



**The Public Consultations of the  
Competition Bureau: Building  
Bridges to Consumers**

Report drafted by Jocelyn David

for *Option consommateurs*

and presented to the Competition Bureau, Industry Canada

ISBN 2-921588-51-X

June 2003

## Contents

<b>Abstract</b> .....	<b>III</b>
<b>Presentation</b> .....	<b>VII</b>
<b>1. Introduction</b> .....	<b>1</b>
<b>1.1 The definition of the problem</b> .....	<b>2</b>
<b>1.2 Objectives of the project</b> .....	<b>2</b>
<b>1.3 Approach and method</b> .....	<b>3</b>
<b>2. The Competition Bureau’s public consultations</b> .....	<b>3</b>
<b>2.1 Public information context</b> .....	<b>5</b>
2.1.1 The conformity continuum .....	5
<b>2.2 A description of the various consultation procedures</b> .....	<b>6</b>
2.2.1 Consultations on the legislative amendments of 1999 .....	7
2.2.2 Consultations on the legislative amendments of 2002 .....	9
2.2.3 Requests for comments from the public .....	11
2.2.4 Consultations on payments.....	13
2.2.5 Stakeholder Relations Program .....	14
<b>3 Stakeholders’ comments on the Competition Bureau’s consultation process</b> .....	<b>15</b>
<b>3.1 The Competition Bureau’s comments</b> .....	<b>15</b>
3.1.1 Comments on the 2002 legislative amendments .....	16
3.1.2 Comments on the conformity continuum .....	16
<b>3.2 Comments by consumer’s representatives</b> .....	<b>17</b>
3.2.1 <i>Consumers Council of Canada</i> .....	17
3.2.2 The Public Interest Advocacy Centre.....	18
<b>4. Consultations in similar contexts</b> .....	<b>19</b>
<b>4.1 European Community</b> .....	<b>19</b>
4.1.1 Competition Directorate-General .....	19
4.1.2 The European Economic and Social Committee .....	20
<b>4.2 France</b> .....	<b>21</b>

<b>4.2.1 Consultation on the Guidelines</b> .....	<b>21</b>
<b>4.2.2 Competition and Consumer Affairs Workshops</b> .....	<b>22</b>
4.2.3 The <i>MINEFI Forums</i> .....	24
<b>4.3 The United Kingdom</b> .....	<b>25</b>
4.3.1 <i>Opening the door on fair trading: The consultation document</i> .....	25
4.3.2 <i>Opening the door on fair trading. A summary of responses</i> .....	25
<b>4.4 Australia</b> .....	<b>26</b>
4.4.1 <i>The Consumer Consultative Committee</i> .....	27
<b>4.5 The United States</b> .....	<b>29</b>
<b>5. Consultations in different contexts</b> .....	<b>30</b>
<b>5.1 Patent Medicine Prices Review Board</b> .....	<b>30</b>
5.1.1 <i>The PMPRB's consultation policy</i> .....	31
<b>6. Conclusion</b> .....	<b>33</b>
<b>6.1 Summary of key points</b> .....	<b>33</b>
<b>6.2 Avenues for the future</b> .....	<b>34</b>
<b>Bibliography</b> .....	<b>35</b>
<b>Appendix I</b> .....	<b>38</b>
<b>Appendix II</b> .....	<b>39</b>
<b>Appendix III</b> .....	<b>42</b>
<b>Appendix IV</b> .....	<b>44</b>
<b>Appendix V</b> .....	<b>46</b>
<b>Appendix VI</b> .....	<b>49</b>
<b>Appendix VII</b> .....	<b>55</b>
<b>Appendix VIII</b> .....	<b>59</b>
<b>Appendix IX</b> .....	<b>62</b>

## **Abstract**

The general purpose of the Competition Bureau is to consult consumers and their representatives in various contexts, especially during legislative amendments to the *Competition Act* and when the Bureau solicits comments on several aspects of its activities via its Web site.

These consultations most often raise three difficulties for consumers and their representatives: the reactive nature of the consultations lack of resources, and the need to master expertise in a short space of time.

Since issues related to competition law have major repercussions on the daily lives of Canadian consumers, we wanted both to examine the Competition Bureau's consultation processes, while seeking to improve them if necessary, and also study the possibility of consumers and their representatives intervening in a proactive, preventive way with the Competition Bureau.

It was with this aim in mind that we examined the Competition Bureau's consultation process. We supplemented our examination with discussions with consumers' representatives who took part in the Bureau's consultations. We also conducted research abroad with organizations with similar mandates to that of the Bureau. Finally, we looked very closely at consultations conducted by Canadian organizations. Throughout our study, we have included our comments in specially identified paragraphs.

In all, we make nine recommendations that should attenuate the difficulties experienced by consumers and their representatives during consultations. Since the recommendations can only be understood in relation to their appropriate analytical context, we have included a reference to the section of the report where they can be found.

In the light of the experience of the *Australian Competition and Consumer Commission* (ACCC), which in 2001 set up a *Consumer Consultative Committee*, our first recommendation is the establishment of a Consumer Consultative Committee that will recast the relationship between consumers and their representatives and the Competition Bureau in a more proactive, preventive mode (Recommendation 8). The Australian committee, formed of ten or so representatives of public lobbies, meets with the ACCC executive

four times a year to discuss issues of concern to consumers, questions of topical interest, the ACCC's administration of the law and strategies for disseminating information.

We also recommend the creation of a fund to finance the participation of consumer and public interest groups in the Competition Bureau's consultations (Recommendation 5). This recommendation should not be construed as a criticism on our part, but as a response to a concern expressed by certain consumers' representatives involved in consultation in the field of patented medicines when questioned on this point during the study. This means that for consumers and public interest groups, financing concerns extend beyond the realm of competition and seem to affect their ability to participate in consultations.

In addition, based on the experience of France's *Direction générale de la concurrence et de la repression des fraudes* (The DGCCRF or, in English, The General Directorate of Fair Trading, Competition, Consumer Affairs and Fraud Control), we strongly recommend that competition and consumerism workshops be set up in order to support dialogue and develop expertise (Recommendation 6). For several years, in fact, the DGCCRF has been organizing meetings of specialists on topics related to competition and consumerism in order to further public dialogue. We also support the establishment of workshops on topics relating to both competition and consumerism in order to promote a closer liaison among stakeholders. In general, we prefer the formula of the French workshops to that of the American ones.

Finally, thanks to the involvement of an independent organization that we observed in the Bureau's last consultation on legislative amendments and the possibility of interactive Web-based forums, either in parallel with other consultations or otherwise, we arrived at a set of recommendations for improvements to be carried out here and there in the Competition Bureau's consultation process (Recommendations 1 to 4 and 7). We put more particular stress on the implementation of service standards for the Bureau's consultations (Recommendation 9) in line with the draft consultation policy put forward by the Patented Medicines Price Review Board. In fact, the service standards have the advantage of identifying the steps in the consultation process without compromising the need to adapt each consultation to its particular situation.

**Recommendation 1 (Subsection 2.2.2)**

That the Competition Bureau always call upon an independent body to guide a transparent consultation process whenever amendments are made to laws that fall under its authority.

**Recommendation 2 (Subsection 2.2.2)**

That the independent body thus designated not only accord special importance to soliciting comments from a wide range of parties, but further, that it promote dialogue among stakeholders during the consultation process (e.g. interactive round tables, Web-based forums, etc).

**Recommendation 3 (Subsection 2.2.2)**

That the independent body thus designated be allowed sufficient time to gather comments with regard to the consultation and that it post them on a Web site not only during, but after the consultation process, for purposes of information.

**Recommendation 4 (Subsection 2.2.5)**

That the Competition Bureau maintain a formal, public, active list of stakeholders in connection with its Stakeholder Relations Program.

**Recommendation 5 (Subsection 3.2.2)**

That the Competition Bureau explore the possibility of creating funds to finance consumers and public interest groups so that they can develop written comments in response to the Bureau's consultations.

**Recommendation 6 (Subsection 4.2.2)**

That the Competition Bureau organize joint competition and consumer affairs workshops at least twice a year in order to promote exchanges among stakeholders and broaden their understanding of both competition and consumer issues.

**Recommendation 7 (Subsection 4.2.3)**

That the Competition Bureau organize interactive forums through its Web site, either in tandem with other consultations, or to obtain opinions on other issues of general or current interest.

**Recommendation 8 (Subsection 4.4.1)**

**That the Competition Bureau make it a priority to set up a Consumer Consultation Committee.**

**Recommendation 9 (Subsection 5.1.1)**

**That the Competition Bureau avail itself of public service standards to define the scope of each of its consultations.**

## Presentation

This research report presents the observations that *Option consommateurs* wishes to bring to the attention of the Competition Bureau of Canada concerning its consultation processes. *Option consommateurs* has already initiated seven class action suits in the domain of competition law.<sup>1</sup> These mainly entailed claiming damages suffered by consumers as a result of illegal price fixing or collusion to manipulate market share. *Option consommateurs* thus has a significant, growing interest in competition law.

*Option consommateurs* is also interested in possible consultations with the Competition Bureau, since there are several provisions of the *Competition Act* that relate to advertising and commercial practices. These provisions are fundamental, because they directly affect consumers in their everyday lives, and, unfortunately, merchants do not always respect them.

*Option consommateurs* envisages proactive consultations with the Competition Bureau on a range of topics such as:

- problems due to infringements of the law most often experienced by consumers
- possible amendments to the law, particularly to correct legislative shortcomings
- interventions by the Competition Bureau regarding legal proceedings and information to consumers
- opening the market to competition as it affects actual benefits for consumers.

In short, *Option consommateurs* believes in increased, proactive cooperation with the Competition Bureau and wants to bring about positive results in the Bureau's general relations with consumers and their representatives.

---

<sup>1</sup> In cases of illegal price-fixing conspiracy, *Option consommateurs*, has been involved in four class action suits against manufacturers of lysine, citric acid, sodium erythorbate and vitamins; it has also been involved in a case against pharmacy owners concerning ovulation-suppressing drugs. Also, *Option consommateurs* initiated a class action suit against a pharmaceutical company that wrongfully led customers to believe that no generic bio-equivalent drug existed. Finally, it also initiated proceedings against a brewery that made retailers sell its beer at a fixed price.

## 1. Introduction

For several years now, transparency has been one of the Competition Bureau's principal goals. In addition to offering wide access to its publications and reports, particularly via its Web site, and the speeches and short talks its representatives have given on various occasions, the Bureau has also attempted to enhance transparency by revitalizing communications with stakeholders. With this aim on mind, "In the spring of 2001, the Competition Bureau began building new partnerships with business, legal and consumer associations directly affected by its work."<sup>2</sup> All this is to the Bureau's credit.

Moreover, the Competition Bureau's mandate conceals a double objective, as the first page of last year's annual report reveals:

The Competition Bureau works to create an environment in which Canadians can enjoy the benefits of competitive prices, product choice and quality services in a dynamic, healthy, innovative and competitive marketplace. It accomplishes this by promoting and maintaining competition in the Canadian market.<sup>3</sup>

In other words, the Bureau ensures that Canadian consumers reap all the advantages of a competitive market (first objective) through monitoring and encouraging such competition (second objective). Without getting into semantics, it appears obvious to us that the first objective is the condition for the second. In short, the enforcement of Canadian legislation on competition to some extent guarantees a competitive environment for Canadian consumers.

If we agree that this is obvious, should we not for a moment consider the situation from a totally opposite perspective? Are there not grounds for wondering about the means available to consumers and their representatives for bringing competition-related questions to each other's attention?

---

<sup>2</sup>Competition Bureau, *Annual Report of the Commissioner of Competition for the year ending March 31, 2002*, p. 2.

<sup>3</sup>*Ibid.*, p. 1. This paragraph has been reproduced, sometimes with a few subtle variations, for the four last years. See Competition Bureau, *Annual Report of the Commissioner of Competition for the year ending March 31, 2001*, p. 1; *Annual Report of the Commissioner of Competition for the year ending March 31, 2000*, p. 1 and *Annual Report of the Commissioner of Competition for the year ending March 31, 1999*, p. 1.

## **1.1 The definition of the problem**

More specifically, in the current state of affairs, consumers and their representatives are able to interact formally with the authorities responsible for applying *the Competition Act*<sup>4</sup> in the following situations:

- in the context of parliamentary work, generally at the time of tabling a bill, or in the context of consultations organized by the Bureau in relation to private bills
- in the context of consultations announced by the Bureau, particularly via its Web site, in relation to various questions falling under its purview, which result in the submission of written comments
- in the context of interventions of a legal nature, before the Competition Tribunal or other courts.

This raises three major difficulties. First, consumers and their representatives are generally in reactive mode in relation to initiatives originating from the Bureau. Second, the greater number of thematic consultations may result in a dispersal of consumer association resources. Third, the mechanisms in place often require stakeholders to analyze complex and rather technical problems in a very short time.

Given the large number of questions related to competition law and the repercussions that these can have on the daily lives of Canadian consumers, it would definitely be useful for consumers and their representatives to be able to intervene in other contexts, in a proactive and preventive way. However, this will require resources and a certain degree of expertise, as well as mechanisms to facilitate such interventions.

## **1.2 Objectives of the project**

The aim of this project is to:

1. Identify the principal issues the Competition Bureau has taken action on, and to proceed with consultations with the public, particularly through consumer associations
2. Identify the mechanisms that the Bureau uses for this purpose and evaluate their effectiveness
3. Describe, in the light of the experience of other countries in analogous contexts, various consultation processes that the Bureau could utilize by evaluating their potential effectiveness

---

<sup>4</sup> Although the Competition Bureau is also responsible for the application of other legislative provisions that involve questions very similar to those covered by *the Competition Act*, we have chosen to limit ourselves to questions related to the development and application of *the Competition Act* in order to better focus our study.

4. Describe, in the light of the experience of Canadian authorities with a different role than the Bureau, other consultation processes that the Bureau might employ, and evaluate their potential effectiveness

5. Make recommendations aimed at increasing the effectiveness of the public consultation processes used by the Bureau and attempt, in general terms, to make it easier for Canadian consumers to be informed of competition-related issues and to be involved in them.

### **1.3 Approach and method**

In order to attain the objectives of the project, we intend to proceed as follows:

1. By carrying out information retrieval on every aspect of the project, i.e. on the major questions raised during the Competition Bureau's public consultations, on the consultation process used by the Bureau, on the consultation modes employed by foreign agencies that play a similar role to the Bureau and, finally, on some of the consultation modes used by Canadian authorities with a different mandate than the Bureau

2. By supplementing this information with discussions with participants in the consultations (particularly representatives of consumer associations) and with the senior management of the Competition Bureau in order to determine how effective the parties on both sides judge the consultation process to be.

3. By analyzing this information, drafting a report and sending our recommendations to the Competition Bureau and to any other party interested in these questions.

## **2. The Competition Bureau's public consultations**

The Competition Bureau has been consulting and informing the public on questions that fall under its authority for some considerable time. The first meeting organized as part of the Director's Consultative Forum took place in September 1987,<sup>5</sup> and the experience was repeated twice in 1988, in April and December, and several times in 1989.<sup>6</sup> This is how the process is described in the annual reports:

---

<sup>5</sup> At that time and until March 18, 1999, the Commissioner of Competition's title was Director of Investigations and Research. In addition, the Director's Advisory Forum was integrated within the Information and Conformity Program, whose activities included short speeches, advisory opinions and information bulletins.

<sup>6</sup> Bureau of Competition Policy, *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1988*, p. 31; *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1989*, p. 39 and *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1990*, p. 37.

The Director's Consultative Forum is an informal gathering comprising a small number of academics, business people, lawyers, consumer representatives and others, who are invited to meet the Director to provide feedback on issues relating to the enforcement of the *Competition Act*. In order to allow for the broadest cross section of participation, there is no fixed membership for the Forum and an effort is made to involve participants from different regions of the country. While attendance at the Forum is by invitation, those interested in the administration and enforcement of competition law are welcome to request an invitation to be a participant.<sup>7</sup>

In the various Forums conducted over the years, attention has been focused on the merger review process (September 1987), on the overall approach to conformity policy, on the role of the *Competition Act* in a freer commercial environment (April 1988), and on policies with regard to suppression and private prosecution (December 1988). Finally, we should add that the Director and the senior executive of the Bureau have taken part in several other, more limited consultation meetings with representatives of the commercial, industrial, legal, and political sectors, as well as with business people and consumer associations.<sup>8</sup>

As a consultation process, therefore, the Director's Advisory Forum represents an interesting antecedent. The Forum was admittedly informal and irregular with no established members, yet it constituted an example of continuous consultation and dialogue between interested parties and the Bureau. This process did no more than start the work of consultation that has since been initiated by the Bureau; a task that touches on an increasing number of issues as problems in competition law become ever more complex.

However, before directly addressing the question of the Competition Bureau's consultations, we wish to specify the context in which they take place. We think that the consultations find their rationale in the broader context of the public need for information and transparency recognized by the Bureau. This placing in context also enables us to appreciate the overall work of the Bureau and to observe the role that the consultations and their participants can play within it.

---

<sup>7</sup>Bureau of Competition Policy, *Annual report (1987-1988)*, *op cit.* p. 31. The paragraph was included almost completely in the annual reports for the two following years.

<sup>8</sup>Bureau of Competition Policy, *Annual report (1988-1989)*, *op cit.*, p. 39 and *Annual report (1989-1990)*, *op cit.*, p. 37.

## 2.1 Public information context

There are various programs or intentions that, in our view, have contributed to the development of a true public information policy at the Competition Bureau. Already, at the time when *the Competition Act* was still only a bill, the aim was “to develop a total, dynamic program to raise public awareness about the beneficial effects of maintaining competition.”<sup>9</sup> Moreover, the Good Business Practice and Information Program or the Information and Compliance program have long occupied a place in the pages of the annual report of the Director of Investigation and Research. Far from being useless or negligible, public information assumes its fullest significance in its current articulation via the conformity continuum

### 2.1.1 The conformity continuum

The conformity continuum is not in itself a consultation process. We refer to it primarily because it attempts to organize all the Competition Bureau’s activities into a coherent whole.

The continuum can be best understood as a system of compliance and enforcement instruments designed to complement one another and work interdependently toward promoting conformity with the law. No individual part of the continuum is more important than another; no part stands alone; and no part can be effective in isolation<sup>10</sup>.

The continuum comprises both general and specific measures. We shall omit the specific measures because they relate to individual cases of non-compliance with the law. However, the general measures “have been taken to encourage proactive compliance with the law and are addressed to the general public and to business people in the form of education and monitoring activities.”<sup>11</sup> The general measures include publication, communication, promotion and monitoring activities.<sup>12</sup> Among these can be found a description of the relationship with the actors in the market:

The Bureau maintains regular contact with industry representatives, consumers and the legal community to collect and analyze market information. This market intelligence contributes to a better understanding of stakeholders and helps the Bureau maintain or set priorities. Liaison with marketplace contacts such as major Canadian retailers, importers and manufacturers helps to ensure compliance with the standards-based acts. Designated Bureau officers provide a

---

<sup>9</sup> Bureau of competition policy, *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1986*, p. 11.

<sup>10</sup> Competition Bureau, *Conformity Continuum Information Bulletin*, 2000, p.3. We should note that a first mention of the conformity continuum is made in Competition Bureau, *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1998*, p.1

<sup>11</sup> Competition Bureau, *Conformity Continuum Information Bulletin*, *Op cit.*, p. 3.

<sup>12</sup> A table illustrating the elements making up the continuum is found in Appendix I.

single point of contact for major retailers to resolve compliance issues. These officers are also called upon to deliver in-house seminars to managers, buyers and quality control personnel.<sup>13</sup>

There is also a description concerning the consultations:

The Bureau uses a consultation process for legislative amendments and enforcement practices that are under review. Typically, guidelines and information bulletins are released only after extensive consultations. The Bureau consults regularly to ensure that its policies reflect the input of stakeholders.<sup>14</sup>

### ***Comments by Option consommateurs***

The general measures of the conformity continuum are designed to be proactive and are addressed to the general public through education and monitoring activities. In this way, the Competition Bureau communicates with consumers and others about the market. However, although such wholly creditable efforts appear to be proactive, they seem to us overly timid. As for the regularly organized consultations on the Bureau's policies, we doubt that these are truly proactive; once again the initiative to consult falls primarily upon the Bureau. Finally, the relationship with the actors in the market seems to be directed at merchants or people in the industry. Is it the rather general character of the conformity continuum document that leaves this impression? It seems not, since it describes the Bureau's various publications, promotion activities and the information center in sufficient detail to form a fairly accurate impression. Now that the stage has been set, let us examine the consultation process employed by the Competition Bureau.

## ***2.2 A description of the various consultation procedures***<sup>15</sup>

The *Competition Act* and Canadian competition law in general have undergone relatively frequent amendments in recent years. 1986 saw the adoption of the *Competition Act*, which considerably widened the range of civil provisions already adopted in 1975 under the *Combines Investigation Act*. The new act opened to consumers and their representatives a whole range of possibilities in the field of competition law that hitherto came under the criminal code. Furthermore, the field of activity in which private individuals can intervene directly before the *Competition Tribunal* has recently been widened.<sup>16</sup> While they do not

---

<sup>13</sup> *Ibid.*, p. 8.

<sup>14</sup> *Ibid.*, p. 9.

<sup>15</sup> For this part of the Competition Bureau's consultation, we relied heavily, in addition to our research, on information provided by Purvi Radia of the Competition Bureau. We are very grateful his assistance.

<sup>16</sup> These are cases of refusal to sell, of tie-in sales, and market exclusivity and limitation. See sections 75 and 77 of the *Competition Act* with respect to restrictive trade practices, 2002, Ch. 16, sec. 11.1, 11.2 and 11.3.

properly speaking constitute a consultation, we cannot but be pleased by the possibilities of such an initiative. However, debate is obviously limited to what is immediately relevant to the purposes of the matter under dispute and consumers and their representatives remain in reactive mode.

As stated earlier, consumers and their representatives were consulted above all while the draft legislation was being studied. However useful this formula might be, stakeholders still find themselves in reactive mode and are required to analyze complex issues in a short time. Finally, the number of consultations announced by the Competition Bureau through means such as its Web site has been increasing substantially for some time now. While the issues that consumers and their representatives can intervene on are diversifying, this inevitably implies a dispersion of their resources, both human and material, which are often very limited, if not exhausted. Let us now turn to the Competition Bureau's various consultation process.

### **2.2.1 Consultations on the legislative amendments of 1999**

In June 1995, Industry Minister John Manley requested a large-scale public consultation process aimed at bringing the *Competition Act* up to date. The consultations served as a framework for bill C-67, *An Act to amend the Competition Act and to make Consequential and Related Amendments to Other Acts*, which was tabled in the House of Commons in November 1996. However, bill C-67 died on the order paper with the call for elections in April 1997, and saw itself replaced, after slight amendments, by Bill C-20, which was finally passed in March 1999.

A discussion paper prepared by the Competition Bureau in June 1995 listed a number of possible amendments to *the Competition Act* aimed at facilitating consultation.<sup>17</sup> The document was posted on the Bureau's Web site and sent to over one thousand stakeholders, including companies, consumer associations, government agencies, lawyers and academics. In October 1995<sup>18</sup>, over 80 answers to the discussion paper were received; these came from various interested parties, in particular, small and large

---

<sup>17</sup> Competition Bureau, *Discussion Paper: Amending the Competition Act*, June 1995. The subjects, seven in number, were as follows, Notifiable Transactions; Confidentiality and Mutual Assistance; Misleading Advertising and Deceptive Marketing Practices; Regular Price Claims and Section 52(1)(d); Price Discrimination and Promotional Allowances; Access to the Competition Tribunal; Prohibition Orders; and Deceptive Telemarketing Solicitations..

<sup>18</sup> By cross-checking information found under the Competition Bureau's Web site's "News Releases/Backgrounders" heading in its "Media Room" section with *Concuration/CompAct*, No 1, January-March 1996, we were able to establish that the period allotted for sending comments was from June 28 to October 6, 1995, i.e. 101 days inclusive.

enterprises, law firms, various organizations and associations, provincial governments and private individuals.

A consultative committee was set up to study the observations submitted by stakeholders in response to the discussion paper and to issue opinions on the relevance and feasibility of the proposals and solutions.<sup>19</sup> The Committee met in camera on several occasions between October 1995 and February 1996. During this time, the Competition Bureau maintained dialogue with stakeholders interested in specific aspects of the amendments and set up think tanks on topics such as prior notice, confidentiality and telemarketing.<sup>20</sup>

In March 1996, the consultative committee presented a report to the Competition Bureau that included specific recommendations on each legislative proposal put forward in the discussion paper. The Director of Investigations and Research made recommendations concerning legislative amendments, which were sent to the Minister of Industry. So it was, following the elections and after a few final corrections, that the consultation process culminated in the legislative amendments of 1999.

### ***Comments by Option consommateurs***

We should point out right away that the initiative for the consultations on these legislative amendments came from the Competition Bureau, which meant that consumers, their representatives, and other stakeholders were in reactive mode. Consumers and their representatives were given a reasonable period of time (101 days) to address up to seven general topics related to the amendments under consideration. We imagine that the consultation process must have involved the deployment of considerable resources on their part, but they had a reasonable period of time to prepare for it. Among the twelve members of the consultative committee that met in camera before presenting its report was one representative of a consumers' association. Transparency was thus not in evidence at the committee

---

<sup>19</sup> On this committee: Ed Ratushny (Chair) (Faculty of Law, University of Ottawa), Donald S. Affleck (Kelly, Affleck, Greene), Robert D. Anderson (Proctor & Gamble), Yves Bériault (McCarthy, Tétrault), Sara Blake (Ontario Securities Commission), Harry Chandler (Competition Bureau), Rosalie Daly Todd (Consumers' Association of Canada), Calvin S. Goldman (Davies, Ward & Beck), Lawson A. W. Hunter (Stikeman, Elliott) George Post (Counsel), William T. Stanbury (Faculty of Commerce and Business Administration, University of Columbia-British), Norman J. Stewart (Ford Canada Ltd) and Peter Woolford (Retail Council of Canada).

<sup>20</sup> The consultation process surrounding these legislative amendments is explained in articles in the Information Bulletin *Concuration/CompAct*. These articles are accessible via the Competition Bureau's Web site. See *Concuration/CompAct*, No 1, January-March 1996 and No 2, April-June 1996.

meetings and, although we approve of the presence on the committee of Rosalie Daly Todd of the Consumers' Association of Canada, there were nonetheless eleven other members around the table who did not necessarily have the interests of consumers at heart. Just one consultation process, however, does not make up truly representative sample for evaluating the work of the Bureau; let us now take a look at what occurred a few years later.

## 2.2.2 Consultations on the legislative amendments of 2002

In April 2000, Industry Minister John Manley asked the Competition Bureau to launch a consultation process on four private bills. Here again, the public consultations served as a framework for Bill C-23, *An Act to Amend the Competition Act and the Competition Tribunal Act*, which was adopted in June 2002.

The Competition Bureau gave the Public Policy Forum<sup>21</sup> (PPF) the specific mandate of consulting Canadians on the principles underlying the proposed amendments to the four private bills. Thus, the consultations focussed not on the four private bills as such, but on the principles underlying the proposed legislation.<sup>22</sup> Throughout the consultation process, the PPF posted relevant documents on its Web site related to the various stages of the consultation (context papers, memos, round table reports).<sup>23</sup>

The PPF invited approximately 2,000 organizations and individuals to make comments on the discussion paper<sup>24</sup> prepared by the Competition Bureau and received a little over 100 submissions between

---

<sup>21</sup> "The Public Policy Forum is a non-partisan, non-profit organization aimed at improving the quality of government in Canada through better dialogue among government, the private and the third sectors. The Forum's members, drawn from business, federal and provincial governments, the voluntary sector, and the labour movement, share a common belief that an efficient and effective public service is a key element in ensuring our quality of life and global competitive position. Established in 1987, the Public Policy Forum has gained a reputation as a trusted, neutral facilitator, capable of bringing together a wide range of stakeholders in productive dialogue. Its research program provides a neutral base to inform collective decision-making. By promoting more information sharing and greater linkages between governments and other sectors, the Public Policy Forum ensures that Canada's future directions become more dynamic, coordinated, and responsive to the challenges and opportunities which lie before us. [...] we have tried to ensure that the views expressed in this report fairly and accurately reflect all expressions of support and concern about the proposed amendments." Public Policy Forum, *Amendments to the Competition Act and the Competition Tribunal Act: A Report on Consultations. Final Report Submitted to the Commissioner of Competition*, December 2000, pp.3 and 5.

<sup>22</sup> These principles, of which there are seven, are: Illustrating the abuse of dominant position in the retail market (Bill C-402); Informing consumers (Bill C-438); Facilitating cooperation between competition authorities (Bill C-471); Private Right of Access to the Competition Tribunal (Bill C-472) References (Bill C-471), Adjudicating costs and summary dispositions (Bill C-472) Power to issue an injunction (Bill C-472); and Facilitating strategic alliances and improving the investment climate (Bill C-472)

<sup>23</sup> According to our research on the PPF Web site, these documents are no longer posted once the consultation is complete.

<sup>24</sup> Competition Bureau, *Amendments to the Competition Act. Discussion paper. To answer the need for an economy in change*, April 2000, 13 pages.

April 17 and June 30, 2000.<sup>25</sup> The PPF then organized a series of nine “general” round tables in August and September 2000. Representatives of consumer and trade associations, companies, federal, provincial and territorial governments and trade unions were invited to take part in these round tables, which took place in Halifax, Montreal, Ottawa (2), Toronto (2), Winnipeg, Calgary and Vancouver. Thereafter, the PPF invited specialists in competition law from the academic and legal worlds to three “technical” round tables, where the questions raised in the submissions and during preceding round tables were explored in greater depth.

Finally, once the consultation process (submissions and round tables), had been analyzed, the PPF sent a final report to the Competition Commissioner, who not only included comments on the seven principles under study, but also more general comments on the consultation process and the Competition Bureau.<sup>26</sup> The Commissioner then made recommendations to the Industry Minister on legislative amendments. So it was that the consultations organized by the PPF made way for the legislative amendments adopted in June 2002.

### ***Comments by Option consommateurs***

We should state at the outset that these consultations on private bills place consumers and their representatives, like all stakeholders, in reactive mode. As the complaints reproduced in Appendix II testify, although the time allowed to issue a comment on the consultations was very short (75 days), the consultation process at least had the merit of being monitored by an independent body, in this case the Public Policy Forum, followed by a dozen round tables. We can only encourage the Competition Bureau to continue on this course, and, furthermore, based on this experience, we have formulated the following three recommendations:

---

<sup>25</sup>The period allocated for the sending of comments thus extended over 75 days. Public Policy Forum, *Amendments...op cit.*, p. 3.

<sup>26</sup>These comments outside the scope of the seven principles under study during the consultations on the amendments to *the Competition Act* are reproduced in Appendix II.

### **Recommendation 1**

**That the Competition Bureau always call upon a independent body to guide a transparent consultation process whenever amendments are made to laws that fall under its authority.**

### **Recommendation 2**

**That the independent organization thus designated not only accord special importance to soliciting comments from a wide range of parties, but further, that it promote dialogue among stakeholders during the consultation process (e.g. round tables, interactive Web-based forums, etc).**

### **Recommendation 3**

**That the independent organization thus designated be allowed sufficient time to gather comments with regard to the consultation and that it post them on a Web site not only during, but after the consultation process, for purposes of information.**

## **2.2.3 Requests for comments from the public**

As often as possible and in line with its concerns over education, enforcement of the law and transparency, the Competition Bureau issues requests for comments from the public. Although it had already done this previously, in 2001 the Bureau assembled all the information on its Web site in the section “Requests for Public Comments.” This section gives information on public consultations related to legislative amendments, draft guidelines<sup>27</sup>, information bulletins and various guides.<sup>28</sup> Replies received by the Bureau are posted there, with permission, in their entirety or in summary form. The Bureau attempts as far as possible to take proposals submitted into account before posting a final version of any given project. It sometimes happens that requests for public comments ensue from other Competition Bureau consultation activities. This was the case, for example, with the discussion paper on pricing and service standards; which, incidentally, states:

---

<sup>27</sup> The Competition Bureau has conducted many consultations on draft guidelines in recent years. Let us note in passing the *Merger Enforcement Guidelines as Applied to a Bank Merger 1998; Draft Enforcement Guidelines. Abuse of Dominant Position in the Retail Food Sector, 2001 and Draft Enforcement Guidelines for Illegal Trade Practices: Unreasonably Low Pricing Policies, 2002.*

<sup>28</sup> A list of examples of consultations on publications is included in Appendix III.

In developing this proposal, the Bureau has benefited significantly from client input received during the Fees and Service Standards Forum in 1999, the June 2001 Mergers Branch Forum, the Merger Review Benchmarking initiative, the Merger Notification Unit consultations in January 2001, and the numerous other consultations and meetings between the Bureau and its stakeholders. Through a combination of stakeholder forums and wide distribution of this consultation paper, the Bureau intends to gather the necessary client input for revising the existing Fee and Service Standards Policy. Forums planned for November 2002 will benefit from written comments received as a result of this consultation. These forums will allow those most directly affected to comment on, and actively participate in, the development of revisions to the current policy. The final proposal will reflect the feedback provided by interested parties.<sup>29</sup>

Therefore, not only did the consultation on pricing and service standards result from the forums and various projects, but it in turn gave rise to three forums<sup>30</sup> in addition to written comments.

Finally, it should be noted that the Bureau's Web site receives an average of 25,000 visits per month. Also, anyone interested in the Bureau's activities can subscribe, depending on their interests, to a mailing list on the Web site; approximately 2,500 subscribers receive information from the Competition Bureau by e-mail.

### ***Comments by Option consommateurs***

We encourage the Competition Bureau to continue its "Requests for Public Comments" via its Web site and to post relevant documents to help interested parties carry out the necessary follow-up. It is certainly the most cost-effective way to reach a wide audience, especially consumers or at the very least their representatives. It is obvious that "the Bureau's main communication tool is its Web site<sup>31</sup>" and this should continue, while seeking improvements. However, we notice that the subjects on which the Bureau requests comments are very diverse and that it is difficult for stakeholders such as consumers and their representatives, with their often limited resources, to be prepared for every call from the Bureau. We will see presently how the Bureau tries to contact stakeholders, in a different, more informal way (Subsection 2.2.5).

---

<sup>29</sup> Competition Bureau, *Discussion Paper on the Proposal to Increase Fees and Revise its Fee and Service Standards Policy*, August 2002, p. 20.

<sup>30</sup>The forums scheduled for November 2002 finally took place on December 9, 2002 in Vancouver, on December 11, 2002 in Toronto and on December 13, 2002 in Montreal.

<sup>31</sup>Competition Bureau, *Annual report (2001-2002)*, *op cit.*, p. 2.

## 2.2.4 Consultations on payments

When the Competition Bureau carries out amendments to its regulations, it is subject to *The Government of Canada Regulatory Policy*, which applies to all federal regulatory agencies. In particular, this policy states that “Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs.”<sup>32</sup> The policy describes the consultation process as follows:

Regulatory authorities proposing new regulatory requirements, or changes to existing regulatory requirements, must carry out timely and thorough consultations with interested parties. The consultation effort should be proportional to the magnitude of the impact of the proposed regulatory change. Notice of proposed regulations and amendments must be given so that there is time to make changes and to take comments from consultees into account. Regulatory authorities must clearly set out the processes they use to allow interested parties to express their opinions and provide input. In particular, authorities must be able to identify and contact interested stakeholders, including, where appropriate, representatives from public interest, labour and consumer groups. If stakeholder groups indicate a preference for a particular consultation mechanism, they should be accommodated, time and resources permitting. Consultation efforts should be coordinated between authorities to reduce duplication and burden on stakeholders. Regulatory authorities should consider using an iterative system to obtain feedback on the problem, on alternative solutions and, later, on the preferred solution. Consultations should begin as early as possible in order to get stakeholder input on the definition of the problem, as well as on proposed solutions. Regulatory authorities creating new regulatory requirements must tell stakeholders about the proposal in simple, clear, complete and concise language that the general public can easily understand. New regulations must be written in plain language that regulatees can easily understand. New regulations and changes to existing regulations, as well as material incorporated by reference, must be well publicized and easily accessible to stakeholders.<sup>33</sup>

Moreover, all draft regulation is subject to prepublication in the *Gazette of Canada*. Prepublication gives interested stakeholders and Canadians in general one final opportunity to review the draft regulation in question and to comment on it. Prepublication also makes it possible for interested stakeholders to follow the development of the regulation from the initial consultation stage. Usually, a 30-day time limit is allowed for comments.<sup>34</sup> For example, the Competition Bureau had to resort to this procedure recently with regard to Notable Transactions Regulations.<sup>35</sup>

---

<sup>32</sup> Privy Council Office, *The Government of Canada Regulatory Policy*, November 1999.

<sup>33</sup> *Ibid.*

<sup>34</sup> This time limit may be extended or reduced. In matters of trade and competition, given that Canada has signed various international agreements, the period is often extended to 75 days.

<sup>35</sup> See *Canada Gazette, Part I*, vol. 136, No 33, August 17, 2002 and the *Canada Gazette, Part II*, vol. 137, no 3, March 27, 2003.

### ***Comments by Option consommateurs***

Although this consultation process places stakeholders in reactive mode, we understand that the Competition Bureau is simply pursuing the policy set in place by the Canadian government. On the other hand, we think there is nothing to prevent the Bureau from inserting references to its own consultation processes within a regulation. We will see further which aspects could profit from such insertions, without being constraining, in the light of the experience of another Canadian authority (Subsection 5.1.1).

### **2.2.5 Stakeholder Relations Program**

In the spring of 2001, the Competition Bureau undertook the creation of new partnerships with business, law and consumer associations. Consequently, in June 2001, the Bureau hired a consultant to solicit regular stakeholders and sound them out with regard to the Bureau's consultations and ways in which it could improve its relations with stakeholders.<sup>36</sup> This resulted in the establishment of the [Stakeholder Relations Program](#). The partnership effort with these associations is focussed on improving relations and raising awareness of the work carried out by the Bureau. This involves reinforcing the Bureau's communication tools and developing a transparent dialogue with stakeholders. The Bureau then consults stakeholders directly, targeted according to issue, on very specific questions. For example, the Bureau conducted interviews with various stakeholders with a view to improving its Web site in order to respond to the needs of its diversified audience.

### ***Comments by Option consommateurs***

The Competition Bureau's [Stakeholder Relations Program](#) has the merit of conducting consultations within a more informal framework, without necessarily making them more proactive for consumers and their representatives. In fact, although the consultation process is more informal in terms of the questions asked, the stakeholders consulted and the means of conducting it, the Bureau still retains the initiative of whether to consult or not. We by no means call into question the advantages that can be derived from such consultations as we will see further on (Subsections 3.2.1 and 5.1.1), but we think that the interaction between the Bureau and its stakeholders, particularly consumers and their representatives, would be

---

<sup>36</sup>A list of stakeholders interviewed on this occasion is available in Appendix IV. It provides a general portrait of the stakeholders contacted by the Competition Bureau in consultations with stakeholders.

enriched if the latter could proceed within a formal framework without having to wait for a request from the Bureau. We will formulate our recommendation in this regard further on (Subsection 4.4.1). In spite of this, as an organization representing the interests of consumers, we approve of the efforts deployed by the Bureau in its Stakeholder Relations Program. We not only encourage the Bureau to continue in this course, but make the following recommendation:

#### **Recommendation 4**

**That the Competition Bureau maintain a formal, public, active list of stakeholders in connection with of its Stakeholder Relations Program.**

Let us now see what the Competition Bureau and other stakeholders have to say about consultations.

### **3 Stakeholders' comments on the Competition Bureau's consultation process**

Since it was not our mandate to undertake an exhaustive evaluation of the stakeholder consultation process, we limited ourselves to the consumer organizations that agreed to answer us. It should also be noted that none of the academics we contacted replied to us. The following comments shed light on certain aspects of the preceding section from a different standpoint.

#### **3.1 The Competition Bureau's comments**

In addition to participating in describing its own consultation process, the Competition Bureau wrote to tell us that it agrees that there is room for improvement in every type of consultation. In addition, the Bureau considers that it is proceeding in a consistent manner with regard to its consultations, but that it would be able to accomplish far more if it had more resources.

As an organization that represents consumers, we cannot but sympathize with this remark, and hope that this report will help the Bureau improve its consultations. We have also selected some comments from responses by Bureau staff, the broad outlines of which are presented below.

### 3.1.1 Comments on the 2002 legislative amendments

In a short speech given at a Canadian Bar Association conference, Suzanne Legault, the Assistant Deputy Commissioner of Competition in the Legislative Affairs Division, made the following comments:

Although the legislative process followed in Bill C-23 might be described by some as unorthodox, the Bureau considers it highly successful. The underlying principles of the bill were developed by a number of people, not solely by the Bureau. A broad range of stakeholders were consulted and additions needed to address the Canadian economy were made to the Bill. These important amendments represent a comprehensive, balanced approach to amending competition legislation and were in keeping with the flexibility afforded by the legislative process [...]

It is the Competition Bureau's preference to release discussion papers on all proposed amendments to the *Competition Act* so that they can be fully studied and discussed by a wide range of stakeholders. Similarly, the Bureau recognizes that these consultations need to allow sufficient time for meaningful input. Both steps will only improve on the advice that the Bureau provides to its Minister. At the same time, it is necessary to recognize that there are often competing interests involved in competition policy, that Members of Parliament have a legitimate role to play in the process, and that competition policy is not developed in a static environment (changing events can outstrip even the best laid plans).<sup>37</sup>

In an unspecified short speech, Sally Southey, Assistant Commissioner of Competition in the Communications Division, comments on the interest in resorting to private bills to amend *the Competition Act*:

An interesting common thread which has run through most of the bills proposed in recent years is that there has been a consumer-focussed element. While this consumer-focussed aspect may not have been the most important element of the bill from a competition law standpoint, it is this consumer focus which often stirs members of parliament to action. For example, many members of parliament reported receiving letters and phone calls from constituents complaining of so-called "scratch and win" cards they receive in the mail, or harassing phone calls from telemarketers telling them that they have won a prize.<sup>38</sup>

### 3.1.2 Comments on the conformity continuum

In the same speech, Sally Southey adds, this time in connection with communication strategies aimed at the public:

In 2001, the Bureau launched a plan to build new partnerships with its key stakeholders including: business groups, consumer organizations and industry associations. The initiative is improving relationships, enhancing credibility and raising awareness of the Bureau's operations among the key associations and their members. One tool that has proven to be

---

<sup>37</sup> Suzanne Legault, *Legislative Process for Amending the Competition Act*: Remarks to the Canadian Bar Association's Annual Fall Conference on Competition Law, 2002, pp. 10-12.

<sup>38</sup> Sally Southey, *Building a Competition Culture*, speech, November 2002, p.8.

very effective in communicating with external audiences and supporting our enforcement approach is the Bureau's Conformity Continuum.<sup>39</sup>

### ***Comments by Option consommateurs***

First, with regard to the legislative amendments, we see that the principles underlying the bill were not developed solely by the Competition Bureau and that consumers, via their Members of Parliament, seem to have played a proactive role in the process. Second, the above excerpt suggests to us that the Stakeholder Relations Program has some considerable importance in the Bureau's information initiative and that it falls well within the scope of the conformity continuum. We will see later how, in our view, the Bureau could further strengthen its capacity "to communicate with external audiences" and establish a proactive dialogue with consumers and their representatives (Subsection 4.4.1).

## **3.2 Comments by consumer's representatives**

### **3.2.1 Consumers Council of Canada**

The *Consumers Council of Canada* representative related her experience with regard to the Stakeholders Relations Program. She says that a consultant at the Competition Bureau telephoned her twice: the first time in 2002 about the Bureau itself and the second time a few months ago about the Bureau's Web site. In the first case, she was interviewed by telephone for approximately 45 minutes, in a rather exhaustive manner, she says, on her general perceptions of the Bureau. She had the feeling that the Bureau was truly interested in her comments. If her memory serves her well, there was even another call some time after, by way of follow-up. In the second case, which specifically concerned the Bureau's Web site, she first received a series of questions about other sites for purely comparative purposes. There was then a telephone conversation of approximately 30 minutes on her assessment of the Bureau's Web site compared with other sites. On the whole, she rated the experience positively; she found the telephone interview satisfactory and was delighted to see that the Bureau actually makes contact with stakeholders.

---

<sup>39</sup> *Ibid.*, p. 10.

### 3.2.2 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) began by pointing out that the PIAC is primarily consulted in the context of legislative amendments to the *Competition Act*. According to the representative questioned, the principal problem with these consultations is that they are focussed on the opinions of “Bay Street lawyers” who in general are against any reform that would threaten a wider range of anticompetitive behaviour or would make it easier for complaining parties to obtain assistance. He added that because of the lack of consumer and public interest groups active in the field of competition law, the interests of the public tend to be seen as no more important than any other interests in the process. He was of course implying here that the interests of the public should definitely take precedence over other interests.

Furthermore, The PIAC suggests that the Bureau should first of all try to develop a more enlightened position toward consumers, who are supposed to be protected by a competitive market. It recognizes, moreover, that public interest and consumer organizations must themselves use resources from other projects in dealing with consultations involving competition. Consequently, it thinks that the Bureau could fund the production of comments on a given consultation. Finally, it believes that the Bureau should try to balance stakeholder participation in order to avoid the situation in which one or two consumers’ representatives find themselves facing about thirty stakeholders from the industrial sector.

#### ***Comments by Option consommateurs***

In short, the CCC experience confirms the importance that the Stakeholders Relations Program can have for stakeholders who represent consumers. It also highlights one of the advantages of informal consultations: direct contact with stakeholders.

Like the PIAC, we have already referred to the lack of resources for consumer and public interest groups. We also think that these groups would appreciate the chance to develop more in-depth expertise in the area of competition and be able to take part more effectively in the formal consultation process launched by the Competition Bureau. Consequently, we recommend:

### **Recommendation 5**

**That the Competition Bureau explore the possibility of creating funds to finance consumer and public interest groups to permit them to develop written comments in response to the Bureau's consultations.**

In order to do this, the Bureau could use as its starting point the Contributions Program for Non-profit Consumer and Voluntary Organizations administered by Industry Canada's Office of Consumer Affairs. Pursuing this line of thought, let us now see whether we might have something to learn from foreign experiences in the competition domain.

## **4. Consultations in similar contexts**

Before we present the results of our research on consultation on competition in various countries, and to set the tone for our approach, we would like to draw attention to certain aspects of a study that substantially supports our position with regard to consumer organizations. In this study, it states:

In Europe, probably because of the development of the economic union, there appears to be more government intervention and appreciation for the benefits of consulting with consumers. Governments such as the United Kingdom's have recognized the need to strengthen consumer organizations in order to ensure effective consumer representation. This occurs through both training and funding. Nonetheless, many consumer organizations and consumer advisory boards continue to lack financial resources. The European Union is examining this aspect and relevant consumer bodies within the European Union have called for more resources to perform their role effectively [...] Experience has shown, in other countries, that a careful and transparent appointment process is necessary when consumer representatives are appointed to public advisory bodies.<sup>40</sup>

### **4.1 European Community**

The European Union Treaty states that each Member State must adopt an economic policy based on the principle of an open market economy. Accordingly, the European Community's Competition Directorate-General pursues the objective of defending and developing healthy competition in the common market.

#### **4.1.1 Competition Directorate-General**

When a new policy or draft legislation is being considered, the Competition Directorate General usually launches consultations and invites the public to make comments. The consultations follow a

---

<sup>40</sup> Consumers Council of Canada, *Research Brief Involving Consumers in Corporate Decision and Policy-Making*, April 2002. This document is a summary of the report *Consumer Participation in Corporate Decision-Making*.

traditional pattern; i.e. a document explaining the Directorate-General's project is submitted to those who have a certain interest in commenting on it or who would like to do so.<sup>41</sup> Moreover, it sometimes happens that specific opinions are solicited from companies in an exploratory questionnaire.<sup>42</sup> Finally, when the *White Paper on Modernization of Rules Implementing Articles 85 and 86 of the EC Treaty*, was being considered, not only were interested parties invited to submit their comments, but the European Parliament held public hearings.<sup>43</sup> As regards the Competition Directorate-General of the European Community, however, there is nothing truly remarkable that could be used to improve consultation processes that are, after all, already in vogue at the Competition Bureau.

#### **4.1.2 The European Economic and Social Committee**

Nevertheless, one of the most interesting aspects at the European Community level is the work of the European Economic and Social Committee (EESC). This committee is made up of 222 members from the various socio-economic communities of Europe. The main task of this consultative body is to advise EU decision-making bodies. It is mandatory for the Committee to be consulted on the issues stipulated in the Treaties and in all cases where the institutions deem it appropriate. The Committee may also be asked to draw up exploratory opinions and can also issue opinions on its own initiative. In short, the EESC represents organized civil society to the politicians of the European Community.<sup>44</sup> It therefore happens that the EESC issues opinions in the area of competition, particularly in the DGCCE annual report.

#### ***Comments by Option consommateurs***

Without wishing to push for the creation of a similar organization in Canada, which incidentally would be exceeding our mandate, we feel that the operations and organization of the EESC provide an example that would deserve to be adapted here within the more limited context of competition. We find the idea of a bridge between decision-making authorities and civil society very appealing; a bridge that

---

<sup>41</sup> The reader can observe this in the current and completed consultations described on the Competition Directorate-General Web site. For example, in the consultation *Regulation in liberal professions and its effects. Invitation to comment* on p. 8, the following invitation appears: "Comments are welcome from professional bodies, members of professions, consumers, public sector regulators, and other representatives of public administrations and from any legal or private person with relevant experience and/or interest. In case you represent an organization or institution, please name it."

<sup>42</sup> Let us mention, for example, a consultation in progress until June 13, 2003: *Industry dialogues on air transport competition policy. Exploratory questionnaire on selected airline alliances and merger competition assessment issues*.

<sup>43</sup> The period for formulating comments extended from April 28, 1999 to September 30, 1999, i.e. 156 days inclusively, and the hearing was on September 22, 1999.

<sup>44</sup> For fuller details on the EESC, see Appendix V

supports dialogue in both directions, that places stakeholders in reactive mode and proactive mode at the same time. We cannot but approve of a participatory democracy that not only guarantees a opportunity for fruitful dialogue, but by that very fact reinforces the legitimacy of the decision-making process. We will see further on how this might be envisaged (Subsection 4.4.1).

## **4.2 France**

In France, competition law falls within the purview of the Ministry of the Economy, Finance and Industry (MINEFI). The General Directorate for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF) reports to the MINEFI<sup>45</sup> and is, in essence, responsible for the control of mergers, as appears from the only public consultation available on its Web site as of December 13, 2002. The DGCCRF also makes the control of mergers public within the regime created by the Law Relating to New Economic Regulations, thus allowing the public to follow the progress of a merger case. Once the Minister of the Economy has been notified of a merger, interested third parties are invited to provide their comments. Needless to say, the DGCCRF also consults representative professional bodies when preparing texts for France or for the European Community. From the outset, it should to be admitted that the consultation modes adopted for DGCCRF initiatives are reactive and rather informal. Let us nonetheless examine the consultation process on the guidelines for control of mergers in greater detail.

### **4.2.1 Consultation on the Guidelines**

The Law Relating to New Economic Regulations of May 15, 2001 instituted a new regime for controlling mergers in France, which came into force on May 18, 2002. In order to ensure the transparency and predictability of this control, the DGCCRF published the *Draft Guidelines for the Analysis and Control of Mergers* on its Web site. This document sets out the criteria retained by the French competition authorities in their analysis of mergers and constitutes as exhaustive a guide as possible of the control procedures put in place by the new regime. These draft guidelines were published in order to gather comments from the business community and competition law practitioners. Interested parties were invited

---

<sup>45</sup> We note in passing the existence of the Competition Council and the National Consumers' Council, both under the aegis of the MINEFI. Having basically an advisory role, neither of these councils conducts public consultations. Their opinions are published in the *Official Bulletin of Fair Trading, Consumer Affairs and Fraud Control*, available on the DGCCPF Web site.

to contribute their observations and comments on the draft during the consultation period, which extended for just over two months. Once the final guidelines are prepared, they will be published.

Consultation on the guidelines was essentially addressed to parties directly affected by mergers. There is nothing new to this type of consultation, and it does not provide consumers or their representatives with a way to increase their participation in the consultation process. The DGCCRF has, however, been conducting workshops on competition and consumer affairs issues for several years. These workshops merit a closer look.

#### **4.2.2 Competition and Consumer Affairs Workshops**

Since they were begun in 1994, competition workshops have proven valuable as a forum in which a range of specialists (academics, economists, lawyers, government representatives) can meet in a group to consider, analyze and publicly debate:

- issues on which jurisprudence not yet determined all the rules
- issues on which there may be divergent opinions, and
- issues to which the application of competition law may be perceived as antagonistic to the interests pursued by other laws.

Consumer affairs workshops were begun in 1996 to gain a better understanding of consumer-related phenomena by stimulating discussion and promoting encounters among specialists with different perspectives, such as heads of research groups, consumer group representatives, business leaders, academics, government representatives, and lawyers.

The competition and consumer affairs workshops each have a steering committee whose role is to determine the orientation of the workshop meetings, propose topics for discussion, establish a schedule, and guide the work they do. At an annual meeting, each steering committee, presided over by the Director General of the DGCCRF, draws up a list of possible topics for workshops. The Director General makes the final choice from among the topics proposed by the steering committees and the administration.

A chair for each workshop is also chosen at the annual meeting. The chair considers the plans for the workshop with the administration and suggests possible participants. The chairman leads the debates, ensures that the workshops proceed smoothly, sees that the time allotted to participants, usually a maximum

of 30 minutes each, is respected, and, if necessary, keeps the debates focussed. A file is routinely given to the participants at each workshop. It contains a summary or an outline of the various contributions and documents for consideration, including useful schedules, on the chosen topic. With certain exceptions, the workshops are held between 2:30 and 5 p.m.<sup>46</sup>

Each of the participants is given an evaluation form in order to determine their interest in the proposed event and to gather their suggestions. This is done mostly to help the administration improve its performance by taking participants' remarks into account. The workshops are part of the DGCCRF's policy of transparency in matters of competition and consumer affairs. The highlights of the debates and contributions are published in the *Revue de la concurrence et de la consommation* (competition and consumer affairs journal).

### ***Comments by Option consommateurs***

We noticed that the DGCCRF competition workshops are separate from their consumer affairs workshops. We believe that exchanges would be more fruitful if the workshops brought together stakeholders concerned with competition issues and those concerned with consumer issues. This would permit stakeholders to share their often opposing views. In order to encourage exchanges and avoid split vision within the Competition Bureau, it would be advisable for the Bureau to organize workshops in which both competition and consumer specialists are brought together. Thus a single steering committee would be called upon to determine subjects of common interest.<sup>47</sup> We recommend, therefore,

#### **Recommendation 6**

**That the Competition Bureau organize joint competition and consumer affairs workshops at least twice a year in order to promote exchanges among stakeholders and broaden their understanding of both competition and consumer issues.**

---

<sup>46</sup> Details of the composition of the steering committee, a hypothetical workshop schedule and the topics addressed since the competition and the consumer workshops are presented in Appendix VI.

<sup>47</sup> We believe that current events provide an almost inexhaustible source of topics for the workshops, which would address themes related to both competition and consumer affairs. The workshops organized by the DGCCPF have dealt with topics such as health, the Internet and banking. The fourth consumer workshop was entitled "Is Consumer Protection Useful in a Free-Market System?" while the twelfth competition workshop was entitled "Consumer Interests in the Application of Competition Law." It thus appears feasible to find common topics for more harmonized workshops.

While these workshops may have no apparent decision-making impact, they do permit parties with different interests to participate in formal discussions on a wide variety of current topics. The workshops would, therefore, be of interest to the Competition Bureau in its efforts to promote communication and would ensure that stakeholders expand their range of knowledge. Once the workshops are over, their reports should be published on a Web site so that the workshops remain accessible in a cost-effective way.

### **4.2.3 The MINEFI Forums**

We turn now to the consultations conducted directly by MINEFI on various current issues that generally fall outside the framework of competition. These consultations do, however, have the merit of being simple and direct. The MINEFI uses the interactive potential of the Web to organize forums. More than a dozen public consultations have given Internet users an opportunity to voice their opinions on a range of subjects of current interest. A forum on a given issue is accessible for several months, during which time contributions received from the public are coordinated by a moderator and made available on line. Once the forum is closed, the results are consolidated and made public. The MINEFI Web site announces that this dialogue with the public will soon be expanded.<sup>48</sup>

#### ***Comments by Option consommateurs***

The Competition Bureau's Web site is clearly a valuable means of communication. The Internet is particularly well-suited to public consultations on issues of general interest because opinions can be quickly obtained, and the interactive capacity of the Internet can be used without spending colossal sums of money. For these reasons, we recommend:

#### **Recommendation 7**

**that the Competition Bureau conduct interactive forums on its Web site, either in tandem with other consultations or to obtain opinions on other issues of general or current interest.**

---

<sup>48</sup> See the "Forum" section on the MINEFI Web site, at [www.minefi.gouv.fr/minefi/forum/index.htm](http://www.minefi.gouv.fr/minefi/forum/index.htm)

Of course, the Bureau may decide to conduct a more traditional form of consultation (requests for comments from the public, written comments and discussions through forums), and back it up with an interactive forum on the Internet.

### **4.3 The United Kingdom**

The *Office of Fair Trading* (OFT) is the British authority that plays a role that is markedly similar to that of the Competition Bureau. On July 7, 1999, the OFT published a consultation document aimed at improving the transparency of its activities that it sent to over 1,100 organizations, including government departments, trade associations, chambers of commerce, foreign competition and consumer authorities, universities, consumer associations, companies, law firms and the media.<sup>49</sup> Here is a brief outline:

#### **4.3.1 Opening the door on fair trading: The consultation document**

The consultation document was divided into four parts and contained thirteen questions, three of which were specifically related to the consultation process: one on reasons for consultation, one on methods of consultation, and one on reactions to the consultation exercises.<sup>50</sup> One does not need to examine this document or the OFT Web site for very long to be convinced that the OFT conducts a great deal of consultation on a wide range of topics. Moreover, the OFT recognizes the importance of consultation for the relevant information it provides on a range of issues.

#### **4.3.2 Opening the door on fair trading. A summary of responses**

In the summary of the answers recorded during the OFT consultation, a majority of respondents considered that the OFT already consults enough. Three respondents even commented that the current number of consultations conducted by the OFT was the most they could handle. Some, however, wished that the OFT would consult more, particularly with regard to setting priorities in creating information guides for consumers. In addition, the point was made that the OFT should carry out on-line consultation via its Web site, as well as person-to-person consultations such as seminars, roundtables or study groups.

---

<sup>49</sup> We should mention that Industry Canada's Competition Bureau took part in this OFT consultation.

<sup>50</sup> Office of Fair Trading, *Transparency Report. Opening the door on fair trading. A consultation paper on improving transparency in the operations of the OFT*, 1999, p. 15-17. These pages are reproduced in Appendix VII.

Finally, a majority of respondents, although satisfied with the reactions to the consultation exercises, wanted a published summary of the answers, a complete analysis of the answers, the details of actions to be taken, and explanations of factors that influenced decisions. A minority of respondents thought that the answers should always be available in their entirety, while the rest thought that the summary was sufficient.<sup>51</sup>

### **Comments by *Option consommateurs***

Among the OFT's consultation procedures, we found nothing more innovative than what has been described until now. For example, *custom-built mailing* has many points of similarity with the Competition Bureau's Stakeholders Relations Program (Subsection 2.2.5), also, we have already suggested something along the lines of *extensive consultation* (Subsection 4.2.3). The answers recorded during this OFT consultation are more often than not reformulations of comments expressed earlier in this document. In line with the concern expressed in the answers given to the OFT, however, we believe that there are grounds for standardizing communications after the consultation process. We will address this question in Subsection 5.1.1.

## **4.4 Australia<sup>52</sup>**

In Australia, the equivalent of the Competition Bureau goes by the name of the *Australian Competition and Consumer Commission* "The Commission," as it is known, is responsible for the application of various competition-related laws and consults stakeholders frequently. It recognizes that some stakeholders, particularly community and consumer organizations, often do not have the resources and, in some cases, quite simply the expertise to take part in the consultations it conducts. Whenever public interest is manifested, the Commission can help stakeholders participate in consultations by collecting their opinions orally and then transcribing them. In addition to this feature of the Commission's consultations, we retained the impression of a completely original Consultative Committee.

---

<sup>51</sup> Office of Fair Trading, *Transparency Report: Responses to the OFT's Consultation Document: Opening the door on fair trading*, undated, no pagination. A summary of the answers to questions 7 to 9 is also reproduced in Appendix VII.

<sup>52</sup> For this part, we are very grateful for the cooperation of Elizabeth Davidson, Director of *The International Unit of The Australian Competition and Consumer Commission*, for the documents that she sent to us.

#### 4.4.1 The Consumer Consultative Committee

In November 2001, the Commission set up a *Consumer Consultative Committee* (the Committee) that meets four times a year to ensure better communication between it and some of the major national consumer and public interest advocacy organizations. The Committee was established in order to provide the Commission with opinions on:

- Questions affecting consumers that fall under the Australian *Trade Practices Act*
- Topical questions or market developments of interest to certain groups of consumers
- The administration of the law by the Commission and the possibilities of its further improving its responsibilities as defined in the Act
- Strategies of dissemination of information and availability of relational networks designed to improve dialogue between consumers and their representatives
- Questions requested by the Commission.

In fact, each of the Commission's divisions is actively encouraged to submit questions to the Committee's program. The Committee, for its part, is formally invited to submit comments to the attention of the Commission without necessarily having to be asked.

The Committee is made up of eight to twelve members chosen to represent a broad range of community sectors.<sup>53</sup> The Commission also makes provision that additional members with particular expertise in a certain point on the agenda may be added to Committee meetings on an ad hoc basis. This has not occurred to date.

The first members of the Committee were selected on the basis of the Commission's relations with various organizations while attempting to reflect the diversity of Australian consumers.<sup>54</sup> The members are named by the Commission for a period of one to two years, after which the Commission renews its membership. Meetings take place four times a year at the Commission's Canberra Office, with the possibility of being held in other Bureaus. It is preferred that members be present at the meetings, but a compromise through videoconferencing is possible. In addition, the Commission tries to establish a

---

<sup>53</sup> A list of the current members of the Committee is available in Appendix VIII.

<sup>54</sup> The Commission recognizes that all interests cannot be represented on the Committee, but that ideally its members would represent: consumers from isolated communities, aborigines, States and Territories, women, handicapped consumers, consumers in financial difficulties, consumers from various ethnic or linguistic communities and consumers of all ages.

complete calendar for the year. Finally, the Commission assumes both travel and lodging costs for the members of the Committee.

The Commission also provides the Committee's secretariat. The secretariat is available to help and advise members; its role is summarized as follows: to arrange reservations for the transport and lodging of members, to organize meetings, to handle correspondence, to prepare the agenda, and to establish and distribute the minutes of meetings. The secretariat also occasionally organizes teleconferences for members between Committee meetings. Finally, certain points of the minutes distributed after each meeting are updated and reported in the agenda of the next meeting.<sup>55</sup>

Final details: members who believe that their other activities could come in conflict with their membership on the Committee must declare their interests to the Committee Chair. All correspondence must be approved by the Committee Chair and be handled by the secretariat. The Commission shall provide information on its activities to the Committee unless specifically forbidden on grounds of confidentiality.

### ***Comments by Option consommateurs***

For consumers and their representatives, the Australian *Consumer Consultative Committee* represents an ideal forum for fertile exchanges with decision-making bodies in the domain of competition. We should point out that these exchanges occur not only at the instigation of one of the parties, but of all the parties around the table. Such a committee seems to represent a clear instance of dynamic relations between organized civil society and decision-making authorities, somewhat similar to what we noted above with regard to the EESC (Subsection 4.1.2). Such a committee has also the merit of giving a say to organizations that often do not have the resources to take an active part in consultations. Consequently, we strongly recommend:

### **Recommendation 8**

**That the Competition Bureau make it a priority to set up a Consumer Consultative Committee.**

---

<sup>55</sup>An example of a standard Committee agenda is provided in Appendix VIII.

Finally, we suggest that the Competition Bureau consult *Canadian Consumer Initiative* to assist them in organizing all the finer details of setting up a Consultative Consumer Committee.

#### **4.5 The United States**

The United States represents a particular case. There is a whole series of laws in the United States relating to competition, the application of which is shared between the *Federal Trade Commission* (FTC) and the *Department of Justice* (DOJ). Without going into too much detail, consultations in the United States above all take the form of public hearings. Indeed, the FTC Web site announces public hearings in connection with health care and intellectual property that it conducts jointly with the DOJ.<sup>56</sup> In addition, since April 1995, the FTC has organized forty public workshops on various questions relating to consumerism and competition.<sup>57</sup> It is difficult for us to describe these here because practically every workshop has a different format: they can last one day or an entire weekend and their frequency is not stated. To give an idea nonetheless, we could say that the workshops are a cross between public hearings and the French workshops described earlier.

Naturally, if the FTC accumulates sufficient indication of unfair or misleading competitive practices, it can initiate a regulatory process. During this process, the public will have an opportunity to take part in public hearings and send comments. Before making its final decision on the regulation, the FTC considers the written comments from the public, testimony given at the time of the hearings and various reports from its personnel and the “Presiding Officer.”

#### ***Comments by Option consommateurs***

The American experience, although rich in term of public hearings, offers little interest for in terms of this study. We feel that repeated public hearings can not only be long and tiring, but also very costly. The idea of workshops is not bad in itself, but we find the French approach to workshops simpler and easier to manage. As for the CTF’s regulatory processes, these are scarcely different from what already occurs on this side of the border.

---

<sup>56</sup>See <http://www.ftc.gov/ftc/hearings.htm>

<sup>57</sup>See <http://www.ftc.gov/ftc/workshops.htm>

Before concluding, we wish to point out some relevant consultation experiences that took place in various competition domains in Canada.

## **5. Consultations in different contexts**

The purpose of this section is not to make an inventory of all the consultation processes in progress at the moment across the country, but simply to supplement what we have already seen on consultations here and elsewhere in the domain of competition. We had hoped at the beginning to examine the consultations of the Canadian Radio-television and Telecommunications Commission (CRTC), but the public notices of the CRTC have nothing new to offer and their public hearings are quite simply disproportionate to the needs of the competition domain. Also, the CRTC uses massive advertising campaigns to announce its consultations, yet we do not see what such a costly process could contribute to the Competition Bureau's consultations. Our attention was, however, drawn towards another Canadian Government authority.

### ***5.1 Patent Medicine Prices Review Board***

Since 1987, the mandate of the Patent Medicine Prices Review Board (PMPRB) has been to protect the interests of consumers by making sure that the prices of patented drugs are not excessive. The PMPRB includes among its principal stakeholders consumers, seniors' organizations, patients' interest advocacy groups, provincial health ministries, and various groups of professionals in the health and pharmaceutical sectors.

Since June 1997, the PMPRB has been involved in a vast process of examination and renewal of its activities, and towards the end of the same year, it began a consultation with stakeholders on its role, its functions and methods with the aim of better serving the needs of the Canadian public. This consultation made it possible for the PMPRB to confirm that stakeholders wish to be consulted on a regular basis and prompted it to devise a consultation policy.

### 5.1.1 The PMPRB's consultation policy

In September 1998, in its *Road Map for the Next Decade*, the PMPRB presented the broad outlines of its consultation policy. We reproduce here, for its undeniable interest, the “Standards of service” section of the policy; other significant parts of the policy are included in Appendix IX, for consultation purposes.

#### Service Standards

The Board will maintain and publish an annual Research Agenda as part of its annual planning process. Among other things, the Research Agenda will identify initiatives that are currently, or may become, subject to public consultations. The Board's consultation plans will allow sufficient preparation time for meaningful participation by stakeholders. For each consultation initiative, the Board will develop a plan including these elements:

- Identify the objectives of the specific consultation.
- Develop an action plan setting out roles and responsibilities, both internally and with stakeholder participants.
- Ensure that the values, interests, knowledge and contribution of participants are considered.
- Identify in advance what information will be needed to support the consultation process and how this will be shared with stakeholders.
- Determine how communications will be managed before, during and after the consultation process.
- Identify evaluation and feed-back mechanisms.

Consultations shall be conducted in a public manner. For each consultation initiative, the Board will ensure that all written submissions and minutes of meetings with stakeholders as well as summaries of minutes of working groups and task forces are placed on the public record and reported on the Web site. Progress reports and the results of the consultations will be shared with stakeholders in a timely fashion and summarized in the Annual Report, the NEWSletter, the Web site, and in other ways as appropriate.<sup>58</sup>

On November 20, 1998, the PMPRB organized a meeting to discuss the various questions raised in the *Road Map*. As regards the PMPRB consultation policy, the stakeholders who took part in the meeting approved several points, including the very existence of the policy, the diversity of its mechanisms, and the fact that it recognized several stakeholders. The stakeholders also added suggestions; these included the

---

<sup>58</sup> Patent Medicine Prices Review Board, *Road Map for the Next Decade*, September 1998; enclosure entitled “Consultation Policy,” p. 4.

need for informal discussions, meeting with one group at a time as well as with all the groups, and providing resources to nongovernmental groups and those representing consumers.

***Comments by Option consommateurs***

We should state right away that consumers groups, whether they are concerned with questions relating to competition or with questions relating to the patent medicines market, all have the same Achilles' heel: the question of resources (particularly financial). We cannot insist too much on the recommendation made earlier (Subsection 3.2.2).

We also wish to emphasize that we understand the utility and the financial benefits that consultations in informal situations could represent for the Competition Bureau. Indeed, we could not find the same degree of latitude in any other consultation process. Consequently, we find it hard to imagine how a sufficiently explicit consultation policy could incorporate the degree of flexibility needed for the Bureau to consult on the highly diversified questions that arise in the field of competition. It must be admitted, however, that the introduction of service standards for the consultations, along the lines of those established by the PMPRB, would allow the Competition Bureau to delineate the steps in its advisory process without adversely affecting the need to adapt each consultation to its situation. Based on the PMPRB draft consultation policy that we have just seen, especially as concerns service standards, we recommend:

**Recommendation 9**

**That the Competition Bureau avail itself of public service standards to define the scope of each of its consultations.**

Consequently, and it does not matter whether the consultation is formal or informal, stakeholders will be informed from the outset of the plan behind every consultation project. We also think that such service standards would easily find their place among the general measures contained in the conformity continuum referred to at the beginning.

Although we could no doubt have added extra details throughout our study to fine-tune our presentation, we believe that the time has come to stress a number of key points.

## **6. Conclusion**

At the beginning of this report, we referred to three difficulties encountered by consumers and their representatives in taking part in consultations organized by the Competition Bureau: the reactive mode of these consultations, the lack of resources and the need to master a certain expertise in a short period of time. Let us specify, first, that the goal of consumers and their representatives is not so much to ensure that they are consulted by the Competition Bureau at every possible opportunity, but that they have access to a proactive, preventive means of acting in collaboration with decision-making authorities, in this instance, the Bureau. In addition, we believe that the recommendations outlined in this report can resolve the difficulties experienced by consumers and their representatives.

### **6.1 Summary of key points**

In section two, we expressed our appreciation of the various situations in which the Competition Bureau conducts consultation and the effort it puts into consulting in a diversified way, in both formal and informal modes. Our recommendations are intended solely to improve certain aspects of the consultation process at the Competition Bureau, including those related to consultations on legislative amendments and the Stakeholders Relations Program (see Recommendations 1 to 4, Subsections 2.2.2 and 2.2.5).

In section three, the comments collected on the Competition Bureau's consultation processes threw new light on these processes. In particular, we noted one of the advantages of an informal consultation and pointed out the importance of funding for consumer and public interest groups. Additionally, our recommendation seeks to alleviate the precarious situation engendered by the insufficiency of resources for these groups and to develop expertise with regard to competition.

In section four, in our overview of foreign experiences in a similar context, we noted that in the majority of countries, consultations for all intents and purposes revolve around the same questions and unfold in the same way as at the Competition Bureau. In addition, two of our recommendations aimed, first, at stimulating dialogue among stakeholders and increasing their expertise through workshops and, second, at optimizing the use of the Web site, using interactive forums to enhance consultations (see Recommendations 6 and 7, Subsections 4.2.2 and 4.2.3). We also described the dynamic, preventive operations of a Consultative Consumers Committee active in Australia: we cannot stress enough the

importance we ascribe to the recommendation that we derived from this experience (see Recommendation 8, Subsection 4.4.1).

Finally, in section five, during our examination of other consultation processes, we noted some service standards in a draft consultation policy developed by a federal government agency. While the policy as a whole appears to us to be more constraining than practical, the service standards have the advantage of clearly delineating the steps of any consultation (see Recommendation 9, Subsection 5.5.1).

## ***6.2 Avenues for the future***

One last word in closing. Our principal recommendation, which requires the creation of a Consumers Consultative Committee, would probably be a first step toward helping consumers and their representatives to express themselves in a proactive way about competition. Such a recommendation can only encourage the Competition Bureau to develop a more informed approach toward consumers. We invite the Bureau to work in partnership with consumers to construct bridges that support dialogue in both directions.

## Bibliography

Unless otherwise specified, all the documents mentioned below can be found on the Web site of the organization that they refer to. We did not believe it necessary to include Web addresses at length for each document because they sometimes change over time, especially since the organizations' Web sites have their own search engines.

### **Competition Bureau (<http://strategis.ic.gc.ca/SSGF/ct01250f.html>)**

COMPETITION BUREAU. *Conformity Continuum Information Bulletin*, 2000.

COMPETITION BUREAU. *Concuration/CompAct*, No 1, January-March 1996.

COMPETITION BUREAU. *Concuration/CompAct*, No 2, April-June 1996.

COMPETITION BUREAU. *Discussion Paper on the Competition Bureau's Proposal to Increase Fees and Revise its Fee and Service Standards Policy*, 2002.

COMPETITION BUREAU. *Discussion Paper . Amendments to the Competition Act*, 1995.

COMPETITION BUREAU. *Enforcement Guidelines for Illegal Trade Practices. Unreasonably Low Pricing Policies*, 2002.

COMPETITION BUREAU. *Enforcement Guidelines on the Abuse of Dominance Provisions: the Retail Food Sector*, 2001.

COMPETITION BUREAU. *Merger Enforcement Guidelines as Applied to a Bank Merger*, 1998.

COMPETITION BUREAU. *Amending the Competition Act. A Discussion Paper on Meeting the Challenges of the Global Economy*, 2000.

COMPETITION BUREAU. *Annual report of the Commissioner of Competition for the year ending March 31, 2002*.

COMPETITION BUREAU. *Annual report of the Commissioner of Competition for the year ending March 31, 2001*.

COMPETITION BUREAU. *Annual report of the Commissioner of Competition for the year ending March 31, 2000*.

COMPETITION BUREAU. *Annual report of the Commissioner of Competition for the year ending March 31, 1999*.

COMPETITION BUREAU. *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1998.*

BUREAU OF COMPETITION POLICY. *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1990.* This document was consulted in the library.

BUREAU OF COMPETITION POLICY. *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1989.* This document was consulted in the library.

BUREAU OF COMPETITION POLICY. *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1988.* This document was consulted in the library.

BUREAU OF COMPETITION POLICY. *Annual Report of the Director of Investigation and Research. Competition Act for the year ending March 31, 1986.* This document was consulted in the library.

LEGAULT, Suzanne. *Legislative Process for Amending the Competition Act*, Remarks to the Canadian Bar Association's Annual Fall Conference on Competition Law, 2002.

SOUTHEY, Sally. *Building a Competition Culture*, speech, November 2002.

**European Economic and Social Committee (<http://www.esc.eu.int/pages/fr/home.asp>)**

EUROPEAN ECONOMIC AND SOCIAL COUNCIL. *The EESC in Ten Points*, 2002.

**Directorate-General of Competition ([http://europa.eu.int/comm/competition/index\\_fr.html](http://europa.eu.int/comm/competition/index_fr.html))**

EUROPEAN COMMUNITY, DIRECTORATE-GENERAL OF COMPETITION. *Regulation in Liberal Professions and its Effects. Invitation to Comment*, 2003.

EUROPEAN COMMUNITY, DIRECTORATE-GENERAL OF COMPETITION. *White Paper on Modernization of the Rules Implementing Articles 85 and 86 of the EC Treaty*, 1999.

**PMPRB (<http://www.pmprb-PMPRB.gc.ca/francais/View.asp?x=1>)**

THE PATENT MEDICINE PRICES REVIEW BOARD. *Road Map for the Next Decade*, 1998. Enclosure entitled "Consultation Policy."

**Consumers Council of Canada (<http://www.consumerscouncil.com/>)**

CONSUMERS COUNCIL OF CANADA. *Research Brief. Involving Consumers in Corporate Decision and Policy-Making*, 2002. This document is the summary of the report *Consumer Participation in Corporate Decision-Making*.

**DGCCRIF (<http://www.finances.gouv.fr/DGCCRIF/>)**

DIRECTION-GENERALE DE LA CONCURRENCE, CONSOMMATION ET LA REPRESSION DE LA FRAUDE. *Revue de la concurrence et de la consommation*. This document was consulted in the library.

**Public Policy Forum (<http://www.ppforum.com/english/>)**

PUBLIC POLICY FORUM. *Amendments to the Competition Act and the Competition Tribunal Act: A Report on Consultations. Final Report Submitted to the Commissioner of Competition, 2000.*

**Government of Canada ([http://canada.gc.ca/main\\_e.html](http://canada.gc.ca/main_e.html))**

PRIVY COUNCIL OFFICE. *The Government of Canada Regulatory Policy, 1999.*

*Canada Gazette, Part I*, vol. 136, No 33, August 17, 2002.

*Canada Gazette, Part II*, vol. 137, No 3, March 27, 2003.

*Competition Act, 2002*, Ch. 16, art. 11.1, 11.2 and 11.3.

**Office of Fair Trading (<http://www.oft.gov.uk/default.htm>)**

OFFICE OF FAIR TRADING. *Opening the door on fair trading. A consultation paper on improving transparency in the operations of the OFT, 1999.*

OFFICE OF FAIR TRADING. *Transparency Report. Responses to the OFT's consultation document: Opening the door on fair trading*, undated, not paginated. This document was obtained thanks to the cooperation of the OFT Webmaster.

Other sites of interest:

**Australian Competition and Consumer Commission (<http://www.accc.gov.au/>)**

**Federal Trade Commission (<http://www.ftc.gov/>)**

## Appendix I

### Conformity Continuum<sup>59</sup>

Conformity Through Education			Facilitating Conformity		Responses to non-conformity		
Publications	Communication	Advocacy	Monitoring	Voluntary compliance	Suasion	Consent	Adversarial
Information bulletins	Communications	Interventions	Information centre	Advisory opinions	Information contacts	Negotiated settlements	Prosecutions
Enforcement guidelines	Speeches	Representations	Prenotification	Pre-market assessment	Information letters	Consent orders	Tribunal applications
Annual report	Seminars	Policy development	Targeted inspections	Advance ruling certificates	Warning letters	Consent prohibition orders	Product seizures
News Release	Trade shows	Connection	Marketplace contacts	Corporate compliance programs	Compliance meetings	Undertakings	Contested prohibition orders
Discussion papers	Web site	Liaison	Practitioner contacts	Voluntary codes		Corrective notices	Injunctions
Reports	Media Contacts	Partnerships	Consultations			Voluntary product recalls	
Pamphlets series	Videos	Research					
<b>General Application</b>				<b>Specific Application</b>			

<sup>59</sup>Reproduced from *Conformity Continuum Information Bulletin*. Competition Bureau, 2000, p. 4.

## **Appendix II**

### Comments outside the scope of the consultations on the 2002 legislative amendments <sup>60</sup>

A number of participants commented on areas of concern outside the scope of the seven principles underlying the proposed legislative amendments. These concerns may be addressed in the future as the review of competition policy continues. The following is a reflection of comments received both in the written submissions and during the roundtable discussion.

#### The consultation process

The consultation process undertaken by the Public Policy Forum on behalf of the Competition Bureau was the subject of some debate among the intervenors, both in the written comments and during the course of discussions at the roundtables. On the one hand, some of these comments were quite supportive of the process.

In particular, organizations and individuals who had not been included in previous consultation processes were quite pleased with the form that our process took. On the other hand, some of the representatives of organizations which habitually participate in the more traditional consultation processes expressed strong concerns about the process. These concerns fell into two categories: 1) the speed of the process, and 2) the basis for the consultation.

In terms of the speed of the process, many of the participants who had been involved in previous amendment processes were surprised – even dismayed – by the fact that the consultation was intended to be completed in only six months. Many felt that they were not being given adequate time to reflect on the proposed changes and to consult with their colleagues (and members or clients in the case of business associations or consulting companies) on the potential impacts of the proposed amendments.

A related concern was the fact that the discussions were being held to discuss draft legislation proposed by Members of Parliament. Some participants may have felt that the draft legislation intimated that the federal government had already established the directions to be pursued in terms of amendments even before the consultations began. Others expressed the concern that the draft legislation had been prepared without adequate consultation with concerned stakeholders. They felt that a more extensive White Paper should have been prepared by the federal government on its intentions vis-à-vis proposed amendments, followed by an in-depth consultation which would allow the stakeholders to express their

---

<sup>60</sup>The text of this appendix is reproduced from a section of the Public Policy Forum report: *Amendments to the Competition Act and the Competition Tribunal Act: A Report on Consultations. Final Report Submitted to the Commissioner of Competition*, December 2000, p. 35-37.

viewpoints on the proposals. This consultation would then result in draft legislation which would also form the basis of further consultation. These concerns were not allayed by the fact that the Standing Committee on Industry had previously undertaken extensive consultations on the proposed amendments, at which some of the same participants had testified, or that some of the proposals (namely private access and international co-operation) had been the topic of consultations with the stakeholders over the past several years. Finally, some participants expressed the view that the federal government had not made a case proving the necessity for most of the proposed changes.

That being said, it is the view of the Public Policy Forum that this consultation process was successful, for two reasons:

1) The consultations allowed [those] who have not previously had an opportunity to participate in the development of competition legislation stakeholders – generally from the small and medium business sector – to express their concerns about how competition legislation affects them and on the improvements they believe are needed. This was due not only to the fact that invitations were extended to them, but also that the consultations were held across Canada, which made their participation more economically feasible;

2) For the first time, the consultation process allowed stakeholders holding different points of view to address one another at the same table. As per our mandate as a neutral and trusted facilitator, the Public Policy Forum firmly believes that this form of dialogue allows for the most insightful and beneficial results.

Allowing more time for the intervenors to study the complexities of the proposed legislation would probably have been beneficial, if only to reassure them that every effort was being made to take their viewpoints into consideration.

## The Workings of the Competition Bureau

Some concerns were raised expressing dissatisfaction with the way the Competition Bureau carries out its mandate. Some of these have been alluded to in the previous discussions on legislative amendments. Some of these concerns and others are described below.

### **Resourcing the Competition Bureau**

Quite a number of the participants expressed the view that the Competition Bureau does not possess the resources needed to carry out its mandate in a thoroughly satisfactory manner. Although most of the participants expressed full confidence in the competence of the Competition Bureau staff, several

expressed concerns on different levels. It was suggested, for example, that a lack of resources could compromise the independence of the Bureau in its work. Quite a few participants stated that a lack of resources causes the Competition Bureau to set priorities in a way that forces it to refuse to take on meritorious cases. Indeed, one of the reasons given for not supporting some of the proposed amendments is that these would only add to the Bureau's workload, thereby making the situation worse.

### **Competition Bureau Staff and Activities**

Various other issues were raised concerning the Competition Bureau. One respondent commented that "the economic analysis of cases does not rank as highly as it should among the factors that contribute to Bureau decisions." This was attributed at least in part to the predominance at senior levels in the Bureau of lawyers rather than economists.

It was suggested that the Department of Justice and the Commissioner of Competition desist from the use of outside lawyers and any other actions that allow even the appearance of conflict of interest or bias.

An intervenor complained that since the Bureau was not obliged to provide reasons for its decisions on cases, the Bureau could not be held publicly accountable for its "wide and rather erratic latitude in exercising discretion."

### **Other Issues**

Various other issues concerning competition legislation in general were raised, mainly in written submissions.

A telecommunications company noted that the relative jurisdictions of the Competition Tribunal and specialized industry regulators are defined by informal inter-agency working arrangements and "a judge-made doctrine called the defense of regulated conduct." A look at Australia's telecommunications laws, which leave "competition oversight to the competition authority," was recommended. It was suggested that fines imposed on companies found to have contravened the *Competition Act* should exceed (significantly) any profits from unlawful activity.

The \$10 million limit on the level of fines should be removed in order to send a strong signal to business that anticompetitive agreements among competitors will not be tolerated. .

### Appendix III

Examples of consultations on Competition Bureau publications between January 1, 2001 and on March 31, 2003 <sup>61</sup>

Publication	Consultation mechanisms
<p><i>Proposed Voluntary Code of Conduct for Authenticating "Canadian Diamond" Claims</i></p> <p>Document ratified by the Bureau</p>	<p>—Requests for comments from the public and information note</p> <p>—Meetings with industry associations and government stakeholders</p> <p>—Letters sent to industry associations, stakeholders and government and consumer associations</p> <p>—Telephone contacts with consumer associations</p>
<p><i>Scanner Price Accuracy Voluntary Code</i></p> <p>Document ratified by the Bureau</p>	<p>—Developed in partnership with the Retail Council of Canada, the Canadian Association of Chain Drug Stores, the Canadian Federation of Independent Grocers, and the Canadian Council of Grocery Distributors</p> <p>—Meetings and telephone contacts with industry associations, government stakeholders and consumer associations</p>
<p><i>Proposed Adoption of New Environmental Labelling &amp; Advertising Guideline</i></p> <p>Document ratified by the Bureau (not finalized)</p>	<p>—Requests for comments from the public</p> <p>—50 consultation letters sent to stakeholders including trade associations, government and not-governmental agencies and enterprises.</p>
<p><i>Application of the Competition Act to Representations on the Internet</i></p> <p>Information Bulletin</p>	<p>—Requests for comments from the public</p> <p>—Stakeholders answers evaluated; technical and legal data search</p> <p>—Second consultation with stakeholders on a revised discussion paper</p>
<p><i>Multi-level Marketing Plans and the Competition Act</i></p> <p>Multi-media tool</p>	<p>—Presentation of preliminary version to stakeholders to obtain feedback</p> <p>—Organization of study groups to obtain feedback</p>

<sup>61</sup> We wish to thank Purvi Radia, of the Competition Bureau, for providing the information used to develop this Appendix.

**Examples of consultations on Competition Bureau publications between January 1, 2001 and March 31, 2003 (continued)**

<b>Publication</b>	<b>Consultation mechanisms</b>
<p><i>Interpretation Bulletin on the Marketing of Canadian Diamonds</i></p> <p>Information Bulletin</p>	<p>—Requests for comments from the public and information note</p> <p>—Letters sent to industry stakeholders and government and consumer associations</p> <p>—Telephone contacts with industry stakeholders and government and consumer associations</p>
<p><i>Guide for the Labelling and Advertising of Pet Foods</i></p> <p>Document ratified by the Bureau</p>	<p>—Requests for comments from the public and information note</p>

## **Appendix IV**

### **The Stakeholders Relations Program (June 2001)** <sup>62</sup>

#### **Interviews completed**

Packaging Association of Canada; Larry Dworkin, Government Relations

Association of Canadian Advertisers; Ron Lund, President and Bob Réaume, Vice-President

Canadian Marketing Association; John Gustavson, President

Canadian Association of Petroleum Producers; Nick Schultz, General Counsellor

Canadian Association of Retired Persons; Lillian Morgenthau

Canadian Independent Petroleum Marketers Association; Bob MacMinn, Executive Director

Public Interest Advocacy Centre; Michael Janigan, Executive Director and Philippa Lawson, Counsel

Canadian Chamber of Commerce; Nancy Hughes Anthony, President

Canadian Council of Better Business Bureaus; Garth Whyte, Senior Vice-President and André Piché, Senior Policy Analyst

Canadian Council of Chief Executives; John Dillon, Vice-President

Retail Council of Canada; Peter Woolford, Vice-President

Consumers Council of Canada; Joan Huzar, President

Davies, Ward, Phillips & Vineberg; Calvin Goldman

Food and Consumer Products Manufacturers of Canada; Elaine Smith, Vice-President

Fraser Milner; Barry Zalmanowitz

Lang Michener; James Musgrove

McMillan Binch; William Rowley

Olser Harcourt; Tim Kennish

Stikeman Elliot; Lawson Hunter

#### **Unavailable for interview**

Canadian Corporate Counsel Association; David Murphy, Executive Director

Canadian Jewellers Association; Catherine Sproule, Executive Director

Canadian Apparel Federation; Bob Kirke, Executive Director

Canadian Manufacturers and Exporters; Jason Myers, Chief Economist

---

<sup>62</sup> We wish to thank Purvi Radia, of the Competition Bureau, for providing the information used to develop this Appendix.

McCarthy Tétrault; Yves Bériault

*Option consommateurs*; Louise Rozon, Director

## Appendix V

### The European Economic and Social Council <sup>63</sup>

#### 1. What is the European Economic and Social Committee (EESC)?

The European Economic and Social Committee is a consultative body set up by the Rome Treaties in 1957. It consists of representatives of the various economic and social components of organised civil society. Its main task is to advise the three major institutions (European Parliament, Council of the European Union and European Commission).

It is mandatory for the Committee to be consulted on those issues stipulated in the Treaties and in all cases where the institutions deem it appropriate. It can also be consulted on an exploratory basis by one of the other institutions, or can itself take the initiative to issue opinions (around 15 % of its opinions are own-initiative opinions). The Committee adopts on average 150 opinions a year on a wide range of subjects concerning European integration. It therefore plays an active role in the Community decision-making process. [...] The Committee holds structured dialogue with representatives of civil society organisations in these countries and regions, and promotes the creation of consultative structures based on its own model. Thanks to the EESC, building Europe is therefore the task not only of the European Union and politicians, but also of members of the public belonging to organizations involved in economic, social and cultural life.

#### 2. Who are the members of the EESC?

The Committee is made up of 222 members split into three groups. The Committee's membership is not static. It changes with each four-yearly renewal so as to reflect changes in civil society in the Member States as accurately as possible. The last EESC renewal – which covers the next four-year period – took place in October 2002. A total of 40 % of members were newly appointed.

#### 3. How are EESC members appointed?

EESC members are appointed by the Council of Ministers of the European Union for four years on the basis of proposals put forward by the Member States in agreement with representative civil society organisations at national level. Their mandate is renewable. Members generally continue to carry out their professional activities in their country of origin and only travel to Brussels when required to do so for their

---

<sup>63</sup> The text of this appendix is largely excerpted from a brochure available on the EESC Web site: *European Economic and Social Council: The EESC in Ten Points*, 2002.

EESC work. They are not paid for their EESC activities, but they do receive travel and meetings allowances, the level of which is set by the Council.

#### **4. How does the EESC operate?**

Committee opinions are prepared by ‘rapporteurs’, usually assisted by a study group, the members of which are selected from the three different groups on the basis of their expertise in a particular subject area and the need to ensure a certain geographical balance. The size of these study groups varies from 3 to 15 members, depending on the importance of the subject. Rapporteurs can also call on external experts to assist them. Where particularly important issues are concerned, the Committee may hold public hearings in order to hear the views of a wide range of parties concerned. After in-depth discussions in the study groups and then in the sections, opinions are adopted by a simple majority at plenary sessions (nine per annum). Once adopted, the opinions are forwarded to the Commission, the Council and the European Parliament and published in the European Union’s Official Journal. They are available on the EESC’s Web site (<http://www.esc.eu.int>) and can be downloaded.

#### **5. What added value does the EESC bring?**

The EESC’s contribution to European integration is threefold:

- Firstly, members bring together considerable expertise under one roof. These men and women work actively ‘in the field’ in the economic and social life of their country. This pool of expertise is backed up by specific working methods, (study groups, experts and hearings).
- Secondly, the Committee is a place for studying issues and hammering out solutions based on compromise, even where the initial stances are divergent or even diametrically opposite.
- Finally, its members’ professional origins mean that the Committee is a focal point for the questions and aspirations of civil society organisations regarding all aspects of European integration. It is also an essential information source for these same organisations.

#### **6. In what way does the EESC provide a ‘bridge’ between Europe and civil society?**

EESC members directly represent the many different interests of civil society organizations in the EU. They bring to bear the expertise for which they were appointed. Whether it be the major EU enlargement scheduled for 2004 or the Convention responsible for proposing a reform of the European

institutions, the EESC acts as a host organisation for various participatory democracy forums, and guarantees a pluralist model that enhances the legitimacy of the decision-making process.

Through the role assigned to it by the Treaties, and thanks to its broad membership and their expertise, the EESC constitutes a valuable forum for representing and informing civil society organisations and expressing their views. It speaks on behalf of these organisations to the European institutions and in doing so acts as a unique bridge between Europe and its people.

## **7. What is the impact of the EESC's work?**

Two thirds of EESC recommendations are taken into account by the decision-making bodies, and their influence often goes beyond the limited scope of the Commission proposal being examined in a Committee opinion. The EESC's own-initiative opinions are of particular interest, as they often raise the awareness of decision-making bodies, and the Commission, especially, about subjects which have not hitherto attracted much, if any, of their attention.

## **8. What are the EESC's current priority objectives?**

Over and above its consultative role, the Committee is working to set up a model of participatory democracy throughout Europe and the rest of the world. It contributes to the development of socioeconomic organisations in civil society, including in countries applying to join the EU. Through the Convention, it fully participates in the debate on the future of Europe and preparations for the next IGC. It has the same objectives as all the institutions that are working towards European integration, i.e. harmonious and balanced development, and the promotion of a social model that places human values at the centre of such development. The Committee's work programme is based on the European Commission's work programme, the priorities of each Presidency of the Council of the European Union and the work programme presented by each Committee president upon election.

## Appendix VI

### Competition and Consumerism Workshops <sup>64</sup>

#### Steering committees

#### The Competition Steering Committee

The competition workshop steering committee is made up of recognized experts in the field of competition. From seven members at the beginning, the committee now numbers 16:

Michel Bazek (law professor, *université Paris-Nanterre*)  
Laurent Benzoni (economics professor, *École nationale Supérieure de télécommunications*)  
Alain Bienaymé (economics professor, *université Paris-Dauphine*)  
Laurent Cohen-Tanugi (barrister)  
Marie-Anne Frison-Roche (law professor, *IEP de Paris*)  
Jean-Luc Gaffard (economics professor, *université Nice-Sophia Antipolis*)  
Michel Glais (economics professor, *université de Rennes*)  
Claude Henry (economics professor, *École Polytechnique*)  
Laurence Idot (law professor, *université Paris-Pantheon-Sorbonne*)  
Martine Lombard (professor, *université de Paris II, Pantheon-Assas*)  
Claude Lucas de Leyssac (Director, *institut d'études judiciaires Jean Donnat*)  
Patrick Messerlin (economics professor, *IEP de Paris*)  
Michel Mougeot (economics professor, *université de Besançon*)  
Marc Siroen (economics professor, *université Paris-Dauphine*)  
Louis Vogel (law professor, *université Paris-Pantheon-Sorbonne-Assas*)

#### The Consumer Steering Committee

The consumer workshop steering committee saw its role reinforced and its composition widened in 2000. It now has nine members instead of the six it began with:

---

<sup>64</sup> Information on the steering committees is available on the DGCCRF Web site. The list of competition and consumer workshops is established on the basis of the *Revue de la concurrence et de la consommation*. Finally, we wish to thank Mr. Jacques Rimbart for providing the internal DGCCRF documents used to make up the standard calendar.

Alain Bensoussan (barrister)

Thierry Bourgoignie (law professor)

Élisabeth Bouvet (university professor at *l'hôpital Bichat*)

Jean Calais-Auloy (law professor, consumer law center, *université de Montpellier*)

Olivier Gérardon de Véra (Vice-President of IRI-SECODIP)

Domenica de Gramont (general delegate, *Institut de liaisons et d'études des industries de consommation*)

Hervé Le Lous (CEO, *Société européenne de diffusion*)

Jean-François Normand (advisor, Quebec Delegation-general in Paris)

Didier Maus (State Councillor)

## Organizing the workshops

It takes several months' preparation to organize a workshop, following a standard calendar that sets out the various phases of the work and their distribution over time.

### Hypothetical workshop calendar

<b>Date limit</b>	<b>Operation</b>
<b>D + 8 weeks</b>	Publication of the report in the next issue of the <i>Revue de la Concurrence et de la consommation</i>
<b>D + 2 weeks</b>	Producing the abstract and choice of important excerpts for the <i>Revue de la Concurrence et de la consommation</i>
<b>D</b>	<b>Date of the workshop</b>
<b>D - 5</b>	Submitting the file to the Director General (DG)
<b>D - 6</b>	Final list of participants who sent back their invitation cards <sup>65</sup>
<b>D - 20</b>	Deadline for adjustments to stakeholders' contributions, supply of the file drafted by Jacques Rimbert. Sending to reproduction workshop for printing
<b>D - 21</b>	Submission of contributions by stakeholders. The file will be submitted to the lead office
<b>D - 30</b>	Mailing of invitations + reply coupons + personalized letters signed by the DG
<b>D - 31</b>	Mailing guest list
<b>D - 40</b>	Sending OK to print (invitation card) printing
<b>D - 6 weeks</b>	Signing OK to print
<b>D - 7 weeks</b>	Final agreement on invitation card
<b>D - 8 weeks</b>	Submission to DG, on the Friday, of the invitation card for approval. The previous day, final agreement on the text of the card <sup>66</sup>
<b>D - 10 weeks</b>	Setting up the list of personalized invitations
<b>D - 3 months</b>	Agreement of stakeholders
<b>D - 3 months and half</b>	Meeting with the external guide and internal guide: finalizing the list of stakeholders, call for contributions
<b>D - 4 months</b>	Choosing the external guide and the official theme, finalizing the date of the workshop, reserving the locale
<b>D - 4 months and half</b>	Meeting of the scientific committee: setting the theme, proposing the external guide and stakeholders
<b>D - 6 months</b>	Possible proposal to order additional studies

<sup>65</sup> The list may be closed on the day before the workshop. If there are any places remaining on the day of the workshop, unannounced candidacies can be accepted.

<sup>66</sup> Journalists are solicited through the DGCCRF communication cell.

Topics

**Chronological list of themes of competition and consumer workshops**

<b>Competition Workshops</b>	<b>Workshops of consumption</b>
1. May 19, 1994; Competition and intellectual property	1. June 14, 1996; Sales and promotions
2. June 16, 1994; Exchanges of information: how far should go?	2. January 16, 1997; Precariousness and consumption
3. July 7, 1994; Oligopolistic domination	3. February 27, 1997; New dimensions of time in consumerism
4. October 6, 1994; Innovation and competition	4. March 27, 1997; Is consumer protection useful in a system of free competition?
5. November 3, 1994; Economic public order	5. June 12, 1997; Data megabases
6. January 26, 1995; Fundamental rights and freedoms vs competition law	6. October 16, 1997; European consumer law: Community unity in the diversity of national laws
7. March 16, 1995; The economic goal of regulating competition	7. March 5, 1998; Development of consumer loyalty among consumers
8 May 11, 1995; The administrative judge and competition law; grounds for dispute	8. June 16, 1998; One or fifteen different consumer protection plans: subsidiarity
9. June 8, 1995; What methods to choose for competitive management of essential infrastructures?	9. October 29, 1998; Educating the consumer: a luxury? A necessity?
10. July 6, 1995; Analysis of the contestability of markets	10. December 2, 1998; The bank and the consumer in Europe
11. September 14, 1995; Restrictions on competition inherent in vertical integration	11. March 18, 1999; French and European consumers' access to law and justice
12. October 19, 1995; Consumers' interests in the application of competition law	12. June 24, 1999; The Cyber-consumer
13. November 16, 1995; Competition law and the banking sector	13. October 21, 1999; The true value of the trade mark
14. February 8, 1996; Can there be a multilateral competition law?	14. March 23, 2000; The young consumer <sup>67</sup>
15. April 10, 1996; Abuses in price fixing: possible meanings	15. June 22, 2000; Trade: new techniques, new values
16. May 22, 1996; The notion of economic progress: its scope and its content	16. October 19, 2000; Health: a French model?
17. June 26, 1996; Scope and limitation of the ordinance: article 53	17. December 19, 2000; Consumerism and citizenship

<sup>67</sup> The idea of consumer workshops appealed to many countries and the topic of the young consumer exported particularly well; this will be the topic of a workshop French-Polish workshop to be held in Warsaw on May 22, 2003 as well as of a Moroccan workshop to be held in Rabat in September 2003.

**Chronological list of themes of competition and consumer workshops**

(continued)

<b>Competition workshops</b>	<b>Consumer workshops</b>
18. September 11, 1996; Competition law and the health sector	18. April 18, 2001; The Euro
19. November 13, 1996; Competition law vs the urgency and safeguarding of the useful effect of decisions	19. June 14, 2001; The law applied to Web portals
20. December 6, 1996; Competition rules and the information sector	20. October 25, 2001; Abusive clauses
21. January 29, 1997; The marketing of public data	21. December 13, 2001; Consumption and the environment
22. April 9, 1997; Analysis of vertical restrictions	22. May 2, 2002; Sales, promotions, lotteries: what does the future hold?
23. June 25, 1997; Analysis of purchasing power	23. June 27, 2002; Transborder consumption: what protection for the consumer?
24. October 8, 1997; Birth of a market	24. October 10, 2002; New company-consumer relations: transparency or appearances?
25. February 11, 1998; Telecommunications	25. December 19, 2002; Safety in food and nonfood sectors: parallel stories?
26. March 25, 1998; Regulation of network industries	26. March 20, 2003; Consequences of widening the Common Market
27. June 3, 1998; The role of commitment in competition authority decisions	27. June 19, 2003; Remote sales
28. November 4, 1998; Economic intermediation and competition	28. December 1, 2003; First international consumerism meetings <sup>68</sup>
29. April 7, 1999; Stock market law and competition law	
30. June 2, 1999; Sport and competition	
31. October 27, 1999; The civil judge, the commercial judge and competition law	
32. November 17, 1999; Predatory prices as an obstacle to competition	
33. March 29, 2000; The administrative judge and competition law	
34. April 26, 2000; Competition policy and numerical policy	
35. June 7, 2000; Effectiveness of decisions with regard to agreements and concentrations	
36. March 14, 2001; Internet and competition	

<sup>68</sup> There are only two consumer workshops organized in 2003, due to the preparations for a major new event, the International Consumerism meetings, that involve a great deal of work to organize. This will focus on the development of consumerism in the past 50 years and the emergence of the concept of sustainable development.

**Chronological list of themes of competition and consumer workshops**

**(continued)**

<b>Workshops of competition</b>	<b>Workshops of consumption</b>
37. May 2, 2001; The modernization of European competition rules: procedural or institutional reform?	
38. October 10, 2001; Culture and competition	
39. December 5, 2001; The collective dominant position	
40. April 3, 2002; The lessons of opening up to competition in the energy sector	
41. June 5, 2002; Public order and competition	
42. October 2, 2002; New upsurge in state aid in competition law	
43. December 4, 2002; Transatlantic misunderstandings or divergences?	
44. April 2, 2003; Economic analysis: Servant or master of competition law?	
45. July 2, 2003; The time factor in competition law: court time vs company time	

## Appendix VII

*Opening the door on fair trading.* Excerpts from the consultation document and summary of answers <sup>69</sup>

### Consultation Document

#### Reasons for consulting

It is important that the OFT has a clear understanding of the views of those affected by consumer and competition issues. Consultation serves to ensure that those with an interest in the Office's work have an opportunity to comment or contribute and that the information at the Office's disposal is as accurate and comprehensive as possible. Clearly the OFT cannot make personal approaches to everyone who might be interested but inquiries are publicised through press notices and, in the case of mergers, on the Stock Exchange. The Web site also provides an opportunity for those with access to the Internet to be aware that an inquiry is in progress and to make a contribution within the consultation period if they wish to.

There are a number of specific circumstances in which the OFT conducts formal consultation and the categories of consultee may be very different from one case to another. The specific circumstances include:

- forming a view on the basis of evidence from affected parties (for example, on a proposed merger)
- developing a picture of consumer detriment in a market sector and making recommendations on how to reduce it (for instance, recent work on care homes and used car sales)
- ensuring that legislation is enforced in a practical and clear way (such as recent consultation on the Competition Act guidelines)
- stimulating debate on an issue (for example, research papers on economic issues).

The OFT takes pride in the focussed nature of its consultations and goes to considerable trouble to ensure that it targets those bodies with a contribution to make. The use of a fixed list of consultees would not suit the varied nature of the OFT's work. However, any suggestions for improvements are very welcome.

---

<sup>69</sup> Office of Fair Trading, *Opening the door on fair trading. A consultation paper on improving transparency in the operations of the OFT*, 1999, p. 15-17; and *Transparency Report. Responses to the OFT's consultation document: Opening the door on fair trading*, undated, not paginated.

***Question 7. Are there any issues on which the OFT does not consult at the moment but where its work might benefit from it? What are they?***

### **Methods of consulting**

Many people and organisations have a keen interest in the OFT's work and there are therefore many different stakeholders to satisfy. This makes the process of consultation particularly challenging. Methods of consultation which the OFT has used include:

- the extensive consultation (using both the Web site and written consultation) that is taking place on the Competition Act guidelines
- market research. The OFT engages specialist contractors to conduct rigorous, statistically significant market research. This forms part of almost every major consumer investigation. For example, a study of car servicing and repair launched in April 1999 will include this type of research
- custom-built mailings. These include extensive consultation exercises such as those carried out recently for the Older People as Consumers in Care Homes and Vulnerable Consumers and Financial Services reports where an early task was to draw up a list of interested parties with a contribution to make
- public announcements by issuing press releases. This generally happens at the outset of a sectoral inquiry and can generate responses
- announcements via Reuters inviting comments on mergers
- arranging consultative conferences. In 1998 a very successful conference was held on voluntary codes of practice
- carrying out surveys. A recent survey carried out to assess the level of awareness of the Competition Act 1998 and the OFT's responsibility for it was publicised and the press release published on the Web site. It will act as a baseline for the OFT's business education programme for the Act.

These are all examples of formal consultation. Use is also made of informal, frequent discussions with individuals or groups (for instance, trading standards departments, trade associations, business organisations and consumer groups) affected by the OFT's work. The OFT considers that seeking advice from groups with specific expertise provides better value for money than, say, setting up an advisory committee or panel of people with a general interest in consumer or competition issues or arranging public open meetings.

**Question 8. Are there other cost-effective methods of consulting that the OFT could make use of? What are they? What would the benefits be?**

### **Feedback from consultation exercises**

The output from consultation exercises carried out by the OFT varies; it may be a published report or advice to Ministers or, in the case of Competition Act guidelines, a revised draft of published guidelines. Some people have suggested that it would be helpful if the OFT could provide an explanation for why it takes the line it does or, where possible, to make available for inspection the actual responses to consultation exercises so that consultees can get a clearer idea of the weight of opinion on particular issues. However, responses made in confidence could not be released. Cabinet Office guidelines recommend that a summary of responses should be published and this is likely to become the norm in due course.

**Question 9. Is there demand for more feedback on the outcome of consultations that the OFT holds? Of what nature?**

### **Summary of answers**

#### **Consultation procedures (Questions 7-9)**

The majority of respondents considered that the OFT already consulted widely and effectively. Consultation about residential care homes and the Competition Act guidelines were volunteered as examples of good practice. However, a few additional areas were nominated for consultation eg with trading standards departments about priorities for consumer guidance leaflets and new trading practices of concern; with the credit industry about the procedures for issuing consumer credit licences. Three respondents commented that the current level of consultation by the OFT was already as much as they could handle.

Responses about methods of consultation had two strong themes:

- that the OFT should make more use of on-line consultation via its Web site (though others warned that since use of the internet was still limited this should not replace traditional consultation methods)
- that it could make more use of face to face methods such as public meetings, open days, consultation conferences, focus groups, round tables and seminars.

While a number of respondents were happy with existing feedback, the majority wanted more. Most frequent comments were that:

- a summary of responses should be published as a matter of routine
- a full analysis should be made of the responses received
- details should be given of the action to be taken
- the OFT should explain the factors which influenced its decision and why other factors were disregarded
- feedback should be as speedy as possible.

While some respondents considered that actual responses should always be made available for inspection, a larger number thought the publication of a summary was sufficient.

## **Appendix VIII**

### To consume Advisory Australian Committee <sup>70</sup>

#### Members of the Consumer Consultative Committee

<b>Member</b>	<b>Organization</b>
Peter Opio	Aboriginal Coordinating Council
Louise Sylvan	Australian Consumers Association
Brian Rope	Australian Federation of Disability Organizations
Derek Wilding	Communications Law Centers
Su Mahalingham	Consumer Credit Legal Service
Chris Field	Consumer Law Centers of Victoria
David Tennant	Consumers Federation of Australia
Sally Crossing	Consumers Health Forum of Australia
Myra Pincott	Country Women's Association of Australia
David Owen	Tasmanian Council of Social Service

#### Standard agenda of Consumer Advisory Committee

#### **Welcome from the Consumer Advisory Committee (CCC) Chair**

#### **Overview from the Chairman**

#### **Matters arising from previous CCC minutes**

#### **Agenda items**

General items of interest:

---

<sup>70</sup>This appendix is based on documents supplied by Elizabeth Davidson, Director, International Unit, Australian Competition and Consumer Commission, for which we express our gratitude.

This item covers topical items of interest that have broad implications. This item is intended to raise broad issues that are likely to be relevant to other items to be discussed during the meeting. For example recent Government reviews of the *Trade Practices Act*.

Member issues:

This item provides an opportunity for CCC members to bring relevant emerging issues or systemic problems encountered by their agency to the Commission's attention. Recognising that the Commission has a particular role in protecting the interests of consumers that may not otherwise have a voice, we are particularly interested to hear about issues that have a particular effect on disadvantaged or vulnerable consumers.

Issues and administrative arrangements for the CCC:

This item allows the CCC to ensure that it functions effectively. CCC agenda/work planning could also take place under this item. Members requested that this be a standing item.

Recent cases and judgements:

This item provides an opportunity to reflect on recent Commission enforcement outcomes including new points of law as well as creative remedies. Potential enforcement matters can also be brought to the Commission's attention under this item.

Session time for CCC members only:

This item provides an opportunity for CCC members to discuss issues without Commission staff present.

Commission processes and decisions:

The Commission is responsible for several statutory processes under the *Trade Practices Act* that influence market structures and conduct (Regulatory Affairs, Mergers, Adjudication, and Prices Oversight). This item provides an opportunity to explain these processes and bring specific matters that are currently under consideration by the Commission to the attention of CCC members.

Rural and regional:

The Commission's Rural and regional program is designed to educate consumers and businesses about the benefits of the *Trade Practices Act*. This is a standing item to discuss initiatives in the program.

Other news and updates:

This item covers off on small additional items that may be of interest, in particular, Commission involvement in the work of other agencies. CCC members may wish to raise issues that may be relevant to Commission submissions, etc.

Next meeting:

Agree on general details of the next meeting and teleconference, and close.

## **Appendix IX**

### **Excerpts from the PMPRB consultation Policy<sup>71</sup>**

#### **Our Approach to Consultation**

The Board considers consultation an important part of the way it does business. Effective consultation should ensure that stakeholders are aware of and have opportunities to comment on activities that may affect them. Such an approach supports an open and transparent decision-making process which allows for meaningful public input. In addition to the principles of openness and transparency, effective consultations are based on integrity and mutual respect. Consultation is a key part of the Board's operations and requires good planning, research, analysis, advice, feedback and an ongoing commitment of human and financial resources.

#### **The Objectives of Consultation**

- to facilitate input and feedback from stakeholders and the public on the Board's activities.
- to ensure that the Board is able to consider the views of all stakeholders in making policy decisions.
- to facilitate an ongoing exchange of information and feedback among the Board, its stakeholders and the public.

#### **Guiding Principles**

The following principles will be applied to the Board's consultations:

- Building relationships and trust: The PMPRB, as a fundamental part of its operational focus, consults on a regular basis with its stakeholders. To give effect to this, the PMPRB must therefore not only consult but also be seen to consult.
- Enhancing openness: The PMPRB's consultation activities reflect transparency and accountability through inclusiveness, accessibility, consistency of message and process, and feedback.
- Ensuring an effective process: Establishing clear roles and responsibilities is critical to effective consultations. A solid, mutual understanding of the issues, objectives, purpose and expectations of all

---

<sup>71</sup> The Patent Medicine Prices Review Board, *Road Map for the Next Decade*, September 1998, enclosure entitled "Consultation Policy," pp. 2-3 and 5.

parties is also essential. To facilitate consultations, the PMPRB is committed to the service standards set out below.

— Linking consultation and operation planning: The results of the consultations will be integrated through the Research Agenda into the planning process of the Board in terms of strategic and operational considerations and the development of future consultation plans.

— Adhering to high quality and performance standards: As part of the evaluation process, the PMPRB is committed to a continuous review of its consultative efforts and to assess, based on current best practices, opportunities to enhance its consultations.

### **Methods of Consultation**

To facilitate consultations with the various stakeholders and to promote accessibility and transparency, the Board will draw on a range of mechanisms as may be most appropriate in the circumstances. These include:

— Discussion Paper: an analysis or report which raises questions and invites responses, usually in writing, within established time lines.

— Notice & Comment: a published proposal for a change to policy or guidelines with a request for written comments within established time lines.

— Working Groups or Task Forces: groups of experts representing key stakeholders, ordinarily on more technical or complex issues, to report conclusions and recommendations for the Board to consider.

— Public Policy Hearing: a public hearing by the Board to allow stakeholders to present or explain their views directly to the Board.

— Stakeholders Meeting: with representatives of all major stakeholder groups to consult directly with the Board on broader issues of policy and the Research Agenda.

— Public Meetings: special meetings involving Board members that are open to the public (e.g., regional information sessions in 1998).