OUTSIDE THE COURTS

RTPC'S FINAL TELECOMMUNICATIONS REPORT ON VERTICAL INTEGRATION REJECTS DIVESTITURE OPTION

The final report of the Restrictive Trade Practices Commission respecting its telecommunications reference was released in January (Telecommunications in Canada, Part III, The Impact of Vertical Integration on the Equipment Industry, Department of Consumer and Corporate Affairs, Ottawa). After noting widespread restrictions abroad on international trade in telecommunications equipment it recommends against divestiture of Bell Canada's and B.C. Telephone's manufacturing subsidiaries and rejects a proposal that Bell be required to introduce competitive bidding procedures in purchasing supplies. The report proposes moral suasion by public authorities to ensure that Bell and B.C. Telephone are receptive to innovations in Canada of non-affiliates. It also proposes that the Canadian Radio-Television and Telecommunications Commission take certain measures to enlarge its flow of information about pricing and costs in order to ensure that vertical integration operates in the public interest.

The report terminates an inquiry whose origins go back to 1966. In that year the Director of Investigation and Research under the Combines Investigation Act commenced an investigation into suspected offences connected with the acquisition by Bell of interests in a number of telephone companies including Maritime Telegraph and Telephone in Nova Scotia. There was concern in Nova Scotia that purchases by Maritime Tel & Tel would be shifted from local suppliers to Northern Electric (now Northern Telecom). The Province of Nova Scotia responded to the concern by enacting legislation to limit Bell's voting rights in Maritime Tel & Tel. In 1973 the Director of Investigation and Research discontinued his inquiry because it had not disclosed any offence. However, he decided that it did disclose conditions which warranted a research inquiry, which he commenced at that time. His resultant Statement of Evidence, which he sent to the RTPC in 1976, called for divestiture of Northern by Bell as a remedy for a number of alleged anticompetitive practices including Bell's refusal to permit subscriber-owned attachments.

The years taken up by the two inquiries have been ones of vast technological and structural change in telecommunications industries both in Canada and abroad. It was only in 1962 that Western Electric sold its remaining shares of Northern to Bell Canada, and the latter's technological dependence upon AT&T continued into the early 1970's. The innovative capabilities of Northern along with Bell Northern Research which is jointly owned by Bell and Northern, grew rapidly in the 1970's. In 1981 Northern's sales abroad were almost as large as its domestic sales and much larger than its sales to Bell. The

period of the inquiries also coincided with the development in Canada of independent producers of telecommunications system attachments and the decision by the CRTC to require the carriers to permit subscriber-owned attachments.

Part I of the RTPC's report, which was released in September, 1981, dealt with the attachment issue. Its conclusion, which was similar to the position taken by the Director of Investigation and Research, was that subscribers should have the right to own telecommunications attachments. That report appeared after the CRTC's Interim Decision along the same lines. Part II of the RTPC's report, which was released in August, 1982, was produced in haste in order to record a number of concerns which the Commission had about the reorganization proposal which Bell had announced the previous June and which is now under review by the CRTC.

Part III of the report deals with the issue of vertical integration including Bell's ownership of Northern and B.C. Tel's ownership of AEL Microtel Ltd. (GTE of the United States controls B.C. Tel through Anglo-Canadian Telephone Company). The Commission's rejection of divestiture comes as no surprise. Aside from the opposition to it by the carriers and by the Governments of Ontario and Quebec, the final argument of the Director of Investigation and Research had abandoned the idea and had proposed instead the introduction by Bell of a system of competitive bidding for supplies. The reasons for his change of position apparently included the recent opening up of the terminal equipment market and the move to competitive bidding by B.C. Tel.

The Commissioners open their concluding chapter by stating:

> "Vertical integration between telecommunication carriers and their equipment suppliers results in a restriction of trade almost by definition."

Elsewhere, they note the position of firms such as Canada Wire and Cable which are foreclosed from the Bell market and at the same time face Northern's competition in other markets. Also, alluding to the added difficulties and costs of regulation which flow from vertical integration, they state:

> "The CRTC has been confronted with the tasks of protecting subscribers of Bell and B.C. Tel from financial risk, and from purchasing decisions which are not in their interest. While it is possible to solve the first problem there is not, unfortunately, an acceptable solution to the second."

However, the Commissioners emphasize that in deciding whether remedial action is necessary, "All of the circumstances surrounding the telecommunication equipment industry and the specific results of the vertically integrated operations must be taken into account". One circumstance is clearly of decisive importance in the minds of the Commissioners. It the prevalence of

non-tarriff barriers which virtually exclude Canadian suppliers from the markets of most industrialized countries with the partial exception of the United States and which lead to unfair competition for sales in other markets. The report states:

> "A key characteristic of the telecommunication equipment market is that in much of the world competition is highly restricted. Although there are technological and political pressures for greater openness in the purchasing practices of telecommunication carriers, these have not yet produced appreciable change. As set out in Chapter VI, since telcos outside North America are almost universally owned and operated by governments, their purchasing practices have been dictated by government policies, which have generally been highly protectionist. There is little evidence of serious encouragement of price competition within these countries, and it does not appear to be an important force. Government policies in countries with a domestic telecommunications equipment manufacturing industry also influence competition for sales to developing countries. With their domestic market protected, manufacturers are able to recover the greater part of their development costs from domestic sales and may price their equipment for export at incremental cost. Development costs are particulary high for switching equipment. This results in highly competitive conditions in the markets that are open to competition. In countries where carriers bear much of the development costs of equipment this further reduces the costs which must be recovered by equipment manufacturers. The prices that manufacturers must charge in export markets in order to recover their full costs are also reduced by the subsidization of interest costs by governments anxious to encourage exports."
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> ....
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> "To this bare-bones picture must be added the trade restrictions that arise from differing technical standards. In general this factor protects domestic manufacturers but limits the markets to which they export. In the case of Canada, domestic manufacturers are not protected where Canadian and U.S. standards are the same and European and Japanese manufacturers find it worthwhile to modify their equipment for the U.S. market. In fact there are few product areas which are not affected by the presence in the U.S. of a number of European and Japanese based suppliers."

The commissioners note the trade liberalization trends in the United States including the opening of the terminal equipment market, the ending of AT&T's long distance service monopoly and the decision whereby AT&T will spin off its operating companies which provide local telephone service. Nevertheless, they do not regard the openness of the U.S. market as being by

any means assured. AT&T, whose requirements are largely supplied by Western Electric, still has the bulk of the long distance business. And the Commissioners believe that even after the operating companies have been divested they are likely to retain their business links with Western. Moreover, they note increasing congressional interest in reciprocity as the U.S. market becomes more open.

Conditions in foreign markets would not seem to provide a reason to bar unaffiliated Canadian producers from the Bell market, but barring only foreign suppliers would clearly be difficult to justify under GATT. The Commissioners note a position taken by the Department of Communications that conflicts of interest between autonomous and vertically integrated producers "can and must be reconciled in a spirit of constructive compromise". The commissioners state:

> "The concerns of DOC...could be dealt with by selective access of certain domestic suppliers to Bell and B.C. Tel. It would be very difficult to implement such a policy formally. If it were based upon the nationality of the ownership of the selected firms it could be damaging to Canada's overall interest as a trading nation. While these limitations must be recognized, moral suasion by public authorities should be employed to ensure that B.C. Tel and Bell are receptive to innovations in Canada of non-affiliates. ...In the case of Bell, it must show itself more receptive to innovations which are developed in Canada by non-affiliated companies."

In dealing with the specific results of the vertical integration, the Commissioners found that, while there were some deleterious effects as noted above, allegations of certain other detrimental effects were not supported by the evidence and there were some positive effects as well. Charges which were made of particular instances of Northern selling to unrelated Canadian buyers at prices lower than to Bell were found to be incorrect. Expert testimony was presented that the effect that Bell and B.C. Tel had not performed as well in terms of productivity increases as had the publicly owned carriers on the Prairies, and the differences were ascribed to vertical integration. However, the Commission concluded that there were too many uncertainties about the causes of the measured differences to ascribe them to vertical integration. The Commission also noted the outstanding performance of Northern and it was unable to exclude the possibility that its relations with Bell had been a contributing factor.

In summing up the evidence, the Commissioners stated:

> "The evidence in this inquiry does not establish that, on balance, the separation of Bell and Northern would improve performance in the telecommunication equipment industry or in the

delivery of telecommunication services by Bell and other carriers. The record is less clear in the case of B.C. Tel. The desirability of maintaining the ownership link between B.C. Tel and AEL, however, should be evaluated in the light of any decisions made with respect to Bell and Northern. If AEL is to be a credible alternative source of central office and transmission equipment in addition to Northern, AEL probably requires the marketing advantages afforded to it by its relationship with B.C. Tel. Although it is highly unlikely that AEL will be able to undertake extensive product development, it does have depth of manufacture and substantial customer service capability."

The Commissioners also rejected the proposal by the Director of Investigation and Research that Bell be required to introduce competitive bidding procedures. They stated:

"B.C. Tel should maintain its procedures for open procurement. However, the Commission does not believe that the impostion of such procedures is an effective means of monitoring the purchasing decisions of integrated telcos. To do so would result in the creation of excessive ridigity in the description and selection of equipment. There is no doubt, however, that the various systems of open procurement, involving competitive purchasing, used by a number of telecommunication carriers in Canada can be effective management tools. In addition, these systems are instrumental in creating a more broadly based telecommunication equipment industry than is possible with vertical integration. It remains to be seen how B.C. Tel's stated procurement practices serve to accomplish this purpose. In the case of Bell, it must show itself more receptive to innovations which are developed in Canada by non-affiliated companies."

The Commission also made the following recommendations "to ensure that vertical integration operates in the public interest":

- The requirement that Northern sell to Bell at prices no higher than those offered to other Canadian customers should be maintained.

- "The CRTC should require Bell and B.C. Tel to provide reports on prices of selected equipment that these companies pay to their affiliated suppliers and those that are available from other suppliers in Canada and the U.S." This is to "allow the CRTC to assure itself that the ownership link with equipment suppliers is not, on average, costly to subscribers". The Commissioners recognize difficulties in applying this recommendation in an effective way but believe the CRTC to be capable of doing so, and they add:

"...should (the CRTC) decide that, on average, equipment obtained from affiliated suppliers was too costly, it would be faced with a dilemma if there were national goals in place which could best be achieved through vertical integration. Under such circumstances, it would be desirable that the Government issue guidelines to the regulator to assure that these goals are taken into account."

- "It would clearly be in the public interest for there to be better understanding of the causes of differences in telco tariff levels, which is a critical area of telco performance. Improved understanding of comparative telco performance would not only contribute to a better appreciation of the effects of vertical integration, but could also contribute in a significant way to other public policy concerns. A good first step could be made if a uniform system of cost accounting were implemented. This would require close co-operation of the provincial regulatory bodies and the CRTC...Telcos are likely to find themselves facing increasing competition from other carriers and from private systems in the provision of both old and new services. Public policy concerns over the possibility of cross-subsidization of the competitive services by the monopoly services are likely to arise and will require improved knowledge of the carriers' cost structures nationwide."

PRESSURES ON OTTAWA INCREASE TO CHANGE COMPULSORY DRUG PATENT LICENSING LAW

Two announcements over the past six months of drug plant closures in the Montreal area have added considerably to pressures for removal or modification of Canada's compulsory drug licensing provision. S. 41.4 of the Patent Act as amended in 1969 provides for the compulsory granting of licenses for the manufacture or importation of patented prescription drugs.

Ayerst, McKenna and Harrison Inc., which has the largest and one of the few basic drug research facilities in Canada, will move its drug research from Montreal to its home base in the United States with the loss to Canada of some 250 skilled jobs. Hoffman-LaRoche Ltd. has announced the closure of its Montreal area plant which employs some 200. Smith, Kline and French moved its basic drug research out of Canada shortly after the 1969 amendment to the Patent Act. The closures are at most only partly related to the complusory licensing provision. Economies of scale strongly favour large international drug producers, and the amount of pure research conducted in Canada by this largely foreign-controlled industry has never been large. Activitites in Canada consist largely of the later stages of production and the extensive clinical testing which

is required to meet governmental safety requirements. Nevertheless, the industry's locational decisions are undoubtedly influenced by national investment climates, and Canada's has not been regarded by the industry as attractive in recent years.

The enactment of s. 41.4 in 1969 resulted from widespread public concern about high prices of prescription drugs in Canada. A 1963 report by the Restrictive Trade Practices Commission found that consumer prices in Canada were among the highest in the world; retail prices of 58 drugs were from three to twenty times those in the United Kingdom. Noting that most drugs were developed abroad, the Commission could see little benefit to Canada of drug patents and it recommended their abolition. That report was followed in 1964 by the report of the Royal Commission on Health Services (Hall Report) and in 1967 by that of the Special Parliamentary Committee on Drug Costs and Prices (the Harley Report). Both expressed concern about the high prices of prescription drugs and both recommended compulsory licensing for manufacture and importation. There already existed a provision for licensing to manufacture but it had not been widely used. The Minister of Consumer and Corporate Affairs, speaking in the House of Commons on February 13, 1968, referred to the drug companies as follows:

> "They have substituted for price competition the development of minor differences in the product and vigorous sales promotion of these minor differences. We are now in a position to explain why the level of Canadian drug prices is amongst the highest in the world. Because of the heavily protected position enjoyed by the producers, drug pricing is based chiefly on demand. The policy of charging what the traffic will bear can be followed. This means that drug prices will be highest in those countries where the per capita income is the highest."

S. 41.4 was supplemented by various federal and provincial measures to permit and encourage market acceptance of so-called generic drugs as substitutes for those produced by the patent owners. As s. 41.4 is applied in practice, licensees must pay a royalty to patent owners based on four percent of their wholesale sales. The lapse of time between the entry into the market of the patent holder and the entry of a licensee has averaged over ten years, the shortest time having been over four years. Before marketing the generic, a licensee must meet federal safety requirements as well as satisfying the concerns of provincial authorities who exercise considerable control over acceptance of the product.

The result of these measures has been the introduction of a significant degree of competition in markets for a substantial number of prescription drugs. There are now several producers of generic drugs which account for about seven per cent of prescription drug sales. The results have been uneven because licenses have been taken out mainly for the most commercially successful and easier to produce drugs. Where generics have

entered the market, prices have fallen sustantially and these declines have probably been sufficent to keep average prices of all prescription drugs somewhat below what they would otherwise have been (see especially Paul K. Gorecki, Regulating the Price of Prescription Drugs in Canada, Economic Council of Canada, Technical Report No. 8, 1981). Imports have increased as a percentage of supply. Research and development expenditures as percentage of sales have not increased and are likely to decline in view of the recently announced closures.

The large international drug companies with patent holdings opposed compulsory licensing from the start. According to the Financial Post of March 5, the list of those opposing includes the governments of Quebec, Nova Scotia, Saskatchewan and Alberta, the Quebec liberal caucus, seventeen scientific and medical associations and several federal departments including Health and Welfare. The Science Council of Canada is on record as opposing s. 41.4. The drug companies complain that, after spending millions in developing a drug, they face competition from generic producers or importers who have spent nothing on the development. They add that the four per cent royalty fee is entirely inadequate. They also state that research and development expenditures would rise substantially is s. 41.4 were rescinded. Others point to the loss of hundreds of scientific jobs which they attribute at least in part to compulsory licensing.

A general revision of the Patent Act has been in preparation for a long time to bring it into conformity with other OECD countries and to increase administrative efficiency. Its terms were approved in principle by the Joe Clark government and by the Liberal government which preceded it. The one outstanding item is s. 41.4. That section is now the subject of an interdepartmental review and of discussions by a small task force composed of business and government representatives. If an acceptable solution can be found, Consumer and Corporate Affairs Minister André Ouellet is likely to introduce an amendment to that section this year rather than await the final drafting of a revised Patent Act.

The large international drug companies would like a return to the status quo as it was before 1969. The government, on the other hand, is concerned that there might be a repetition of the pricing practices which were found to be abusive in the 1960's and which produced strong public reactions. The drug companies might be prepared to make certain undertakings such as on pricing and expenditures on research and development in Canada, but such undertakings are difficult to devise in the context of a competitive market. There exist, however, a considerable range of options. For example, royalty rates could be raised generally or according to certain criteria such as research performance in Canada. Various degrees of patent protection could be granted, such as by setting a period of time before which a license could not be granted.

RTPC STRIVES FOR COMPLETION OF OIL INQUIRY HEARINGS THIS YEAR DESPITE DELAYS

Progress continued to be made at the hearings before the Restrictive Trade Practices Commission on the petroleum inquiry although delays have been encountered which could carry the proceedings into 1984.

The second and third quarters of 1982 were taken up largely by the international aspects of the inquiry, which then had to be put aside pending the decision on March 7 by the Federal Court of Appeal on the dispute between the Director and the Commission (see above). The hearings from October through January, 1983 were occupied largely with the Director's case on the marketing aspects. The hearings in February, 1983 had to be called off because the Canadian Federation of Independent Petroleum Marketers was not prepared to present witnesses as planned.

It is hoped that the hearings on marketing and refining will have been completed by the August break or else in September. Also, the Commission plans to call pipeline regulatory officials in May. Looking ahead to the last quarter of the year, it is still not clear to what extent the Commission will need to hear evidence on pipelines beyond what will have been provided by the regulatory officials. The Commission has questioned the usefulness of going too far into that subject in view of the pervasiveness of regulation, especially since the period covered by the Director's Green Book. There is also the question of remedies relating to all sectors, and the Director has indicated his intention of calling witnesses on that. The final aspect of the hearing will be presentation of argument by the various parties.

The Director's witnesses on marketing were presented at a time when retail gasoline price wars were widespread in Canada. They appear to have stemmed from efforts by the refineries to maintain output in the face of declining consumption. Evidence from nine Windsor retailers in January was to the effect that the oil companies were controlling the retail prices of their lessees. They have done this by entering into agreements with them whereby the lessees, instead of buying the gasoline, sell on commission as agents and at prices set by the supplier. Competition has been such that the lessees have had little choice but to enter into such agreements. A retired Windsor dealer and past president of the Ontario Retail Gasoline Dealers Association testified that of the 110 operating service stations in Windsor, only four private brand stations were setting their own prices. It was also disclosed at the hearings that an apparently independent Brantford-based chain of 42 retail outlets, Suny's International Inc., was in fact selling on commission under contract with Imperial Oil. According to the Chairman of Suny's, he set his own prices but had to report price changes to Imperial.

That evidence inspired an editorial by Ian Anderson in MacLean's of January 24 which was highly critical of the control exercised by the oil

companies over retail prices. He concluded:

> "If maverick discount sellers disappear, it would leave only the majors to keep gas prices competitive. Given the kind of deal Imperial Oil struck with Suny's, there is scant evidence that competition is what the majors want. As R.T.P.C. Commissioner R.S. MacLellan mused last week, if everyone knows Suny's will match the lowest price, regardless of the cost, 'why would they (prices) come down?' Indeed, in a well disciplined market, they probably would not."

MacLean's of March 7 published a letter by an official of Imperial oil reacting sharply to Anderson's statements and saying in part:

> "The implication is that Imperial could somehow use Suny's to undercut independent dealers and drive them out of business. But, in point of fact, Imperial's contract with Suny's is carefully designed to prevent anything of this nature from occurring. The basic terms of the contract were made clear at the public hearing. Suny's acts as an agent for Imperial in gasoline sales and generally is free to post its own pump prices. Imperial reserves the right to approve these prices when they are at very low market levels. This provision is decidedly pro-competitive in its intent: it is designed to give Imperial the assurance that Suny's is meeting competition and not pricing in a predatory manner."

COMBINES DIRECTOR PRESENTS CASE FOR ABOLITION OF WHOLESALE AND RETAIL MILK PRICES IN QUEBEC

Mr. Lawson Hunter, Director of Investigation and Research under the Combines Investigation Act, appearing before the Régie Des Marchés Agricoles du Québec in January, documented his reasons for urging abolition of wholesale and retail milk prices in Quebec. The hearings were called by the Régie to consider the merits of maintaining or eliminating those controls. They followed widespread publicity and legal proceedings over allegations that large retailers had received kickbacks from dairies.

Noting the absence of any explicit rationale for the controls, the Director referred to press reports on the subject. These indicated that the controls were to discourage the dairies from adopting anticompetitive pricing policies which would favour the development of oligopoly or monopoly, and to prevent unwarranted distributive margins at the expense of the consumers.

He reported that there had been rapid increases in concentration in the dairy industry both in provinces which controlled margins and in those which

did not. The percentage of the fluid milk market controlled by the four largest firms in Quebec had risen from 39.9 per cent in 1976 to the current 80 per cent. He attributed the increases to such factors as increasing economies of scale, the dominance of retail food chains and high energy costs. He also reported that distributive margins were no lower and were in some cases higher in provinces with controls than in provinces without. Moreover, he had found no evidence that milk price margins were abnormally high when compared to those of other foods where the margins were uncontrolled. In addition, he pointed to certain undesirable effects of the controls including the hindrance of price competition, the weakening of incentives to innovate and the cost of enforcing or attempting to enforce compliance.

STATISTICS CANADA REPORTS SLIGHT DECLINE OF CONCENTRATION IN MANUFACTURING INDUSTRIES

Statistics Canada has reported that data for the year 1980 indicate a slight trend towards lower average concentration in Canadian manufacturing industries since 1970. The trend is indicated by the following averages:

MEASURES OF AVERAGE ENTERPRISE CONCENTRATION IN 167 CANADIAN MANUFACTURING INDUSTRIES

Year	Average CR_4(a)	Weighted (b) Average CR_4(a)	Average H-H Index (c)	Weighted (b) Average H-H Index (c)
1970	50.6	48.8	0.1142	0.1082
1972	50.7	48.3	0.1146	0.1067
1974	50.5	47.7	0.1137	0.1031
1976	50.7	47.6	0.1145	0.1031
1978	50.1	47.2	0.1148	0.1063
1980	49.8	46.0	0.1156	0.1050

(a) Percentage of value of shipments accounted for by largest four enterprises in each industry
(b) Weighted by value added in manufacture
(c) Herfindahl Index. It is the sum of the squares of the value of

shipments by each enterprise in an industry expressed as a ratio of the total value of shipments by that industry. For example, in an industry composed of only two enterprises with the same output, the Herfindahl Index is $(.5^2)$ plus $(.5^2)$, which equals .5. The maximum value of the index is 1 for a monopoly.

The shipments of an enterprise were compiled by adding together the shipments of all companies in a particular industry which are under common control. No account is taken of conglomeracy, i.e. of common control of companies in more than one industry. Complete data showing concentration by individual industries will be published by Statistics Canada later in the biennial report Industrial Organization and Concentration in the Manufacturing, Mining and Logging Industries, 1980 (31-402).

Concentration trends in a sample of 57 manufacturing industries from 1948 to 1972 were analysed in a 1980 study by R.S.Khemani, Concentration in the Manufacturing Industries of Canada; Analysis of Post-War Changes, Consumer and Corporate Affairs, Ottawa. He found that the weighted average of four-firm concentration ratios in terms of employment had risen from 44.3 per cent in 1948 to 51.1 per cent in 1972. Altogether, the evidence suggests only a modest increase in concentration at the industry level since World War II.

Concentration levels in Canada are, however, considerably higher than in the United States, reflecting many factors including the smaller Canadian market and the absence of an effective Canadian merger policy. Comparisons with other industrial countries are more difficult to make because of widely differing statistical methods. Concentration data for many industrial countries are contained in the 1979 report by the O.E.C.D., Concentration and Competition Policy.

PHILIPS ELECTRONICS ACQUIRES WESTINGHOUSE LAMP DIVISION

Philips Electronics Ltd. completed its acquisition of the Canadian lamp division of Westinghouse on February 22, 1982. The acquisition resulted from the sale by Westinghouse of its lamp business in North America to North American Philips Corp. The Canadian part of the transaction was approved by the Foreign Investment Review Agency on November 19, 1982.

The Antitrust Division of the United States Department of Justice held up the sale for about a month while Westinghouse sought unsuccessfully for an alternative buyer. Prior to the sale the four largest U.S. producers

accounted for about 80 percent of sales, General Electric and GTE being the largest, Westinghouse having 16 per cent and Philips 5 per cent. Westinghouse planned to liquidate its lamp division if the sale did not go through. The Department of Justice concluded that in the long run a liquidation might impair completition more than the acquisition by Philips.

Canadian General Electric and GTE Sylvania were the largest producers in Canada, followed by Westinghouse. Philips began limited production in Canada about 1970 with the acquisition of a small producer.

FOREIGN AND INTERNATIONAL

PRESIDENT REAGAN SIGNS "PFIZER" AMENDMENT

President Reagan signed the so-called Pfizer amendment into law on December 29, 1982. It amends s. 4 of the Clayton Act to limit the right of foreign governments to recovery of actual rather than triple damages in private antitrust suits.

The amendment has the effect of overruling the 1978 court decision in Pfizer Inc. v. Government of India, 434 U.S. 308 (1978). The decision accorded the Government of India status as a "person" under s. 4 of the Clayton Act, thereby enabling it to recover a substantial amount in treble damages. The amendment means that foreign states will only be eligible for recovery of actual damages in future. Foreign state-owned enterprises will still be eligible for recovery of treble damages providing they do not claim sovereign immunity for any other purpose. The Canadian Government has never filed an antitrust suit in the United States.

The Text of the amendment is as follows:

...That section 4 of the Clayton Act (15 U.S.C. 15) is amended -

(1) by striking out "That" and inserting in lieu thereof "(a) Except as provided in subsection (b)," and

(2) by adding at the end thereof the following new subsections:

"(b)(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

"(2) Paragraph (1) shall not apply to a foreign state if -

"(A) such foreign state would be denied, under section