IN THE COURTS

UNDERTAKINGS BY MOVIE DISTRIBUTORS PROMPT RTPC TO POSTPONE HEARINGS

The Restrictive Trade Practices Commission agreed on June 7 to a request by the Director of Investigation and Research, Combines Investigation Act, for a one-year postponement of hearings on the Director's application for an order to compel the major motion picture distributors in Canada to supply Cineplex's theatres. The postponment follows undertakings by the distributors to the Director for drastic revisions of their distribution policies throughout Canada. The Commission stipulated that the Director must report on the operation of the undertakings in six months and reserves the right to reconvene the hearings at that or any other stage if circumstances so require. The Director retains the right to reactivate his application on four weeks notice at any time within one year.

The application was made under s. 31.2 of the Act which empowers the Commission to issue a remedial order where a person is substantially affected in his business by inability to obtain adequate supplies of a product on usual trade terms. According to Cineplex and the Director, smaller chains of exhibitors were unable to obtain the best films whereas the large Famous Players and Odeon chains had special arrangements with the major distributors which enabled them to do so.

The undertakings, which go far beyond the redress of Cineplex's problem, were made by Columbia Pictures Industries Inc., Paramount Productions Inc., MCA International B.V. (Universal Films (Canada)), Warner Bros. Distributing (Canada) Ltd., United Artists Corporation, and Twentieth Century-Fox Film Corporation. They are in the form of five-page letters to the Director and take effect on July 1, 1983. The distributors are to make the best deal on an individual theatre-by-theatre basis with respect to both first runs and subsequent runs of each motion picture. They also each undertake not be a party to any agreement or arrangement with any exhibitor to determine the pattern of release for each of its motion pictures, and not to grant any exhibitor the right of first refusal on its films.

The new arrangements are similar to those which have prevailed in the United States for many years.

FEDERAL COURT DECLINES TO BAR SEARCH UNDER COMBINES ACT

The Federal Court, Trial division, in a judgement by Mr. Justice Walsh on June 2, dismissed an application by Helix Investments Ltd. and Helix

Shipping Limited to prohibit continuation of a search of their premises by officials of the Bureau of Competition Policy. The search, which was in connection with the container shipping inquiry (see elsewhere in this issue), was being conducted under s. 10 of the Combines Investigation Act. Helix argued that the section was contrary to the right to be secure against unreasonable search and seizure as provided in s. 8 of the Charter of Rights.

The Federal Court's decision was made on the ground of lack of jurisdiction and it does not settle the broader question. As reported in the March issued of Canadian Competition Policy Record, the Court of Appeal of Alberta ruled in January that the search powers under s. 10 are inconsistent with s. 8 of the Charter and therefore invalid. That decision is under appeal to the Supreme Court of Canada.

Mr. Justice Walsh, anticipating a possible appeal from his finding of lack of jurisdiction, decided to comment on the merits of the application, stating:

> "I consider it advisable therefore that this Court should subsidiarily deal with the merits of the application, even if somewhat summarily, so that all issues may eventually be before the Court of Appeal simultaneously."

After considering the reasoning of the Alberta decision, which he found persuasive, he concluded:

> "The interpretation of the Canadian Charter of Rights and Freedoms has already given rise to a number of conflicting judgments in various Courts in various provinces which can only be finally resolved by judgments of the Supreme Court of Canada, and in some cases (the recent 'gating' decision respecting the immediate re-arrest of prisoners entitled to be released on mandatory supervision comes to mind) legislation has had to be immediately introduced so as to overcome the consequneces of such a decision. It may well be that the same situation applies here and that the Combines Investigation Act should be amended so as to require the intervention of a judge before the issue of a search warrant which can only be obtained under oath as to the reasonable grounds on which the Director 'believes there may be evidence relevant to the matter being inquired into'. Certainly at present it lacks the controls normally found in the common law or Criminal Code before search warrants can be issued. However, for the present and so that the entire issue will be before the Court of Appeal and eventually the Supreme Court of Canada I find that, in addition to lack of jurisdiction in this Court to grant the relief sought by Applicants herein, an order should not be made on the merits of the application quashing the authorization on the ground that section 10 of the Combines Investigation Act is of no force or effect being contrary to section 8 of the Canadian Charter of Rights and Freedoms."