

February 25, 2002

Konrad von Finckenstein, Q.C.  
Commissioner of Competition  
Industry Canada  
Competition Bureau  
Phase 1, 21<sup>st</sup> Floor  
50 Victoria Street  
Hull, QC K1A 0C9

Dear Mr. von Finckenstein,

**Re: *Competition Act* Amendments Process**

Thank you for your letter dated December 20, 2001, responding to my December 7, 2001 letter concerning the legislative and policy process followed in connection with Bill C-23, *Competition Act* amendments, which is currently before the Senate of Canada.

The Executive of the National Competition Law Section of the Canadian Bar Association (the Section) appreciates receiving your perspective on these matters and recognizes that you are not entirely in control of this process. Nevertheless, we remain of the view that it was unsatisfactory in a number of respects.

We are particularly concerned that the Standing Committee of Industry, Science and Technology made significant amendments to the Bill immediately prior to Second and Third Readings in the House of Commons. This effectively deprived interested parties of any practical opportunity to provide comments on the wholly new provisions added to the Bill at this stage.

It is true that the most substantial and important of these changes — providing for private access to the civil remedies under sections 75 and 77 of the *Act* — had been previously discussed in principle. However, this discussion did not involve the actual wording of the private access proposal. We recognize that the private member's bills which formed the basis for discussion in the Public Policy Forum (PPF) sessions contained proposed legislative language. However, for the purpose of those discussions, participants in the PPF process were asked to discuss the concepts in principle rather than comment on the actual language. As an organization of lawyers, we view the actual wording of any legislative proposal as critical in assessing its potential impact.

Typically the Senate is reluctant to revise bills which have passed the House of Commons. As a result, there is little chance that the Senate Committee's hearings will have an impact on the final bill.

In your December 20, 2001 letter, you indicated that the direction that Bill C-23 took — in particular, having the Bill referred to Committee following its first reading — can be attributed in part to decisions by the Minister of Industry, Science & Technology in managing the legislative process.

In these circumstances, the Section feels compelled to raise our concerns directly with the Minister of Industry, Science and Technology. We contemplate doing this shortly, however, we wanted to advise you beforehand of our intentions. In pursuing this course of action, we hope that the process of amending the *Act* can be made more effective and efficient from the perspective of interested members of the public who wish to contribute to the process in a meaningful way.

Please understand that we do appreciate your candid response to our expression of concerns, but this is a matter of considerable importance to the membership of our Section.

Yours truly,

Tim Kennish  
Chair, National Competition  
Law Section