

## INFORMATION NOTE\*

### *The Director of Investigation and Research v. The NutraSweet Company*

**October 4, 1990.** The Competition Tribunal today handed down its reasons and order in the *NutraSweet* case. The order is signed by Mr. Justice Barry L. Strayer on behalf of the unanimous panel which also included Mr. Justice Max M. Teitelbaum and Dr. Frank Roseman.

The Competition Tribunal ordered that The NutraSweet Co. ("NSC") will no longer be able to enforce any of its existing Canadian supply contracts that require customers to buy all of their aspartame requirements from it. It cannot enter into new contracts which include such a term. Nor can it offer any sort of discount or allowance on the price of the aspartame it supplies which will induce Canadian customers to buy only from NSC.

The Tribunal has also dismissed a challenge by NSC that the Tribunal is unconstitutional. NSC argued that the nonjudicial members of the Tribunal, who are persons versed in economics or business and who may sit on the Tribunal part time, are not sufficiently impartial or independent enough to meet constitutional requirements for a fair hearing. The Tribunal concluded that there was nothing in the constitution of Canada which precluded persons with specialized knowledge (other than in law) from sitting on tribunals such as the Competition Tribunal.

In June 1989, the Director of Investigation and Research brought an application for an order against NSC to the Tribunal under sections 77 (exclusive dealing and tied selling) and 78 and 79 (abuse of dominant position) of the *Competition Act*. NSC, an American corporation, produces the low-calorie sweetener aspartame, which it markets under the brand name "NutraSweet" which is always displayed with the red and white "swirl" logo. In 1989 NSC had over 95% of the Canadian aspartame market. The Tribunal found that NSC was using its strength to keep other suppliers out of the Canadian market with the result that competition was substantially lessened. NSC had persuaded most major Canadian buyers of aspartame (mainly diet soft drink makers) to buy solely from NSC by offering them discounts on the price that alternative suppliers could not match. This effectively tied up most of the Canadian market.

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\* **This is an unofficial summary prepared by the Registry of the Tribunal.**