

FOREIGN AND INTERNATIONALU.S. FEDERAL TRADE COMMISSION
REVERSES RULE AGAINST BIDS
BY CANADIAN MINING FIRMS

The Federal Trade Commission proposed on June 16 that Noranda Mines Ltd., Inco Ltd. and the Anglo American Group, which includes Anglo American Corp. of Canada Ltd., no longer be declared ineligible to acquire assets divested by Atlantic Richfield Co. (Arco). The proposal, which took effect after a 30 day waiting period, had been requested by Noranda.

A 1979 consent order by the F.T.C. required Arco to divest itself of certain copper mining and copper bearing properties in the United States, including its 50 per cent interest in Anamex Mining Co. The order specifically prohibited Noranda, Inco and Anglo American from acquiring the properties. There is no change in the requirement of the original order that precludes from bidding any firm with more than ten per cent of the U.S. copper market and which requires any firm with between five and ten per cent of the market to obtain prior Commission approval before acquiring any of the properties. The three Canadian companies are now among those which would have to seek prior approval.

U.S. PRESIDENT SIGNS THREE
BILLS AFFECTING COMPETITION

President Carter signed the trucking deregulation bill into law on July 1. The Act will introduce substantially more competition into the trucking industry. While many rates will still be regulated by the Interstate Commerce Commission, truckers will be able to charge up to ten per cent above or below the fixed rate. Entry to trucking routes will be made much easier. Independent truckers will be free to carry processed foods without regulation and truck transport of a number of primary food-related products including livestock, poultry feed, seeds and fertilizers will be deregulated. Antitrust immunity from collusive rate setting will be removed in 1984.

Also in July, the President signed the "Bottlers Bill". The Soft Drink Interbrand Competition Act ensures the legality under the antitrust laws of territorial restrictions on soft drink franchisees providing there is "substantial and effective competition with other products of the same general class". The Act stems from an F.T.C. decision of

1978 which had the effect of outlawing territorial restrictions on bottling franchisees. The decision is still under appeal.

It is of interest to note that the 1976 amendments to the Combines Investigation Act made "market restriction" a reviewable practice, but s. 31.4(7) provided an exemption principally for soft drink bottlers.

The Federal Trade Commission Authorization Bill was signed by the President on May 28. The Act ensures the agency's financial security for three years, but with some diminution of its rule making powers. Aside from some specific limits on those powers, F.T.C. rules have been made subject to review and veto by resolution of both houses of Congress. The President opposed the veto provision but signed the bill because "the very existence of the agency is at stake". Opposition in Congress to some of the activities of the agency led to delays in approving appropriations and to the temporary closure of the F.T.C. early in May and early in June.

U.K. VETOES HIRAM WALKER BID FOR SCOTTISH DISTILLERY

The Monopolies and Mergers Commission, in a report published on August 5, 1980, has concluded that it would not be in the public interest for Highland distilleries Co. of Glasgow to be brought under foreign control.

In December, 1979 Hiram Walker - Gooderham and Worts made a bid of 130 pence a share for the 58.3 million shares of Highland Distilleries. The bid was vigorously opposed by the company and it was referred to the Monopolies and Mergers Commission early in 1980. Hiram Walker, which had only received a small proportion of the shares, suspended its bid pending the report of the Commission.

Under the Fair Trading Act, merger references can be made where 25 per cent or more of the national market is involved or where the value of assets to be taken over exceeds 15 million pounds (prior to April 10, 1980, the threshold was five million pounds). Highland Distilleries was estimated to have about seven per cent of the U.K. market. The Commission has wide latitude in merger references. It must decide whether the merger may be expected to operate against the public interest and give reasons.

The Report has not yet been received here but, according to London's Financial Times of August 4, a major factor was the effect of a takeover on the availability of non-matured malt whiskey to other producers for blending. The Financial Times also stated:

"But the main factor was believed to be concern that control of yet another independent scotch whisky producer would have gone outside the U.K.

The key question likely to follow the Commission's report is whether Hiram Walker will decide to seek other takeover targets in the UK drinks industry or whether it will decide to expand its activities elsewhere."

Mr. John Nott, Secretary of State for Trade, who is empowered to issue an order pursuant to a report of the Commission, has accepted its recommendation and indicated he would seek undertakings from Hiram Walker not to proceed with the bid.

U.K. COMPLETES COMPETITION LAW AMENDING PROCESS

The enabling orders required to bring into force the main provisions of the U.K. Competition Act of April, 1980 were tabled in Parliament on July 21 and became effective August 12. (See June issue of the Record for a report on the amendments).

The Government has decided against any changes in the Fair Trading Act as it applies to mergers. It had under consideration the 1978 Green Paper "A Review of Monopolies and Mergers Policy", which had proposed some strengthening of merger law. Mr. John Nott, Secretary of State for Trade, in a policy statement on July 1, made it clear that no changes in the law were planned. At the same time, he said that the Government's attitude towards mergers had hardened and that there was a need for a "distinctly more sceptical approach". There is some scope for the Government to toughen its stance on mergers within the framework of the present legislation. In particular, the Office of Fair Trading could be encouraged to recommend more merger references to the Monopolies and Mergers Commission, and the Government could act on more of the recommendations which are made.

GERMANY TIGHTENS
COMPETITION LAW

The Fourth Bill to Amend the Act Against Restraints of Competition came into force in Germany on May 1, 1980, the merger amendments being made retroactive to February 28. The amendments, which are quite numerous and technical, will remove a number of gaps and deficiencies experienced in administering the law.

The merger amendments include provisions which will make it easier to find a position of market domination for merger control purposes, a lowering of the size threshold for the acquisition of small companies by large ones and extended reporting requirements. Some of the other amendments provide:

- insertion of examples of abuse to assist in the control of abuses by market dominating enterprises;
- damages may be claimed by parties injured by dominant firm abuses;
- stronger coverage of discriminatory treatment based upon abuse of buying power;
- stricter supervision of export cartels for abuses.

The annual report of Germany's Monopolies Commission for 1978-9, which was released on July 10, found increases in concentration over the previous decade.

E.E.C. INVESTIGATION LEADS
NORDIC NEWSPRINT PRODUCERS TO
MODIFY MARKETING PRACTICES

According to the Financial Times of London in articles published on June 30, July 1 and July 2, the Directorate General of Competition of the Commission of the European Economic Communities in Brussels has achieved some results in its newsprint investigation. The article of July 1 states:

"Swedish and Norwegian newsprint manufacturers have agreed provisionally with the European Commission to adopt individual pricing policies in Britain from January 1, 1982. Press Papers Ltd., their joint sales company, will be down-graded to a distribution and servicing organization.

"Finnpap, the Finnish papermakers' sales organization which markets in Britain through Lamco Paper Sales, is still resisting pressure from the Commission for individual price setting by its members on the British market. Its lawyers will resume talks with the Commission in August."

As far as is known, there has been no announcement by the Commission. However, the Norwegian, Swedish and Finnish newsprint producers are reported to have received letters from the Commission alleging that their arrangements for marketing in France, West Germany and the U.K. violate Article 85 of the Treaty of Rome.

DIFFERENCES REMAIN AFTER THIRD
SESSION OF U.N. CONFERENCE ON
TECHNOLOGY TRANSFER CODE

The Third Session of the United Nations Conference on an International Code of Conduct on the Transfer of Technology, which met in Geneva from April 21 to May 6, 1980, adjourned without resolving the outstanding differences between the industrialized countries and the Third World. Another session is expected to be convened but no date was set.

A large part of the text of a code has been agreed, including important matters of principle. The code would consist of non-mandatory guidelines and would be adopted as a resolution of the United Nations. The main differences still to be settled relate to the wording of clauses on particular restrictive business practices and the extent to which there should be exceptions for arrangements between parent companies and their subsidiaries abroad.

The O.E.C.D. countries are pressing for the insertion of rule of reason tests in many of the restrictive business practices clauses. There are more substantial differences on some of those clauses, particularly the one on export restrictions, with the O.E.C.D. countries and the Socialist countries of eastern Europe demanding more exceptions than the Third World is willing to accept. One of the most difficult points of contention is how and to what extent the code should differentiate arrangements among independent companies from arrangements among affiliated companies. The Third World wants a minimum of differentiation while the O.E.C.D. country proposals would largely exempt intra-enterprise practices except where they restrain the trade of a competing enterprise.

Even the agreed parts of the code are, of course, still subject to change. Moreover, the united fronts of the various country groups tend to conceal differences within the groups. The differences among Third World countries in particular are understood to be causing severe strains.

CANADIAN EXPERT COMPLETES COMPE-
TITION STUDY FOR BERMUDA

The Government of Bermuda has published a report entitled "Competition Policy for Bermuda"¹ which Mr. J.J. Quinlan, Q.C., former Chairman of Canada's Restrictive Trade Practices Commission, was commissioned to prepare. The need for such a study had been suggested in an earlier report on the economic options for Bermuda by Mr. Simon Reisman, formerly Deputy Minister of Finance in Ottawa.

In addition to comments and recommendations respecting particular industries, the Quinlan Report proposes:

- A more comprehensive system of financial reporting to government, including by private companies, to facilitate determination of public policies.
- Provision for granting tariff drawbacks for small businessmen having difficulties in obtaining supplies.
- Prohibition of resale price maintenance, horizontal price fixing, and inducing a supplier to refuse to sell to a competitor. The prohibition would be enforced by the government through a civil injunctive procedure.

The initial reaction of the Government has been positive and it has indicated its intention of holding discussions with the various elements of the community.

¹Competition Policy for Bermuda; An Investigation and the Bermuda Government Response, Bermuda, April, 1980.