advertising goods and services and will outline the Director's approach in interpreting and applying the law to these types of claims.

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Although the *Competition Communiqué* is targeted at SME communities, anyone interested in receiving the newsletter can contact the PEI Coordinator, Linda Bergeron, at the Bureau of Competition Policy, 50 Victoria Street, Hull, Quebec, K1A 0C9, Tel. (819) 953-8645, Fax (819) 953-5013.

### The Mandate

Since the *Competition Act* came into force in 1986, most of the Bureau's education and information activities have been concentrated on larger corporations and corporate legal counsel. The current Director, George N. Addy, felt it was necessary to expand the Bureau's public communications initiatives by developing programs and documents targeted specifically at SME communities.

As a result of this new commitment, the Bureau of Competition Policy began to develop a Public Education Initiative ("PEI") approximately a year ago under the management of Mary Zamparo, the Director General of the Compliance and Operations Branch.

Along with the *Competition Communiqué*, the PEI's publishing component includes three new pamphlets. These new publications increase the Bureau's pamphlet series to five and deal with a general overview of the *Competition Act*, the refusal to deal provision and illegal agreements among competitors. The Bureau launched the new pamphlets at the recent International Business World exhibition in Montreal. A new kiosk, for use by Bureau staff at trade and business shows, was designed specifically for the Bureau's PEI.

As part of the PEI, the Bureau is developing a Speakers' Bureau that will see senior enforcement

officers make audio-visual presentations on the *Competition Act* to such groups as municipal boards of trade, chambers of commerce and other associations and organizations representing small and medium-sized businesses in Canada.

"Smaller businesses need to know more about how Canadian competition law applies to their daily operations," said Mr. Addy. "I am confident that the Bureau's Public Education Initiative will be an important step in communicating the competition message to entrepreneurs across Canada."

### *Available from the Bureau of Competition Policy*

#### Pamphlets

- Refusal to supply
- Reaching an agreement with competitors
- An overview
- Bid-rigging
- Misleading Advertising and Deceptive Marketing Practices

#### Other Publications

- Competition Communiqué, Volume 1, No. 1
- Annual Report
- Misleading Advertising Bulletin
- Information Bulletin No. 1 - The Merger Provisions
- Information Bulletin No. 2 - Advance Ruling Certificates
- Information Bulletin No. 3 - Program of Compliance
- Information Bulletin No. 4 - An Overview of Canada's *Competition Act*
- Information Bulletin No. 5 - Merger Enforcement Guidelines
- Predatory Pricing Enforcement Guidelines
- Price Discrimination Enforcement Guidelines
- Misleading Advertising Guidelines

L.R.B.

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**GEORGE N. ADDY ANNOUNCES  
APPOINTMENT OF NEW  
SENIOR DEPUTY DIRECTOR OF  
INVESTIGATION AND RESEARCH  
(MERGERS)**

*The following is a News Release issued by the Bureau of Competition Policy on August 2, 1994, and is reproduced with permission.*

OTTAWA, August 2, 1994 — Mr. George N. Addy, Director of Investigation and Research under the *Competition Act*, today announced the appointment by the Public Service Commission of Francine Matte, Q.C., to the position of Senior Deputy Director of Investigation and Research (Mergers), Bureau of Competition Policy.

“The *Competition Act* allows us to review the competitive impact of merger transactions and defines the environment within which companies can develop the strengths they need to compete,” Mr. Addy stated. “The merger review process is an important element of Canadian competition law because it facilitates initiatives by businesses to meet the challenges posed by global markets.”

Most recently, Ms. Matte was Director of Legal Services (Market Framework), Industry Canada. In this capacity, she advised the Bureau of Competition Policy, the Corporations Directorate, the Office of the Superintendent of Bankruptcy and the Consumer Bureau.

Throughout her 23 years of service in federal administration, Ms. Matte has acted as legal counsel for many departments and organizations. Among these are the Department of Regional Economic Expansion, the Department of Consumer and

Corporate Affairs and Treasury Board. From 1988 to 1990, she was Corporate Secretary of Investment Canada. She has been a Queen’s Counsel since 1986. Ms. Matte is fluently bilingual and has a law degree from the University of Ottawa (1970). She was admitted to the Barreau du Québec in 1971.

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**SECOND FINE LEVIED UNDER THE  
COMPETITION ACT IN JOINT  
CANADA - U.S. INVESTIGATION**

*The following is a News Release issued by the Bureau of Competition Policy on August 5, 1994, and is reproduced with permission.*

OTTAWA, August 5, 1994 — The Director of Investigation and Research of the Bureau of Competition Policy, George N. Addy, announced today that a total of \$950,000 in fines have been levied against Mitsubishi Corporation and its Canadian subsidiary, Mitsubishi Canada Limited, for implementing a foreign-directed price-fixing conspiracy in Canada and for engaging in price maintenance activities under the *Competition Act*.

Mitsubishi Corporation, of Tokyo, Japan, pleaded guilty in the Federal Court (Trial Division) of having conspired with Kanzaki Specialty Papers Inc., of Ware, Massachusetts to lessen competition in Canada in the sale of thermal facsimile paper from July 1991 to January 1992. This fine represents the successful conclusion of the second phase of an ongoing joint investigative effort undertaken by the Bureau of Competition Policy and the U.S. Department of Justice (Antitrust Division).

“In the new global economy, co-operation between competition law agencies is essential in ensuring

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strong enforcement of our legislation," Mr. Addy said. "The effective administration and enforcement of competition law fosters a competitive marketplace to the ultimate benefit of Canadians."

On July 12, 1994, Mr. Addy announced that a \$950,000 fine had been levied against Kanzaki Specialty Papers Inc., of Ware, Massachusetts, for having engaged in a price-fixing conspiracy.<sup>1</sup>

On July 14, 1994, the U.S. Department of Justice (Antitrust Division) announced that charges had been filed against: Kanzaki Specialty Papers Inc. of Ware, Massachusetts and its former president; Mitsubishi Corporation of Tokyo, Japan; and Mitsubishi International Corporation of New York, as well as others, for their role in a conspiracy to fix and raise the prices of jumbo rolls of thermal facsimile paper sold in North America in 1991 and 1992. Fines of more than \$6 million (US) were imposed.

The Director's investigation of this matter is ongoing.

### Notes

<sup>1</sup> See (1994) 15:2 Can. Comp. Rec. 5.

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### JOINT CANADA AND U.S. EFFORTS TO FIGHT TELEMARKETING FRAUD WILL BENEFIT CONSUMERS AND BUSINESS

*The following is a News Release issued by the Bureau of Competition Policy on September 20, 1994, and is reproduced with permission.*

OTTAWA, September 20, 1994 — The Director of Investigation and Research of the Bureau of Competition Policy, George N. Addy, announced

today that Canadian and American agencies agreed to explore increased coordinated action against cross-border deceptive and fraudulent telemarketing practices.

The announcement follows the first-ever joint session involving the Bureau of Competition Policy, a delegation from the U.S. Federal Trade Commission ("FTC") headed by its Chairman Janet D. Steiger and representatives of various Canadian law enforcement agencies. Canadian participants include members of Project Phonebusters, an initiative directed at deceptive telemarketing and white collar crime.

Global economies are creating an environment where enforcement agencies need to work together more often to ensure healthy and competitive markets.

"Cooperation between my office, the FTC and the other agencies represented here today can lead to successful strikes against cross-border anti-competitive and deceptive marketing practices," Mr. Addy said. "Mechanisms for exchanging information and developing joint approaches to fight illegal telemarketing activities in both countries have now been more clearly defined. We are confident that consumers and businesses will benefit from these enforcement strategies."

The Bureau of Competition Policy's Marketing Practices Branch brought together representatives of the FTC with a variety of Canadian enforcement agencies including the Royal Canadian Mounted Police, the Ontario Provincial Police and the Metropolitan Toronto Police as well as the Ontario Ministry of Consumer and Commercial Relations.

The FTC is an independent regulatory agency supporting the workings of a free market economy

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and protecting the public from unfair trade practices and anti-competitive behaviour.

Separately, as part of regular bilateral meetings between Canadian and American competition authorities, the Director, Anne K. Bingaman, Assistant Attorney General, U.S. Antitrust Division, and Janet Steiger, Chairman, FTC, met in Ottawa today. They discussed competition law developments, cross-border enforcement issues and policy initiatives.

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### DIRECTOR BRINGS CONSENT ORDER BEFORE COMPETITION TRIBUNAL REGARDING YELLOW PAGES PUBLISHERS

*The following is a News Release issued by the Bureau of Competition Policy on September 20, 1994, and is reproduced with permission.*

OTTAWA, September 20, 1994 — George N. Addy, Director of Investigation and Research of the Bureau of Competition Policy, filed an application today before the Competition Tribunal in relation to the sale of national advertising in the Yellow Pages. National advertising designates advertising placed in the Yellow Pages of two or more publishers.

This is the first Consent Order application under abuse of dominance brought before the Competition Tribunal and the first joint dominance case under the *Competition Act*. Following discussions with the Director, during which competition concerns were drawn to the attention of the publishers, all agreed to the terms of the Consent Order filed with the Tribunal today.

“The practice of anti-competitive acts alleged in the application has prevented Yellow Pages publishers from competing with one another and has prohibited independent sellers from selling national advertising,” Mr. Addy stated. “The Consent Order will enable independent selling companies to enter the market for national advertising and allow for competition among the publishers in the sale of national advertising,” he continued.

The application alleges the following practice of anti-competitive acts: that the publishers had agreed that only Yellow Pages publishers could sell national advertising in Yellow Pages directories; that the publishers had appointed each other as exclusive agents for the sale of national advertising in each of their territories of operation; and that they had agreed that national advertising must be sold to other publishers through the publisher in whose territory it originated.

The publishers subject to this application and who have consented to the order filed are:

- Anglo Canadian Telephone Company carrying on its directory publishing business through Dominion Directory, an operating division, in British Columbia and parts of Quebec;
- AGT Directory Limited which publishes on behalf of AGT Limited for all of Alberta except for the City of Edmonton, and the Saskatchewan portion of the City of Lloydminster;
- Edmonton Telephone Corporation which publishes for the City of Edmonton;
- DirectWest Publishers Ltd. which publishes on behalf of Saskatchewan Telecommunications for

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the Province of Saskatchewan, except for the City of Lloydminster;

- The Manitoba Telephone System which publishes for the Province of Manitoba;
- Tele-Direct (Publications) Inc. which publishes on behalf of Bell Canada for most of the Provinces of Ontario and Quebec;
- Tele-Direct (Services) Inc. which publishes on behalf of The New Brunswick Telephone Company, Limited, Newfoundland Telephone Company Limited and Northwestel Inc. for parts of Ontario and Quebec, New Brunswick, Newfoundland and Labrador, the Yukon Territory and the Northwest Territories; and
- MT&T Holdings Incorporated which publishes on its own behalf and on behalf of The Island Telephone Company Limited for the Provinces of Nova Scotia and Prince Edward Island.

It is expected that the application will be heard in November 1994.

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### **WOLVERINE TUBE (CANADA) INC. FINED \$525,000 FOR ONE COUNT OF MISLEADING ADVERTISING UNDER THE *COMPETITION ACT***

*The following is a News Release issued by the Bureau of Competition Policy on October 4, 1994, and is reproduced with permission.*

OTTAWA, October 4, 1994 — George N. Addy, Director of Investigation and Research for the Bureau of Competition Policy, announced today that Wolverine Tube (Canada) Inc. ("Wolverine") had plead guilty to one charge under section 52(1)(a) of the *Competition Act* and had been fined \$525,000 in

the Supreme Court of British Columbia in Vancouver, B.C.

The \$525,000 fine constitutes the second highest fine ever imposed under the misleading advertising and deceptive marketing practices provisions of the *Competition Act*.

It is the highest fine every imposed by a court for a single count of misleading advertising under section 52(1)(a), which prohibits representations, in any form whatever, that are false or misleading in a material respect. Two responsible corporate officials, who also pleaded guilty, have been fined \$10,000 each in Provincial Court for their roles in the practices. A court order prohibiting the repetition of the misrepresentations was imposed on Wolverine.

"This case sends a strong message to manufacturers of plumbing and other building materials that, when they say their products comply with certain standards, they must ensure that their production practices are consistent with those representations and that they have adequate quality control systems in place," Addy said.

From 1988 to 1992, Wolverine promoted the sale of its copper water tubing by representing in brochures, letters and directly on tubing that they met quality standards set by the American Society for Testing and Materials ("ASTM") which were referenced in Provincial Plumbing Codes. In fact, most tubing manufactured at Wolverine's Delta, B.C. plant, and a significant amount from its London, Ontario plant, failed to meet ASTM standards in respect of tube wall thickness and weight.

Wolverine cooperated with the Bureau throughout its investigation. In addition, after learning of the Director's inquiry in this matter, the company revised its publication and adopted a certification process for its copper water tube.

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