CANADIAN COMPETITION LAW AND POLICY DEVELOPMENTS

SUMMARY OF FEDERAL COURT OF APPEAL DECISION IN *THE COMMISSIONER OF COMPETITION* v. *SUPERIOR PROPANE INC. and ICG PROPANE INC.*

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On April 4, 2001, the Federal Court of Appeal in *The Commissioner of Competition* v. *Superior Propane Inc. and ICG Propane Inc.*[1] allowed the Commissioner's appeal from the decision of the Competition Tribunal[2] and sent the matter back to the Tribunal for re-determination in a manner consistent with the Court's interpretation of section 96 of the *Competition Act* which provides for the efficiencies defence.

The Tribunal had found that the merger of Superior Propane Inc. ("Superior") and ICG Propane Inc. ("ICG") would likely lessen competition substantially in many local markets and for national account customers, and would likely prevent competition substantially in Atlantic Canada and, but for the success of the efficiencies defence, the appropriate remedy would have been an order requiring the total divestiture by Superior of all of the ICG shares and assets, including those which, under an interim consent order, were previously integrated. The majority (Nadon J. and Schwartz J.) found that the merger was likely to generate efficiencies of approximately $29.2 million per year and that the effects of the lessening of competition measured by the loss of total surplus would be no more than $6 million per year for 10 years. The merger, therefore, was likely to bring about gains in efficiency that were greater than and would offset the effects of any prevention or lessening of competition, and the gains in efficiency would not likely be attained if a divestiture order were made. One member of the Tribunal panel (Lloyd) dissented, finding that Superior did not meet the burden of establishing the efficiencies defence.[3]

The most important issue that the Tribunal decided in *Superior Propane* was that for the purposes of the efficiencies defence in section 96 of the Act, the total surplus standard should be used to measure the effects of the lessening of competition caused by a merger. This was the central issue in the Federal Court of Appeal's decision.

The Federal Court of Appeal concluded that the Tribunal erred in law in interpreting section 96 as mandating in all cases the use of the total surplus standard to measure the effects of a lessening of competition. The Court declined to prescribe a correct test, but said that whatever test was chosen, it must be one that better reflected the different objectives of the Act and was more flexible than the total surplus standard.[4] The Court did, however, favour the balancing weights approach proposed by the Commissioner's expert, Professor Townley.

The Commissioner had also argued in the appeal that since section 96 of the Act creates a defence, the merging parties bear the burden of proving each of its elements. The Tribunal had found that the merging parties had the burden of proving all of the elements of

the defence except the existence and quantification of the effects of the lessening of competition. A majority of the Federal Court of Appeal (Evans J.A., Stone J.A. concurring) found that the Tribunal had correctly decided the issues relating to the legal onus of proof.

Létourneau J.A. wrote dissenting reasons, in part, in which he disagreed with the majority on the issue of who has the legal burden of establishing the effects of any lessening of competition and seemed to adopt the argument that section 96 could not justify a merger that resulted in a monopoly.[5]

Issues Before the Federal Court of Appeal

The Federal Court of Appeal characterized the issue before it in the following way:

> whether, for the purpose of the efficiency defence, the "effects" of an anti-competitive merger are limited as a matter of law to the loss of resources to the economy as a whole (the deadweight loss), or whether they include a wider range of the effects of a substantial lessening of competition. The latter would include the wealth transfer from consumers to producers that occurs when the merged entity exercises its market power to increase prices above competitive levels, the elimination of smaller competitors from the market, and the creation of a monopoly.[6]

As the Federal Court of Appeal noted, the Tribunal had before it evidence describing, and considered, the alternative approaches that economists had put forward for measuring the anti-competitive effects of a merger. These include the "price standard" under which efficiencies must result in a price equal to or lower than the price before the merger; the "consumer surplus standard" which requires that efficiency gains exceed the sum of the wealth transfer from consumers to producers plus the deadweight loss; and the "balancing weights standard" which, the Court stated, permits consideration of a variety of factors without assigning in advance any fixed weight. The Court further stated that the factors that are taken into account under this standard include the deadweight loss; the wealth transfer from consumers to producers; loss of product choices and services; and the prevention of competition and creation of a monopoly or near monopoly.[7]

The Federal Court of Appeal also noted that the Tribunal rejected the balancing weights approach and its reasons for adopting the total surplus standard included: it provides a more predictable standard for merger review; it is a standard that measures the net increase or loss in general welfare to the economy as a whole; it treats wealth transfers from consumers to producers as being neutral, which is an appropriate approach given that economics does not value a dollar in the hands of consumers any greater than a dollar in the hands of producers; any standard that required assigning values to re-distribution effects would be very difficult to apply and require information concerning the socio-economic profiles of consumers and the shareholders of the producers; and, even if the data were available, an assessment of the distributive effects is primarily a value judgment that should be performed by politicians.

While the competing approaches for measuring the effects of any lessening of competition arising from a merger were considered in some detail by the Tribunal,[8] the Federal Court of Appeal did not decide which approach should be adopted. The Court did, however, as stated above, favour the balancing weights approach.

The decision of the Federal Court of Appeal turned primarily on an issue of administrative law: the appropriate standard of review for reviewing decisions of an administrative tribunal.

Standard of Review

The threshold question for the Federal Court of Appeal was the appropriate standard of review for an appeal from a decision of the Competition Tribunal. The Court referred to the decisions of the Supreme Court of Canada in *Canada (Director of Investigation and Research)* v. *Southam Inc.*[9] and *Pushpanathan* v. *Canada (Minister of Citizenship and Immigration)*,[10] and concluded that the issue of the meaning of "effects" in section 96 of the Act was a question of statutory interpretation and therefore of law, which also had an important precedential value and, as such, the appropriate standard of review was correctness.[11] This finding was necessary before the Federal Court of Appeal could interfere with the Tribunal's decision. A standard that accorded the Tribunal some deference, such as the reasonableness *simpliciter* standard used in *Southam,* would have made it difficult if not impossible to allow the appeal, given that the Tribunal's decision on this point is supported by most economists and many legal scholars who have written about this issue.[12] Indeed, the Federal Court of Appeal did not say that the Tribunal's decision was unreasonable.

The Meaning of "Effects"

The Court of Appeal concluded that by limiting the factors that could be considered as effects to those considered in the total surplus standard, the Tribunal erred in law because it failed to ensure that all of the objectives of the *Competition Act* and the particular circumstances of each merger could be considered in the balancing exercise required under section 96.[13]

The Court then reviewed the relevant sections of the Act, noting that section 96 does not specify what effects must or may be considered. A central issue was whether redistribution of income was an effect that should be considered. The Court noted that subsection 96(3) of the Act makes it clear that redistribution of income is not relevant to measuring efficiencies, but no similar prohibition is found with respect to "effects".[14]

The Court also considered the effect of section 1.1, the purpose clause, noting that not all of the stated purposes can be served at the same time or are necessarily consistent, and that an interpretation of "effects" should not focus exclusively on one of the objectives of promoting competition such as efficacy and adaptability, but should also include effects such as the ability of small and medium businesses to compete and consumers having a choice of goods at competitive prices.[15] The Court concluded that section 96 of the Act in no way restricts the "effects" to deadweight loss. Instead, the word "effects" should be interpreted to include all of the effects of a merger found to lessen or prevent competition substantially, having regard to all of the statutory purposes set out in section 1.1.[16]

The Court concluded that while predictability in merger law is a relevant factor, the notion of granting discretion to a tribunal regulating economic activity is commonplace and even the total surplus standard involves difficult measurements. As such, predictability was not a sufficiently compelling argument in favour of the total surplus standard.[17] The Court was also not swayed by the argument that the *Merger Enforcement Guidelines* adopt the total surplus standard. The Court said that they are not law and if inconsistent with the Act should be ignored.[18]

The Court in essence adopted the statements of Reed J. in *Canada (Director of Investigation and Research)* v. *Hillsdown Holdings Canata Ltd.*[19], noting however that opinion was divided among commentators on whether the total surplus standard was the correct approach.[20]

Disposition

While the Court found that the Tribunal erred in law by adopting a total surplus standard, it declined to prescribe the correct standard because it concluded that such a task was beyond its competence.[21] The Court did, however, state the following:

> Whatever standard is selected (and, for all I know, the same standard may not be equally apposite for all mergers) must be more reflective than the total surplus standard of the different objectives of the *Competition Act*. It should also be sufficiently flexible in its application to enable the Tribunal fully to assess the particular fact situation before it.
>
> It seems to me that the balancing weights approach proposed by Professor Townley, and adopted by the Commissioner, meets these broad requirements. Of course, this approach will no doubt require considerable elaboration and refinement when it comes to be applied to the facts of particular cases.[22]

Burden of Proof

The Court concluded that the Tribunal had correctly decided the issues concerning who has the burden of proof in establishing the efficiencies defence. As such, the merging parties have the burden of proving the scale of the efficiency gains that would not have occurred without the merger and that they are likely to be greater than and to offset the effects of any lessening of competition arising from the merger. The Commissioner has the burden of proving the extent of the relevant effects.[23]

What Happens Next

On May 8, 2001, the Tribunal ordered that the Commissioner's application for re-determination in accordance with the Federal Court of Appeal's reasons be heard on October 9, 2001[24] and issued directions concerning the filing of memoranda of argument. It appears that the re-determination hearing will not involve new evidence being called.

On May 15, 2001, Superior brought an application to the Supreme Court of Canada for leave to appeal the Federal Court of Appeal's decision to the Supreme Court of Canada for a stay of proceedings and an order expediting the hearing if leave is granted.

On May 16, 2001, the Commissioner issued an information notice advising that in light of the Federal Court of Appeal's decision, the parts of the *Merger Enforcement Guidelines* and the *Bank Merger Enforcement Guidelines* that address the efficiency defence no longer apply and where efficiencies are raised, the Bureau will apply the principles set out in *Superior Propane Appeal*.

If Superior does not succeed in the Supreme Court of Canada, the Tribunal will be required to identify, quantify and attach weights to any effects, in addition to the loss of total surplus, of the prevention or lessening of competition and determine whether the efficiencies that the Tribunal has already found to have been proved by the merging parties are likely to be greater than, and will offset those effects.

Perhaps the ultimate question that arises out of *Superior Propane* is what kind of efficiency defence is best for Canada? – a question that Parliament may have to re-visit after the *Superior Propane* litigation comes to an end.

Notes

[1] [2001] F.C.A. 104 [hereinafter *Superior Propane Appeal*].
[2] [2000] Comp. Trib. 15 [hereinafter *Superior Propane*].
[3] For more detailed summary and comments on the Tribunal's decision, see articles in *Canadian Competition Record*, Vol. 20, No. 2.
[4] *Superior Propane Appeal, supra* note 1 at paras. 139-140.
[5] *Superior Propane Appeal, supra* note 1, Dissenting Reasons at paras. 15 and 18.
[6] *Superior Propane Appeal, supra* note 1 at para. 4.
[7] *Ibid.* at paras. 21-25.
[8] *Superior Propane, supra* note 2 at paras. 404-450.
[9] [1997] 1 S.C.R. 748.
[10] [1998] 1 S.C.R. 982.
[11] *Superior Propane Appeal, supra* note 1 at paras. 69-72.
[12] e.g. Trebilcock and Winter, "The State of Efficiencies in Canadian Merger Policy" (1999-2000) 19:4 Can. Comp. Rec. 106.
[13] *Superior Propane Appeal, supra* note 1 at para. 73.
[14] *Ibid.* at paras. 82, 83.
[15] *Ibid.* at para. 88.
[16] *Ibid.* at para. 92.
[17] *Ibid.* at paras. 110-119.
[18] *Ibid.* at para. 124.
[19] (1992) 41 C.P.R. (3d) 289 (Comp. Trib.). *Ibid.* at paras. 127-132.
[20] *Superior Propane Appeal, ibid.* at paras. 134, 138.
[21] *Ibid.* at para. 139.
[22] *Ibid.* at paras. 140 and 141.
[23] *Ibid.* at para. 157.
[24] [2001] Comp. Trib. 8, Document No. 214.

THE COMPETITION TRIBUNAL AND THE COMPETITION BUREAU REPORT ON THE COMPETITION TRIBUNAL ELECTRONIC FILING PILOT PROJECT

On November 6, 2000, the Competition Tribunal heard its first "paperless" case, the *Canadian Waste Services Holdings Inc.* hearing. The successful completion of the case, fully managed and heard in electronic form, was the result of much preparation and cooperation. Free of glitches for a first attempt, all stakeholders were pleased with the results of using technology to make the process more efficient.

The Competition Tribunal, aware of the several hundred electronic courtrooms across North America, played a leadership role in developing e-filing services for the Canadian legal community. To explore the opportunities, the Tribunal undertook a study and pilot project to have clients file applications and all relevant case documentation in electronic format. The objective was to have documents filed directly into a new Tribunal document management system using a software application developed for use on the Internet. These electronic documents then served as legal evidence in Tribunal proceedings and provided the foundation for an electronic document repository. The study was conducted between January and March 2000, with the pilot project beginning in April and ending in December 2000.

The initial phase of the project involved asking the legal community, and other courts and agencies about their levels of technological readiness, standards for document production and infrastructure for Internet filing. Based on the responses, it became clear that there were few, if any, functional e-filing applications in Canada. There was general agreement that PDF, TIFF, XML and SGML were the general standards for document exchange. In most cases there was an acceptance of the use of the Internet for not only banking transactions but expanded use.

The Pilot Project

The pilot project was developed in consultation with stakeholders which included a working group composed of members from the judiciary, the Competition Law Section of the Canadian Bar Association, the Competition Bureau and the Registry staff. The working group worked closely with stakeholders to

develop an efficient and effective e-filing system that would not compromise the integrity of the existing processes.

Many of the steps in managing the case were technical in nature, and required electronic processes for the handling and analysis of the documents, and to prepare for the litigation. These are commonly referred to as the "back office" requirements. Fortuitously, the Bureau had previously made the decision to render electronic all of its evidence processing and handling procedures. Further, test driving of the many different litigation support software applications has been underway for a few years across North America, and both the Bureau and counsel for the parties were familiar with these electronic tools. The Tribunal swiftly moved to introduce electronic document management and litigation software, and the foundation for the pilot was in place.

The working group considered alternative methods for electronic filing and document management that included an incremental approach which built on existing automation, as well as a more radical approach which featured new underlying infrastructure. The incremental approach was found to be significantly less expensive to acquire, develop and operate and was selected for the pilot as it offered sufficiently robust features for electronic filing and document management without introducing undue complexity. Keeping in mind that the goal of the pilot was to derive experience, not to field a robust long term system, this decision allowed for rapid deployment at a low cost. It also allowed for technology development in the marketplace and postponed a "base technology" decision until the results of the pilot were understood.

The Hearing

In consultation with the Competition Bureau and the parties involved, *Canadian Waste Services Holdings* was selected as the pilot case. Not only would this case be paperless, but it would be the first case in which discovery would be expected through the production of an Agreed Statement of Facts. Implementation required flexibility on the part of counsel and the Tribunal as the e-filing procedures, file formats for documents and hearing room procedures were being developed and implemented.

New technology can introduce some uncertainty and apprehension; this concern was taken into account throughout the pilot. Choosing a comparatively small case allowed prototypes to be developed and introduced to the users quickly. This gave everyone the ability to become involved, comment on the work in progress and most importantly, it allowed stakeholders to see their feedback implemented quickly.

The complexity of the software system was purposely kept to a minimum. During the hearing, verbal instructions were given to the court registrar, who then performed document search and retrieval tasks. The public display was exactly the same for all parties on each of their computer screens. Counsel and Tribunal members had access to independent laptops and software so they could perform other tasks matched to their skill and comfort levels. This allowed for skill development at individual rates and gave all participants valuable experience without affecting the mission critical hearing process.

The hearing proceeded exceedingly well. Even though new and innovative possibilities were now achievable, the workflow, particularly during the hearing, remained rigorously familiar even though the new electronic display offered many possible variations. Most of those involved were new to electronic hearings and operating in a familiar environment gave them the level of comfort necessary to proceed. The electronic process resulted in a 33% saving in court and process time.

The pilot succeeded because everyone involved was satisfied that the critical elements were present, having been appropriately designed and implemented. Key to the success was maintaining the integrity of the evidence and the confidentiality of the documents, both while filing and when the documents were in use in the hearing room, and counsel's wish to continue traditional methods of questioning witnesses.

A consulting firm independently evaluated the pilot after the hearing to determine the degree to which the pilot project met its stated objectives and whether improvements are warranted before full implementation. The report indicated that the pilot project did meet the objectives established by the project team and was a success.

All users were very satisfied with the introduction of e-filing and indicated that they would repeat the electronic hearing experience without any hesitation. The general reaction from users was that the system was easy to use, provided faster access to documents during the hearing and reduced substantially the amount of paper. It was estimated that hearing time may have been reduced as much as 2 hours per day, a significant time savings.

The report did identify a number of areas where improvements can be made, including the review of the standards for document format and production, procedures and roles of those involved in the process, more efficient methods for the up-dating of information during the hearing and the review of methods to improve counsel's ability to manage the documents during the hearing.

The Future

The next steps will include building on the pilot experience to develop an even better e-filing system, making e-filing a viable method when filing applications and documents with the Tribunal. The rules of practice and procedure will need to be amended to accommodate electronic filing and hearings. Electronic filings and hearings are the way of the future: the benefits are clear, the challenge will be to keep improving!

OUTCOME OF WASTE INDUSTRY CASE TURNS ON ECONOMICS

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On March 28, 2001, the Competition Tribunal released its decision allowing the Commissioner of Competition's application for a divestiture order in relation to the acquisition by Canadian Waste Services Inc. ("CWS") of certain assets of Browning-Ferris Industries Ltd.'s ("BFI") Ridge landfill site located in Blenheim, Ontario (the "Ridge"). CWS held and operated the Ridge separate from its other operations pending the Tribunal's decision. A hearing on the appropriate remedy will be held at a later date.

This case is important because it is the most recent of only a handful of contested merger cases over the last 15 years.

The Tribunal's reasons closely review the conflicting economic evidence submitted by the experts for the Commissioner and CWS. The Tribunal frequently disagreed with the evidence presented by both sides in assessing the surprisingly complex dynamics of the industry.

CWS is Canada's largest waste management company, providing solid non-hazardous waste management services including collection, compaction and recycling, to customers across Canada. Prior to the sale of its Canadian waste management business to CWS, BFI was the second largest waste management company in Canada.

The Commissioner alleged that CWS' acquisition of the Ridge would result in a substantial prevention and lessening of competition for the disposal of waste generated by institutional, commercial and industrial customers ("ICI Waste") in the Greater Toronto Area ("GTA") and the Chatham-Kent area. Additionally, in relation to the GTA, the Commissioner alleged that CWS' acquisition of the Ridge would permit CWS to effect a cost/price squeeze on its competitors in the waste collection side of the business. Prior to its acquisition of the Ridge, CWS owned six landfill sites in Ontario. With its acquisition of the Ridge, CWS owns 7 of 9 privately-owned landfill sites capable of receiving non-local waste in Ontario and the only two privately-owned landfill sites in Chatham-Kent (one of which is the Ridge).

Product Market

The Commissioner and the respondents disagreed on the definition of both the product and geographic markets. Accepting the position advanced by the Commissioner, the Tribunal held that in relation to both the GTA and Chatham-Kent, the disposal of residential waste would not be affected by the acquisition, thereby effectively limiting the relevant product market to ICI Waste. The exclusion of residential waste from the relevant product market was of particular interest in relation to the GTA. The Tribunal found that the City of Toronto's inability to reach an agreement for the disposal of residential waste at the Adam's Mine site in Kirkland Lake, Ontario, and its subsequent long-term agreements with two solid waste management companies for the disposal of all of the city's residential waste (and the limited amount of ICI Waste collected by the city) at landfill sites located in Michigan, meant that this waste would not be affected by a price increase in disposal costs imposed by a hypothetical monopolist. Accordingly, the Tribunal concluded that the city's residential waste and municipally-collected ICI Waste should be excluded from the analysis of the competitive implications of the acquisition of the Ridge and therefore, the relevant product market was effectively limited to ICI Waste. The same conclusion was reached in relation to the Chatham-Kent area based on the existence of a long-term agreement between Chatham-Kent and the Ridge which ensures favourable fees for the disposal of residential waste from Chatham-Kent.

The Tribunal's reasoning on this point has important practical implications in calculating market shares. For example, where the geographic market is limited to Canada, Canadian firms with large contractually-committed export sales should not have such sales or the proportion of capacity dedicated to exports included in their post-merger market shares.

Geographic Market

The Tribunal agreed with the Commissioner that in relation to the GTA, the geographic market was limited to Southern Ontario and could not be extended to include landfill sites located in the northern states of Michigan and New York. The respondents argued that considerable volumes of ICI Waste are disposed in landfill sites in Michigan and New York, supporting the conclusion that these landfill sites should be included in the relevant geographic market. The Commissioner argued that currently ICI Waste is disposed in landfill sites in Michigan and New York because the Southern Ontario market for disposal service suffers from non-competitive pricing due to an existing capacity shortage in Southern Ontario. The Commissioner asserted that capacity would start increasing in 2002, at which time the prices for disposal services in Southern Ontario would start to fall to a competitive level. However, he argued, CWS' acquisition of the Ridge would prevent disposal fees from falling.

In assessing the definition of the geographic market for the GTA, the Tribunal considered a number of factors including shipment patterns, transportation and disposal prices, pre-merger conditions and impediments to shipping waste to the U.S. In terms of shipping patterns, the Tribunal held that "the mere observation of historical patterns does not establish the constraining effect and is insufficient to justify broadening the geographic market". However, the Tribunal also held that the Commissioner's argument, that shipments of ICI Waste to the U.S. was indicative of non-competitive pricing in Southern Ontario, is not a proper basis for assessing the definition of the geographic market. As discussed below, the fact that there might be excess capacity for disposal of ICI Waste in the near future was considered important to the Tribunal's conclusion on the relevant geographic market definition.

The respondents argued that where there is uniformity in transportation and disposal prices across an area, disposal sites in that area would be reluctant to raise disposal fees significantly for fear of losing customers to competing disposal sites in the area, regardless of the distance which must be travelled to access the site. The Tribunal accepted the logic of the respondents' position but found that there is currently a practice of delivered pricing in the market for disposal services such that landfill sites located further from the GTA reduce their disposal fees in order to attract ICI Waste from transfer stations located closer to the GTA. The Tribunal concluded that the evidence of existing price discrimination in the disposal market indicated that such practices would be possible post-merger. The Tribunal concluded that this suggested a narrower geographic market definition than the area over which transportation and disposal prices are uniform.

The Tribunal also accepted the Commissioner's evidence that there was likely to be excess capacity for waste disposal in Southern Ontario starting in 2002. In arriving at this conclusion, the Tribunal held that it was appropriate to exclude from the analysis the volume of residential waste and ICI Waste that the City of Toronto has agreed to dispose of in Michigan and the volume of non-GTA waste which is currently disposed of in Michigan. The Tribunal found that it was not clear that these volumes of waste would be diverted back to Southern Ontario landfill stations once capacity increases. The Tribunal also accepted evidence that planned expansions of capacity of two sites in Southern Ontario were likely to occur, notwithstanding the fact that full regulatory approval for the expansions has not yet been obtained. The Tribunal concluded that the prevailing price for waste disposal in Southern Ontario would likely fall as the excess capacity developed, suggesting that the geographic market should be determined with reference to the future price rather than the prevailing price. On the basis of future (lower) prices, the Tribunal concluded that the relevant geographic market would likely be limited to Southern Ontario and would not extend to Michigan and New York.

In relation to the Chatham-Kent area, the Tribunal found that the relevant geographic market is the Municipality of Chatham-Kent, included in which are two landfill sites: the Ridge and a second site owned by CWS, the Gore. The Tribunal found that some ICI Waste is currently being disposed of at landfill sites located outside of the municipality but concluded that this does not occur in sufficient volumes to conclude that customers would divert their ICI Waste from the Ridge or the Gore in the face of a significant price increase at those sites.

Analysis of Competitive Factors

Having defined the relevant product and geographic markets, the Tribunal assessed whether CWS'

acquisition of the Ridge would result in a substantial prevention or lessening of competition in the market for ICI Waste disposal in the GTA and the Chatham-Kent area. The Tribunal first considered whether there were barriers to entry in the waste disposal business and concluded that the time and cost associated with obtaining the necessary approvals to open or expand a waste disposal site pose significant barriers to entering the waste disposal business.

The Tribunal also considered whether, prior to its acquisition by CWS, the Ridge had been a vigorous competitor in the ICI Waste disposal business. The Tribunal concluded that notwithstanding evidence that the Ridge did not charge the lowest disposal fees, it was able to offer its customers reliability of service compared to its lower cost competitors. The Tribunal further found that the Ridge had historically been and, but for the transaction, would continue to be, the closest competitor of other CWS landfill sites located in the area.

In terms of foreign competition, the Tribunal concluded that only 21% of ICI Waste in 1999 had been disposed of in Michigan or New York and that of this 21%, 29% had been "internalized" by CWS and BFI, in an attempt to free up volume in their own sites, a practice which likely would not change regardless of changes in disposal fees in Southern Ontario. Further, the Tribunal appeared to accept the Commissioner's argument that ICI Waste is currently only shipped to the U.S. because the Southern Ontario disposal market is non-competitive, such that evidence of shipments to the U.S. landfill sites would not establish that these sites would be acceptable alternatives in a competitive market.

In assessing effective remaining competition, the Tribunal found that if CWS were permitted to keep the Ridge, there would be only three disposal sites in Southern Ontario capable of constraining an exercise of market power by CWS.

After an external review of capacity and waste shipment volumes, the Tribunal concluded that the acquisition of the Ridge landfill site would result in CWS controlling a 70% share of capacity to accept ICI Waste from the GTA in 2002 (with 22% of that share attributable to the Ridge) and CWS will control approximately 80% of the total excess capacity for ICI Waste from the GTA. In Chatham-Kent, the acquisition of the Ridge would result in CWS controlling 100% of the waste generated in Chatham-Kent.

Prevention of Competition

Having completed its review of the evidence, the Tribunal concluded that the acquisition of the Ridge would result in a substantial prevention of competition in both the GTA and Chatham-Kent. CWS' control of the Ridge's 22% share of capacity for ICI waste would prevent the Ridge from competing for ICI Waste from the GTA and Chatham-Kent. The Tribunal found it unlikely that competition would come from any other industry participants.

Lessening of Competition

In concluding that the acquisition of the Ridge would result in a substantial lessening of competition in the GTA, the Tribunal found that CWS' control of the Ridge, and therefore 70% of the capacity for ICI Waste from the GTA, would permit CWS to raise disposal fees without any constraint by new or existing competitors. The Tribunal did not accept the respondents' argument that landfill sites in Michigan or New York would be capable of constraining a significant price increase by CWS. Similarly, in Chatham-Kent, the Tribunal found a substantial lessening of competition on the basis that CWS would control 100% of the disposal market.

Raising Competitors' Costs

The Commissioner also alleged that even if the acquisition did not give CWS market power in disposal, it would nonetheless be able to raise its competitors' costs by increasing the price it charged them for disposal and recouping any losses in its disposal revenues through a cost/price squeeze in the collection of ICI Waste in the GTA. CWS' vertical integration as a collection and disposal company would permit it to impose price increases on its collection competitors for disposal of their waste, thereby raising competitors' collection costs and ultimately resulting in more customers using CWS' lower priced collection services.

The Tribunal noted that the Commissioner's scenario was premised on the assumption that CWS would not acquire market power in disposal, although the Tribunal concluded that the Commissioner's own expert took the position that market power in disposal is required to raise competitors' costs in collection. The Tribunal further considered whether CWS could, post-merger, raise disposal prices and recoup any resulting losses in disposal revenues by exercising market power in collection. The Tribunal held that, if as a result of the transaction CWS had acquired market power in the collection market, which was not alleged by the Commissioner, it would be more profitable for CWS to effect a price increase in collection directly rather than through a cost/price squeeze effected through increased disposal fees. Accordingly, the Tribunal did not accept this aspect of the Commissioner's case.

The CWS case reinforces the importance of presenting credible economic evidence to the Tribunal. The basic legal principles of merger analysis are now well entrenched. Thus, cases will increasingly turn largely on economic evidence.

The CWS hearing was the first to be dealt with by the Tribunal as part of its electronic filing and hearing pilot project.[1] All of the parties' documents were filed in electronic format and the panel members used a document management software. In addition, the parties filed agreed statements of facts which provided detailed information about the parties, the transaction and the waste industry. The Tribunal stated in its reasons that the agreed statements of facts served to reduce the hearing time considerably.

Notes

[1] See the Competition Tribunal and the Competition Bureau's report on the electronic filing pilot project in this issue of the *Record*.

APOTEX INC. v. *HOFFMANN LA-ROCHE LTD.*: THE DRUG WARS CONTINUE

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The recent decision in the case of *Apotex Inc.* v. *Hoffmann La-Roche Ltd.*[1] may represent an important development in the ongoing high stakes competition between the so-called "generic" and the "ethical" or "branded" drug manufacturers. This is a battle with very significant economic stakes for both sides, so it is not surprising that all available weapons, including the *Competition Act*, are being employed.

The primary weapon to date in this war has been intellectual property law, particularly patent claims,[2] proceedings under the Patented Medicines (Notice of Compliance) Regulations[3] and allegations of passing off and/or trade mark infringement.[4] However, competition law has previously been implicated in pharmaceutical disputes from time to time.[5] The *Apotex* case seeks to employ the tools of competition, marketing and consumer protection law in the battle.

Case Summary

In brief summary, the case was brought by Apotex (a generic drug manufacturer), against a number of "branded" drug manufacturers. It involved a claim by Apotex that conduct by the "branded" defendants, and AltiMed Pharmaceutical Company Inc. ("AltiMed"), a company which had been incorporated and was beneficially owned by the branded manufacturers (although its ownership was subsequently transferred by them), was contrary to the *Competition Act* misleading advertising provisions, as well as similar types of provisions in *The Food and Drugs Act* and the *Business Practices Act*.

The claim alleges that the branded manufacturers supplied AltiMed with versions of their name-brand drugs, which they permitted AltiMed to sell under its own name. They only permitted AltiMed to do so immediately before they understood that a generic firm was likely to introduce a version of the same drug. By doing so, Apotex alleged, the branded manufacturers, through AltiMed, captured a significant market share which would otherwise have been available to Apotex or other generic companies. This was alleged to be contrary to sections 52 and 54 of the *Competition Act* (giving rise to a cause of action under section 36 of the Act), to be contrary to the *Business Practices Act*, and to be contrary to section 9 of the *Food and Drugs Act*. As well, because the conduct was contrary to these provisions it was alleged to constitute unlawful interference with economic relations and to constitute civil conspiracy.

The defendants brought a motion under rule 21 of the Ontario Rules of Civil Procedure to strike out the claim as disclosing no cause of action. On October 22, 1999, Mr. Justice Jennings did strike out the claim on that basis. However, in December 2000, the Ontario Court of Appeal reversed Mr. Justice Jennings, in part, and reinstated some aspects of the claim. The reasoning is interesting.

Turning firstly to the allegation with respect to section 52 of the *Competition Act*, involving allegedly false or misleading representations, Apotex alleged that the defendants' misleading representations were the failure to provide physicians, pharmacists and consumers[6] with material information about the source of the AltiMed drugs, while at the same time selling branded drugs at prices in excess of identical products available in the same pharmacies across Canada (i.e. the AltiMed branded products). Thus, it was alleged, they permitted misleading representations to be made about the AltiMed products, such that consumers paid a premium for branded products without receiving any corresponding benefit.

Mr. Justice Jennings struck out the claim on the basis that, as he read it, the allegation was that the defendants had a positive obligation to make a representation that AltiMed products were identical to, and cheaper than, the brand name products. He also found that there was no allegation in the statement of claim that the defendants knowingly or recklessly made a false or misleading statement, or indeed that they made any false or misleading statement.

The Court of Appeal found Mr. Justice Jennings to be in error in this regard. It stated that the Apotex claim did not rely solely on the theory that there was a positive obligation to make the disclosure noted above. Rather, Apotex's theory, at least in part, was found to be that the defendants made a positive representation that the AltiMed supplied drugs originated with (i.e. were manufactured by) AltiMed, and they were not. As well, the Court of Appeal noted that subsection 52(1.2) of the *Competition Act* now includes a prohibition on allowing a misleading representation to be made. Apotex's case was that the branded manufacturers

permitted AltiMed to make a representation that the products it sold originated with it.

Given that the challenge arose only at the pleadings stage, the Court of Appeal did not examine whether the representation which Apotex alleged was made was in fact the representation made. It did examine whether such representation, if made, was for the purpose of promoting the use or supply of a product, or for the purpose of promoting any business interest, and whether it was false in a material respect. The Court noted, with respect to whether the misleading claim (that is, the implicit claim that AltiMed was the manufacturer) promoted supply or use of a product, that the claim, on the plaintiff's theory, discourages consumers from buying the AltiMed products, rather than promoting them (because, presumably, manufacture by a "brand name" company is more attractive to consumers than manufacture by AltiMed), and therefore rejected the claim that the representation promotes the use or supply of a product. The Court stated:

> If the plaintiff were correct in its application of this aspect of s. 52 to these facts, the effect would be to stigmatize as illegal conduct what most people would not consider unlawful. It would, for example, preclude a manufacturer from marketing food products under different brand names for different prices without disclosing the fact on the label of the lower-cost product that it is identical to the other. It would, in effect, impose an obligation on the manufacturer to label its products in a manner that ensured that the consumer was aware of the very best bargain obtainable. In my view, the allegedly false representation could not reasonably be said to be made for the purpose of promoting the supply of a product within the meaning of s. 52(1).[7]

Despite this reasonably straightforward and, it is submitted, compelling analysis, the Court of Appeal stated that while the alleged false representation could not be said to be made for the purpose of promoting use or supply of a product, it could be said to be made for the purpose of promoting a business interest – that is, the business interest of the branded manufacturers in selling their branded products at higher prices. The Court of Appeal found that the term "any business interest" in section 52 must be a business interest of the person or persons making the representation, but found that it was alleged that the branded manufacturers were making the representation (even though it was on the AltiMed product) and that the representation was alleged to promote their business interests.

It is interesting that the Court found not only that the business interest being promoted must be that of the person making the representation but also that the branded manufacturers were indeed making the representation. The Court here did not rely specifically on the new provision respecting allowing a representation to be made (which provides that making a representation includes allowing a representation to be made) in support of this latter finding. Rather, it found that the branded manufacturers' direct actions in establishing and supplying AltiMed were sufficient.

The Court of Appeal then considered whether the alleged representation was false or misleading in a material respect. It noted that the test is whether the representation is "so pertinent, germane or essential that it could affect the decision to purchase".[8] The statement of claim alleged that the majority of consumers do not understand how drugs are produced or marketed and would choose the lower-priced version of a prescription drug if informed that it was identical to the branded higher-priced version. In summary on this point the Court of Appeal stated:

> Although I have some doubt that Parliament intended to prohibit the type of conduct alleged in this case, and appreciate that the causal connection between the false representation and loss or damage to the plaintiff is weak, I cannot say that it is plain and obvious that the plaintiff's claim will fail given the broad wording of s. 52, and the strict test to be applied in striking out a claim.[9]

The Court of Appeal then considered the allegation that the conduct constituted double ticketing contrary to section 54 of the *Competition Act*. Here, both the Motions Judge and the Court of Appeal had no difficulty concluding that double ticketing had no application to the facts, even as pleaded, and struck out the claim.

The claims of unlawful interference with economic relations and of civil conspiracy had been struck out by Mr. Justice Jennings, as he found that no factual underpinning was pleaded sufficient to sustain the tort of unlawful interference with economic relations, and that the claim of conspiracy was devoid of facts supporting the allegation of unlawful purpose. The Court of Appeal disagreed. This disagreement flowed from it having found that a claim under section 52 of the *Competition Act* could arguably be sustained, thus supplying the necessary unlawful means for these claims.

The statement of claim also alleged conduct contrary to the *Business Practices Act*[10] and the *Food and Drugs Act*.[11]

With regard to the *Business Practices Act*, the claim alleged that the conduct of the defendants constituted an unfair practice pursuant to section 2 of the Act, which sets out a list of unfair practices, including:

> A false, misleading or deceptive consumer representation, including but without limiting the generality of the forgoing,
>
> ...(xiii) a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.

The claim was struck out by Mr. Justice Jennings because the representations alleged to be false, misleading or deceptive, and therefore the alleged unfair practices, were not made to consumers but to physicians and pharmacists. The Court of Appeal upheld that decision.

Finally, Apotex relied on subsection 9(1) of the *Food and Drugs Act*, which provides that no person shall label, package, treat, process, sell or advertise any drug in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quality, composition, merit or safety. The Court of Appeal found that the statement of claim could fairly be read as alleging a violation of the section by AltiMed because the drugs were denoted as having originated with (that is, having been manufactured by) AltiMed. This was alleged by the plaintiff to be misleading because AltiMed is not the manufacturer of the drugs. It was also alleged that this representation creates an erroneous impression as to the character of the drugs, in that there is no disclosure that the drugs are identical in all respects to brand-name drugs.

Mr. Justice Jennings found:

> The evil to be prevented [by section 9 of the *Food and Drugs Act*] is the purchase of something different than that which was bargained for. No facts were pleaded as to the making of a false or misleading representation, or to suggest the drugs purchased were different from the drugs intended to be purchased.[12]

The Court of Appeal stated:

> In my view, the motions judge is probably correct as to the purpose of s. 9. However, it is not plain and obvious that with regard to AltiMed the allegations in the amended statement of claim do not fall within the very broad wording of s. 9.[13]

Given the foregoing, the Court of Appeal upheld Mr. Justice Jennings' decision to strike out some aspects of the statement of claim, but allowed other aspects, indeed claims under section 52 of the *Competition Act* and section 9 of the *Food and Drugs Act*, to proceed.

Some Comments

The *Apotex* case is very interesting, certainly in the context of the ongoing drug marketing wars, but even more so with respect to the broad interpretations it offers with respect to the *Competition Act* marketing provisions as well as the *Business Practices Act* and the *Food and Drugs Act*.

The decision does not tell us precisely what the challenged AltiMed labeling or representations actually said. As most who have had occasion to purchase prescription drugs know, these products typically come to the consumer in a vial with a label made up by a pharmacist, not prepackaged by the supplier. In any case, we are not told what AltiMed supposedly said, on any product label or perhaps just to pharmacists. Perhaps it said, "AltiMed Pharmaceutical Company Inc." Or alternatively, perhaps AltiMed said something like "These drugs were manufactured by AltiMed Pharmaceutical Company Inc." Since the decision is silent on the issue of what the actual representation was, it is difficult to determine the significance of the finding. If, however, the representation was the former, it is challenging to see any misrepresentation.

The Court of Appeal may be correct that, the plaintiff having pleaded that the general impression created is that the drugs are manufactured by AltiMed, it was inappropriate at the pleadings stage to strike out the claim. However, it is submitted, in order to survive a motion to dismiss the plaintiff should at least be required to plead the precise words which it alleges are false or misleading.

The second point to note is that the Court of Appeal made note of the fact that section 52 now requires that representations be made knowingly or recklessly. However, while the Court found that there were sufficient facts pleaded to support a finding that the representation was made knowingly, there is no further discussion of this point. This is unfortunate given that this provision is new. Commentators have wondered what these words will be found to mean in the context of advertising which is always undertaken intentionally, and any available guidance as to the meaning of this provision would have been helpful.

A third point of interest is the reference to the new section (section 52(1.2)), which provides that making a representation now includes permitting a representation to be made. The Court of Appeal found that there was a valid cause of action stated against name-brand defendants as well as AltiMed. AltiMed made the representations and the name-brand defendants permitted those representations to be made. However, there is no further discussion of how the name-brand defendants permitted the representation to be made, or what conduct is required or is sufficient to constitute permitting a representation to be made. When this amendment (providing that allowing a representation to be made would constitute making a representation) was introduced into the legislation by the 1998 amendments, the Fair Business Practices Branch assured practitioners that the deeming provision

was designed to deal with situations such as the use of third party telemarketers or marketing organizations to make representations. This decision, while it does not examine the matter in detail, suggests a somewhat wider ambit for "permitting a representation to be made" than merely employing the instrumentality of a marketing firm. Whether it will stretch to the sort of negative control typically exercised through a contractual right to terminate the relationship, such as in franchise agreements for instance, remains to be seen.

Turning to the claims under the *Business Practices Act*, the first observation is that if section 2(1)(xiii) actually does mean, when it provides that "failing to state a material fact" is an unfair practice, that if products are identical but differently priced there must be a positive statement to that effect, then this would appear to be inconsistent with the Court of Appeal's statement, noted above, with respect to a food manufacturer marketing food products under different brand names and at different prices without advising consumers of this fact. As the Ontario Court (General Division) observed in the *Purolator* case,[14] advertisers are not obliged to tell the whole story or provide a balanced view, but they may not make false or misleading statements. It is submitted that the Court of Appeal was not wrong and that the *Business Practices Act* does not make it unlawful to market products with identical physical properties under different names, and at different prices.

The reference to the *Business Practices Act* is interesting because, while in this case the representation was found not to have been made to the public but rather to pharmacists, in many cases such alleged representations would have been made to the public. If this conduct is an unfair practice there will be plenty of scope for the application of this provision in the marketplace.

Turning to the *Food and Drugs Act*, again it is submitted that if placing AltiMed's name on the label (or otherwise using it in conjunction with the product) – that is, not explicitly claiming that AltiMed is the manufacturer, but simply showing the name of the vendor – could be concluded to be a misleading representation that the drugs were manufactured by AltiMed, that is startling. Presumably, the same allegations could be made against any product distributor. Further, in these times of outsourcing and virtual companies the question of just who is a manufacturer is not at all simple. This decision seems to open debates on these complex and, it is submitted, unfruitful, issues.

In addition to the above specific issues, the overall theory of the case, at least as it appears through this preliminary decision, is interesting. It is possible to understand how the generic manufacturers may be injured by the establishment of AltiMed's business. Some of the sales of drugs, which they might otherwise have made, will likely go to AltiMed. That is, price sensitive drug consumers will be as likely to turn to AltiMed as they would have been to turn to Apotex or other generic suppliers. However, discerning a corresponding advantage to the branded drug manufacturers is much more difficult. They lose the sale of their branded, and presumably higher priced, drugs, whether to AltiMed or to generic manufacturers, at least with respect to drugs which are the subject of generic competition. Branded higher priced drugs will suffer in sales whether or not AltiMed exists and whether or not there is a statement as to the source of the capsules supplied by AltiMed.

Turning to the question of consumer prejudice, it is again difficult to see obvious consumer detriment flowing from the alleged misleading representations. Certainly there is no consumer detriment in respect of purchases of the drugs which are or are about to be "generecized".

If AltiMed did not exist there would be generic versions of the drugs manufactured by Apotex or other generic manufacturers, and price sensitive consumers electing to purchase those alternatives would do so. If AltiMed does exist some of those sales will go to AltiMed and presumably some to Apotex or other generic manufacturers. If AltiMed is forced to make a statement that the products it sells are manufactured by a branded company, that may result in slightly more sales being made by AltiMed, and fewer being made by either or both of the generic manufacturers or the branded manufacturers, although the difference is likely marginal. In any case, it is submitted, consumers are no better off (and are likely worse off) without AltiMed being active in the market at all than with AltiMed active in the market, but without requiring it to disclose the source of its product. Consequently, there appears to be no obvious consumer detriment, or detriment to the generic manufacturer, if the source of the products sold by AltiMed is not disclosed. Indeed, AltiMed's existence, if anything, promotes increased competition in these drugs, and is therefore an advantage for consumers.

The real economic and competition policy issue underlying the facts of this case, it is submitted, does not turn on advertising at all, but has to do with the sale, through whatever mechanism, by the branded manufacturers of lower-priced unbranded products. Further, it has to do with the impact of such sales not on drug products which are actually the subject of such sales – those which are or are about to be "generecized" – but rather the possible impact on the business plans of the generic manufacturers regarding the willingness of the branded manufacturers to compete on the basis of price with the generic manufacturers by providing unbranded versions of their drugs. Whether they do so through AltiMed, or directly, is beside the point.

The willingness of the branded manufacturers to compete in the lower-priced unbranded marketplace must inevitably figure in the business plans of the generic manufacturers. Some drugs which, absent competition from AltiMed or its like would make sense for the generic manufacturers to supply, will not be supplied by them given AltiMed's presence. The generic manufacturers know that a significant portion of the sales to price sensitive consumers will go to AltiMed or its ilk. This is regardless of any advertising statement made, or not made, by AltiMed or by the branded manufacturers.

Therefore, once there is generic entry consumers have the benefit of lower prices, with or without AltiMed's existence and with or without any advertising statements by AltiMed. In some cases, however, the fact that the branded manufacturers will compete in this way (on price, through AltiMed) will discourage generic entry, and the branded manufacturers will continue to be able to reap higher prices without unbranded competition in that drug. That is the true competitive issue in the case, and it has virtually nothing to do with misleading advertising.

Misleading advertising law, as noted at the outset of this summary, is really a tool being used in this battle, but, it is submitted, it is a tool which is broadly irrelevant and largely unsuited to the purpose. The true question is whether, as a matter of competition policy, the branded manufacturers should be permitted to supply a lower-priced unbranded product, and compete with generic suppliers, thereby discouraging or slowing entry by generic suppliers. That is a question well beyond the scope of this summary of a case which has as its focus the law of misleading advertising. The implications, however, of forbidding that sort of price competition by branded suppliers would be very significant. The same logic would, it is submitted, prohibit price

competition by the brand manufacturer in "branded" products, even when the prices are non-predatory. That would be a new departure for Canadian competition law.[15] Even in a situation where there has been found to be abuse of a dominant position, low but non-predatory pricing has been rejected as an anti-competitive act.[16]

The *Apotex* case is very interesting, both for its preliminary guidance respecting misleading advertising law, including the new (post 1999) misleading advertising law regime, and also for its implications with respect to competition policy more generally. It is, of course, only a pleadings motion, and different implications may be forthcoming after trial. If the plaintiff's allegations are upheld at trial, however, there may be very serious issues not only for misleading advertising law, but for competition policy generally.

Notes

* With the assistance of Stephanie Chong.

[1] (2000), 9 C.P.R. (4th) 417 [hereinafter *Apotex*].

[2] See for example, *Apotex Inc.* v. *Wellcome Foundation Ltd.* (1998), 79 C.P.R. (3d) 193, aff'd October 26, 2000 (A-211-98, A-213-98, A-214-98) (F.C.A.).

[3] SOR/93-133.

[4] See for example, *Ciba - Geigy Canada Ltd.* v. *Apotex Inc.*, [1992] 3 S.C.R. 120.

[5] See for example, *Boehringer Ingelheim (Canada) Inc.* v. *Bristol-Myers Squibb Canada Inc.* (1998), 83 C.P.R. (3d) 57 (Ont. Ct. (Gen. Div.)) [hereinafter *Boehringer Ingelheim*]; *Eli Lilly and Co.* v. *Novopharm Ltd.* (1996), 68 C.P.R. (3d) 254 (F.C.T.D.).

[6] This reference to misleading consumers is in the pleading, although it is somewhat confusing given the Court's discussion of the *Business Practices Act,* outlined below.

[7] *Apotex*, *supra* note 1 at para. 12.

[8] *Ibid.* at para. 16.

[9] *Ibid.* at para. 18.

[10] R.S.O. 1990, c. B-18.

[11] R.S.C. 1985, c. F-27.

[12] *Apotex*, *supra* note 1 at para. 30.

[13] *Ibid.* at para. 31.

[14] *Purolator Ltd.* v. *United Parcel Service Canada Limited*, 60 C.P.R. (3d) 475 (Ont. Ct. (Gen. Div.)).

[15] See *Boehringer Ingelheim*, *supra* note 5.

[16] See *Canada (Director of Investigation and Research)* v. *The NutraSweet Company* (1990), 32 C.P.R. (3d) 1 (Comp. Trib.).

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NEWS RELEASE: Telemarketing Company Fined $700,000 and its Manager Sentenced to Six Month Jail Term for Deceptive Telemarketing Practices

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INFORMATION: Canadian, Australian and New Zealand Cooperation Arrangement

December 15, 2000
NEWS RELEASE: Company Pleads Guilty to Three Charges and Pays a Fine

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NEWS RELEASE: Competition Bureau Closes Bid-Rigging Inquiry Involving Supply of Electricity in Alberta

December 21, 2000
INFORMATION: Commissioner of Competition Welcomes Report on the Public Consultation on Legislative Changes to the *Competition Act* and the *Competition Tribunal Act*

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NEWS RELEASE: Competition Bureau Continues Air Canada Inquiry

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NEWS RELEASE: Competition Concerns Resolved - Restrictions Attached to Newfoundland Refinery Lifted
NEWS RELEASE: Competition Bureau Requires Divestitures to Resolve Concerns with Lafarge Canada's Acquisition of Warren Paving

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CANADIAN COMPETITION RECORD

January 18, 2001
NEWS RELEASE: Competition Bureau Will Not Oppose Acquisition of Unimedia by Gesca

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INFORMATION: Warning to Businesses Concerning Mail Solicitations
NEWS RELEASE: Corporation Pleads Guilty to Price Fixing
NEWS RELEASE: Arrests Made and More Charges Laid Against Internet Business Directory

February 8, 2001
INFORMATION: Competition Bureau Consults on Draft Enforcement Guidelines on the Abuse of Dominance in the Airline Industry

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INFORMATION: Competition Bureau Requires Divestiture to Resolve Concerns with Abitibi-Consolidated's Acquisition of Donohue Inc.

March 1, 2001
NEWS RELEASE: Corporation Pleads Guilty to Participating in International Conspiracy to Fix Prices

March 5, 2001
NEWS RELEASE: Competition Bureau Seeks Order Against Anti-Competitive Practices by Air Canada

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NEWS RELEASE: Competition Bureau's Investigation Leads to $95,000.00 Fine for Multi-Level Marketing Company

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INFORMATION: Competition Bureau Invites Comments on its Draft Guide to Compliance with the *Competition Act* when Advertising on the Internet

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NEWS RELEASE: Competition Bureau Launches ID-ROM on Multi-Level Marketing and Pyramid Selling

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NEWS RELEASE: Competition Bureau Seeks Unprecedented Divestitures for Lafarge-Blue Circle Acquisition
INFORMATION: Competition Bureau Releases Merger Review Benchmarking and Performance Reports

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