OUTSIDE THE COURTS

OTTAWA PONDERS REVISED SET OF COMBINES LAW REFORMS

The federal Cabinet approved in principle a new set of proposals for amending the Combines Investigation Act last December according to the Globe and Mail of April 7, 1983. The proposals have already been discussed with some business groups and have been incorporated in a draft bill. Consumer and Corporate Affairs Minister André Ouellet told the House of Commons Committee on Health, Welfare and Social Affairs on May 24 that amendments would be introduced in the next session of Parliament.

The proposals were developed from the ones which Mr. Ouellet circulated in April, 1981 and which were published in the June, 1981 issue of Canada Competition Policy Record. Reforms in the following areas are now contemplated:

Adjudication:

Adjudication of the existing reviewable practices would be transferred from the Restrictive Trade Practices Commission to the civil courts, and the latter would also adjudicate a new provision dealing with abuse of a dominant position. The RTPC would adjudicate new provisions relating to mergers and specialization agreements.

Crown Corporations:

Crown corporations, agents of Her Majesty, would be brought within the scope of the Act when they are in competition with firms in the private sector.

Conspiracies

S. 32 would be amended to meet difficulties which were encountered in the Aetna and Sugar cases, and the exemption for export agreements would be broadened.

Mergers

Mergers which are likely to lessen competition significantly would become sugject to prohibition by the RTPC.

Abuse of A Dominant Position

Abuse of a dominant position by one or more firms would become subject to cease and direct orders by the civil courts, and in extreme cases firms could become subject to divestiture of assets.

Specialization Agreements

The RTPC would be empowered to allow specialization agreements relating to products already in production when such agreements were likely to bring about substantial gains in efficiency.

Systematic Delivered Pricing

Firms would be prohibited from refusing to supply their customers at any location where the firms are supplying other customers and on the same terms and conditions available to customers at that location.

Banks

Ss 309(1) and (2) of the Bank Act which, with certain exceptions, outlaws inter-bank agreements on interest rates on loans or deposits, service charges and other specified matters, would be transferred to the Combines Investigation Act. Responsibility for their enforcement would become that of the Director of Investigation and Research rather than of the Inspector General of Banks as it is now.

Other Changes

- The Director, before conducting a search, would be required to inform the person in charge of the premises of the nature and scope of the inquiry.

- There would be a provision specifying procedures to be followed for resolving issues of privilege which arise during searches.

- A person under inquiry would be given the right upon request to be informed from time to time of the progress of the inquiry.

- The provision for confidentiality of information obtained in an inquiry would be strengthened.

The new proposals along with those of 1981 are part of the third attempt to proceed beyond the first stage of reforms which become law in 1976. They were preceded by Bill C-13 of November, 1977 and Bill C-42 of March, 1977. There have been common themes throughout, particularly in proposals to strengthen the law as it applies to mergers and abuse of dominant positions. However, the trend has been towards reductions in scope and severity by deletions and modifications in response to business concerns, along with the addition of some new provisions to meet emerging problems. For example, the 1981 proposals as well as the current ones omitted those of 1977 to expand the quasi-judicial role of the RTPC, to define the relations between regulatory statutes and competition law, to provide civil procedures for dealing with anti-competitive interlocking directorates and so-called price

differentiation, and to establish a procedure for class actions for recovery of damages suffered from anti-competitive conduct. At the same time, they added provisions to strengthen the conspiracy sections. They also provided for reliance largely upon the civil courts rather than the RTPC for adjudication of trade practices, partly to ensure full rights of appeal.

The current proposals continue the more moderate trend by abandoning entirely the following aspects of the 1981 proposals:

- A civil provision for remedial court orders where use has been made of a patent, trade mark, copyright or industrial design in a manner not expressly authorized by the governing legislation where such use has adversely affected competition.

- A criminal provision to deal with international cartels where Canadian firms agree with firms operating abroad to limit Canadian imports or exports or otherwise limit competition in Canada.

- A civil procedure to inhibit Canadian subsidiaries from implementing agreements with foreign parent or affiliated firms to restrict Canadian exports or imports where such restrictions are designed to protect price levels in Canada or abroad. However, s. 32.1, which was enacted in 1976, would remain in effect; it prohibits implementation in Canada of directives from abroad to give effect to a conspiracy which, if entered into in Canada, would be in violation of s. 32.

The proposal to make it clear that crown corporations are subject to the Act is, on the other hand, entirely new and probably stems in part from questions which have arisen in the uranium inquiry about the application of the Act to crown uranium firms. The proposals to require the Director to inform a person in charge of premises of the nature of an inquiry before conducting a search of the premises and to inform persons under inquiry of the progress of the inquiry are also new; they may reflect questions which have been raised about some of the procedures under the Act (see, for example the March, 1983 issue of Canadian Competition Policy Record on the decision by the Court of Appeal of Alberta that the Director's power of search is unconstitutional). Proposals to specify procedures for resolving issues of privilege and to strengthen the confidentiality provision were not in the 1981 proposals but were in those of 1977.

The conspiracy provisions as now proposed are not as severe as those proposed in 1981 but they are nevertheless designed to remedy the difficulties arising out of decisions of the Supreme Court of Canada in the Aetna and Sugar cases. The principal changes would be:

- The tests of "unduly" in s. 32(1) would be changed to "significantly". Interpreting that change will be up to the

courts, but the intention is clearly to catch agreements accounting for a smaller market share than now.

- It would be made clear that the prohibition goes beyond express agreements and that the existence of an agreement may be inferred from all the surrounding circumstances.

- It would be made clear that the offence is in the agreement and its actual or likely effects, whether or not implemented. The onus on the Crown would be to prove an intention to agree, the existence of the agreement and the effects that would flow from it. The Crown would not be required to show that the accused intended to lessen competition significantly or to establish the adverse effects which the agreement actually had upon competition.

The 1981 proposals went further. Agreements on prices, market shares or restricting entry or expansion which had any adverse effect upon competition at all would have been per se offences. Agreements on other dimensions of competition encompassing some stated percentage of a market would, with some exceptions, have been deemed to lessen competition significantly.

The current proposal respecting mergers would mean the replacement of the existing criminal prohibition by a civil law provision to be adjudicated by the RTPC. An RTPC decision not to allow a merger would be subject to a cabinet override.

The basic test to be applied would be whether a merger was likely to lessen competition significantly. The onus of showing significant lessening would be on the Director except when 50 percent or more of a market was involved, when the onus would be on the parties to show the reverse. A failing firm argument would be among the factors to be taken into account by the Commission.

Efficiency gains likely to flow from the merger would override adverse effects upon competition where a remedial order would prevent such gains.

Prenotification to the Director along with the provision to him of relevant information would be required for mergers involving assets or revenues in excess of $500 millions where the business to be acquired had assets or revenues of $20 millions or more.

The merger proposals are less stringent than the 1981 proposals in a number of respects. The earlier ones contained no cabinet override and no failing firm test. Instead of an onus reversal as now proposed, they provided that mergers accounting for more than a certain share of the market would be

deemed to lessen competition significantly. Another difference between the two proposals is that the earlier one called for a special procedure for mergers subject to the Foreign Investment Review Act, while the current one does not.

The present proposal respecting abuse of a dominant position by one or more unaffiliated firms calls for a civil provision to be adjudicated by the courts. Dominance is defined as substantial control of a market. One firm with 50 percent or more of a market would be deemed to have substantial control. Beyond that, the determination of substantial control is left to the courts, whether one or more firms are involved.

Abuse would exist where one dominant firm or more than one jointly dominant firms each engaged in practices of a restrictive, exclusionary or predatory nature which had or were designed to have the effect or preventing or lessening substantially competition in a market. A list of examples of practices which may be abusive would be provided. In determining whether conduct was abusive a court would consider whether it resulted from superiority in efficiency or performance.

The thrust of the proposal appears to be similar to the monopoly and joint monopoly proposal of 1981, but there are a good many changes in lanugage which reduces its stringency. One clear concession in the current proposal is the efficiency consideration, which was not in the earlier proposal. "Substantial control" as now proposed seems to be a less mechanistic concept than dominant market share as proposed in 1981; moreover, the 1981 proposal provided that dominant share would be deemed to exist when four or fewer firms had a certain percentage of the market. Also, the test of "preventing or lessening competion substantially" has replaced the previous test of "creating, entrenching or extending a dominant position"; once again, the new test might well be more difficult to satisfy, particularly with the inclusion of the word "substantially".

The proposal for approval by the RTPC of specialization agreements contains a number of changes which will make it more attractive to business. The RTPC will have full discretion to set the duration of the approval, whereas a maximum of five years was previously proposed. All specialization agreements would have required approval under the earlier proposal, whereas those accounting for less than 50 per cent of the market are now to be exempted. With that change some agreements accounting for less than half a market would be less likely to be prosecuted as conspiracies under s. 32. Finally, there is a new provision for a cabinet override of an RTPC decision not to allow a specialization agreement.

The proposals respecting systematic delivered pricing are unchanged from 1981. At that time, they were explained as follows:

> "It is not the intention to prohibit delivered pricing systems or freight absorption by manufacturers. However, far short of this, it appears that it would be efficacious and desirable to require that

> buyers have the option to purchase at any existing supply point and hence to treat the refusal to grant the option as a per se criminal offence. Such a provision would inhibit the abilities of tight oligopolies to coordinate their behaviour and to discriminate unduly in economic terms against different regions in Canada. The effect of the proposed section would permit a continuation of basing point and related systems but give buyers the option of choosing among the basing points in use, inserting more competitive pressures into the system. This would also reduce the abilities of large Canadian firms to engage in economic price discrimination by segmenting their markets."

Banks were brought within the scope of the Combines Investigation Act along with other services in 1976 except for inter-bank mergers and collusive arrangements of kinds specified in the Bank Act. The present proposals respecting banks are the same as those of 1981 and they were explained at that time as follows:

> "In 1975, the Bank Act was amended to establish more stringent provisions defining anticompetitive behaviour by banks, by extending the existing ban against collusive agreements on interest paid on deposits or costs of loans to include agreements on service charges, amounts and kinds of loans, types of services provided to a customer, and classification of persons eligible or ineligible for loans.
>
> "It is now proposed to transfer the responsibility for competition policy that was in the Bank Act to the Combines Investigation Act, except for the two cases where the Minister of finance has authority to over-ride competition policy on other specific public policy grounds, banking agreements requested or approved by the Minister of Finance and mergers of banks which he certifies as desirable."

COMBINES DIRECTOR DISCUSSES LAW'S APPLICATION TO BUYING GROUPS

Mr. Lawson Hunter, Director of Investigation and Research, Combines Investigation Act, released notes for a speech on the application of the Act to buying groups on June 3. In the recent past three buying groups involving the six largest food retailing organizations in Canada have been formed, and there are others as well. Loblaws and Provigo formed one in 1977, Dominion and Steinbergs formed one in 1982, and Safeway and IGA formed one in March of this year. With the formation of these groups it has been estimated that over 80 per cent of Canadian retail food sales are passed through just five channels. Consumer groups, food retailers outside the groups and food processors have expressed concern about the implications for competition of these developments. The Text of Mr. Hunter's remarks is appended hereto.

OTTAWA ENTERS PUBLIC DEBATE OVER DRUG PATENT LICENSING

Consumer and Corporate Affairs Minister André Ouellet announced on May 27 that the government intends to "rebalance" the 1969 compulsory drug patent licensing legislation. S.41.4 of the Patent Act provides for the compulsory granting of licenses for the manufacture of importation of prescription drugs; as administered, licensees are required to pay royalities based on four per cent of their wholesale sales. The Government, according to Mr. Ouellet, wants to stimulate growth in the Canadian pharmaceutical industry while still moderating drug costs.

Appearing before the House of Commons Standing Committee on Health, Welfare and Social Affairs, Mr. Ouellet advanced a number of alternative proposals for discussion. He stated as follows in part:

> "To generate further growth in this industry the Government of Canada has decided to change the Patent Act to rebalance the 1969 policy. During the process of examining alternatives, their potential long-term impact on the price of drugs must be considered. These concerns may necessitate a price-monitoring system based on either a comparison with foreign drug prices or on price trends of other products sold in Canada. Sanctions for prices in excess of guidelines could be incorporated into the Patent Act.
>
> "Three general approaches for changing the Patent Act have been developed:
>
> - Variable royalty rates: Licences would continue to be granted, but rates would be set according to the level of research and development activity carried out in Canada by the patentee.
> - Market exclusivity: Compulsory licences to import would be granted only after a specified number of years had elapsed following initial marketing of the drug. This would provide patentees with a period of market certainty on which to base future plans.
> - Company-specific exemption from compulsory licences: Firms proposing specific performance and price commitments would qualify for an exemption from licensing to import. Failure to meet the commitments would result in a termination of the exemption for one or more products.
>
> "The impact of each approach on industrial development depends on its possible effect on the import and export behaviour of

both generic and patent-holding firms. Industrial expansion would necessarily involve fine-chemical manufacturing in Canada, increased export of finished products, and additional research activity. The potential for domestic chemical manufacturing, import replacement and increased drug exports would be greatest in the long term if both generic firms and patentees were motivated to manufacture in Canada and actively seek markets abroad. Existing compulsory licences would not be affected and new licences would continue to be available for products to be manufactured in Canada.

"Potential for increase investment in research and development appears to remain with patent-holding firms. Such investment may be more attractive under approaches that extend patent protection."

The government plans consultations with the provinces, the industry, those involved in the delivery of health services and other interested parties.

COMBINES DIRECTOR BEGINS INQUIRY INTO CONTAINER SHIPPING THROUGH MONTREAL

An inquiry under the Combines Investigation Act into the sale of container shipping and related services through the Port of Montreal as it relates to s.34(1) (c) of the Act is under way. Beginning May 19, officials of the Bureau of Competition Policy visited offices of Canadian National Railways, Cast North America Ltd., Sofati Container Line Ltd. and Helix Investments Ltd. and seized certain documents. As reported above, Helix made an unsuccessful bid in court to stop the search. Ss. 34(1) (c) makes it an indictable offence to engage in:

> "... a policy of selling products at prices unreasonably low, having the effect or tendency of substantially lessening competition or eliminating a competitor, or designed to have such effect,"

Cast, in which CN has a minority ownership interest,(1) has been competing aggressively with Sofati for container shipping business through Montreal as well as with conference lines. The Province of Nova Scotia has been concerned about diversion on traffic from the Port of Halifax; since CN provides the rail service to Halifax, Nova Scotia has been particularly concerned about CN's link with Cast. For example, the Halifax-Dartmouth Port Commission has alleged that for some years CN paid rebates to Cast on containers moving westbound to the United States through the Port of Montreal. Aside from the combines inquiry, the Canadian Transport Commission has scheduled hearings on some of the issues to begin in Halifax on July 19.

Inquiries under the Combines Investigation Act involving crown companies such as CN and which could lead to criminal charges have been

infrequent. On June 11, 1982 the Ontario Court of Appeal upheld a trial court decision that two crown uranium companies, Uranium Canada Ltd. and Eldorado Nuclear Ltd. are immune from prosecution under the Act. The case was appealed to the Supreme Court of Canada and its decision is awaited. However, the decision of the Supreme Court of Canada on March 24, 1983 in Canadian Broadcasting Corporation Television Station C.B.O.F.T. Rene Boissay v. The Queen has served notice that crown immunity is by no means absolute. In deciding that the CBC is not immune from prosecution under an obscenity charge, The Honourable Mr. Justic Estey stated:

> "It is difficult to believe that after the great constitutional struggles through which we and our forebears have gone to bring to an end the concept of absolute monarchy we are still faced with the defence of absolute immunity by the monarch's administration. Borrowing the words of Martland J. in Le Conseil des Ports Nationaux, supra: 'It is only when the (Corporation) is lawfully executing the powers entrusted to it by the Act that it is deemed to be the Crown agent' ... When so acting and thereby enjoying the status of Crown agent the immunities of the Crown flow through to the agent for its benefit. Where, however, the Corporation is not acting 'for all purposes of this Act' or with reference to 'its powers under this Act' the status and the benefits of Crown agency disappear.
>
> ...
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> "There certainly can be no reason in law why the law enforcement agencies should not bring before the criminal court a corporation, however established, or any other person, where the conduct of that person, natural or legal, offends the Criminal Code and is not expressly authorized by Act of Parliament. We are not here concerned with whether the same principle would apply to conduct expressly authorized by another legislature acting within its plenary competence."

1. One June 11 the federal Cabinet authorized CN to conclude an arrangement to acquire a 75 percent ownership of Cast, the remainder to be acquired by the Royal Bank of Canada.

GOVERNMENT DECIDES TO MAINTAIN PRESENT AIRLINE REGULATIONS

Transport Minister Jean-Luc Pépin told the House of Commons Transport Committee on March 15, 1983 that the present system of airline regulation would be maintained. The system includes regulation by the Canadian Transport Commission of routes, entry, fares and mergers. Air Canada and CP Air are the only national carriers; there are four regional carriers with designated routes and a number of local carriers. Wardair is restricted to charter operations.

The announcement came nearly two years after the report of the Economic Council of Canada on Reforming Regulation which recommended substantial deregulation of airlines. A study which Prof. William Jordan of York University prepared for the Department of Consumer and Corporate Affairs reached broadly similar conclusions (Performance of Regulated Canadian Airlines in Domestic and Transborder Operations). In August, 1981 the Transport Department issued a policy paper which proposed maintenance and in some respects strengthening of airline regulation. Hearings on the paper were held by the House of Commons Standing Committee on Transport in the spring of 1982; its report largely rejected the Transport Department proposals and called for more competition.

In his statement to the Committee on March 15, 1983, Mr. Pépin explained his decision as follows:

> "We have a bit of a deadlock there, because the committee does not like the draft paper I presented a year and some ago".
>
> "On the other hand, I do not like some of the recommendations they have made to me. I like a number of them, but it is not much use to say that, because I have to say in the next breath I feel I cannot accept some of the core recommendations of the committee report; those having to do with the role of carriers in Canada, national regional and local. I cannot accept that; I am sorry, I feel this is not really a mandate, that this is too new, too flexible, too undefined, and will not constitute a message to the industry nor a message to the CTC.
>
> "I also cannot accept the recommendations of the committee with respect to the elimination of the distinctions between the schedule and the charters. I cannot accept that. I regret I do not think it would be in the best interests of the country."
>
> "So we have a deadlock. But at the same time I do not want to impose my views on the committee. So to make it very, very short, we are continuing with the present system, which emphasizes quite a lot the role of the CTC; and that meets with at least some of the recommendations of the Committee."

"So we are going on as of now. There is a good number of problems of movement taking place in the industry, and I do not think it is of the essence to devise an entirely new flight policy at this moment."

BELL CANADA REORGANIZATION PROCEEDS AS COMBINES DIRECTOR EXPRESSES MISGIVINGS

Mr. A.J. de Grandpré, now Chairman and Chief Executive Officer of Bell Canada Enterprises Inc., announced at the Annual Meeting on April 28 that the proposed reorganization of the Bell group had been put into effect. The Canadain Radio-Television and Telecommunications Commission, in a report released on April 18, recommended that the plan as proposed by the company be allowed to proceed immediately but that legislation be enacted to ensure that the CRTC will have the power to regulate Bell's monopoly telecommunications activities effectively. Telecommunications Minister Francis Fox responded with a statement on April 21 announcing government approval for the reorganization to proceed. He added that the CRTC's legislative proposals would be studied with "urgent priority". The Combines Director and consumer groups have expressed concern that the reorganization was allowed to proceed before the regulatory powers of the CRTC had been clarified.

Earlier, on March 24, the Quebec Court of Appeal unanimously rejected a challenge by the Attorney General of Canada to certain aspects of the proposed reorganization. The federal challenge did not necessarily reflect opposition to the reorganization. Rather, it was to try to defend the regulatory powers of the Commission and to ensure that the reorganization would not take place until after the Commission had issued its report.

The CRTC concluded in its report that the reorganization would allow Bell greater flexibility in meeting the challenge of a rapidly evolving telecommunications industry both domestically and internationally. Bell Canada Enterprises Inc. has become the parent company of the Bell group and Bell Canada is its federally regulated subsidiary. BCE acquires from Bell Canada its provincially regulated telephone companies, a number of other Bell Canada subsidiaries and Bell Canada's 55.2 per cent interest in Northern Telecom. Bell Canada retains its telephone directory publishing subsidiary, its 24.6 per cent interest in Telesat Canada and its 30 per cent interest in Bell-Northern Research Ltd.

The CRTC recommends the following legislative changes to protect its regulatory capability:

- allowing the Commission access to relevant information from all members of the new corporate group so as to be able to detect intercorporate subsidies which could adversely affect subscriber rates.

- empowering the Commission to order that competitive activities carried on within the Bell group be conducted outside of the regulated company, Bell Canada, and monopoly telecommunications activities, or those not subject to a meaningful degree of competition, be conducted within the regulated company.

- prohibiting Bell Canada and other members of the Bell group from holding a broadcasting license, including a cable television license.

- prohibiting Bell Canada from controlling the contents or influencing the meaning of messages carried over its facilities.

- empowering the Commission to direct that a minority shareholder interest in Bell Canada be created, consisting of shareholders other than the new parent Bell Canada Enterprises Inc.

- requiring prior approval by the Commission of any sale or other disposition of Bell common shares by the company's controlling shareholder.

The Report states that "this is not the appropriate forum in which to identify specifically which activities should be carried on inside Bell Canada or through another BCE affiliate." Also, while requesting legislative authority to authorize it to direct creation of a minority shareholder interest in Bell Canada, the report states:

> "... the Commission was not persuaded by the evidence in this Inquiry that a public minority interest in Bell Canada should be estalbished at this time. However, since other regulatory safeguards may prove to be insufficient or unduly burdensome in their application to Bell Canada, the Commission recommends that it should have the power to order the establishment of a minority interest."

The Commission's recommendations are for the most part consistent in principle with the stand taken by Mr. Lawson Hunter, Director of Investigation and Research under the Combines Investigation Act. However, speaking to the Canadian Information Processing Society on April 19, he expressed considerable concern about the reorganization becoming an accomplished fact before any action had been taken on the proposed safeguards. He stated:

> "I am, however, disappointed that the CRTC did not see that the need to clearly separate Bell's competitive and monopoly activities exists now and should be acted upon now. As a

> consequence, the eventual implementation of structural solutions to the problem of fostering competition could well be delayed beyond the point at which effective competition can materialize. For example, the CRTC's approach may give Bell Canada sufficient breathing space to integrate the designs of enhanced services and traditional switching equipment in order to allow the company to argue, at future regulatory proceedings, that enchanced services are 'naturally' part of the company's monopoly services. Similarly, a further delay in requiring terminal equipment activities to be conducted outside Bell Canada, provides further opportunity to the Bell group to supply such services from the regulated company during the early years of the product cycle when losses are common, and risk is high, and then to spin them out to the unregulated BCE when they start to show a profit."

The Director's main concern with the reorganization has been that in his view it does not achieve an adequate separation between the monopoly and the competitive operations of Bell. He is particularly disturbed about Bell's announced plans for marketing terminal equipment. It will buy such equipment from Northern and resell it through federally regulated Bell Canada as well as through its unregulated equipment sales company, Bell Communications Systems Inc. according to whichever division serves to maximize the overall market share of the Bell group. One reason for that is that Bell Canada will have outlets in many localities where Bell Canada Communications does not. The Director stated:

> "In my view, such an approach is inconsistent with Bell's stated desire to assist the regulator, and tremendously increases the difficulty of preventing the cross-subsidization of competitive activities of the group by the telephone service monopoly. It also contrasts with the premise of the current restructuring of AT and T: that monopolistic and competitive activities should be completely split into separate companies."

However, he welcomed the acceptance by the CRTC at least of the principle that Bell's competitive activities should be conducted through separate subsidiaries and their qualified acceptance of the idea that there should be a significant publicly held minority share interest in the new regulated Bell Canada. The Director emphasized the significance of the latter as follows:

> "The principal benefit of a minority interest would be to put the Bell Canada Board of Directors under a clear legal duty to ensure that all resource transfers between that company and other BCE firms were at fair market value. As a result, the regulator's work load would decrease, as it would not have to become involved in a detailed scheme of intra-group transactions monitoring."

The Director placed less confidence than had the Commission that an increased supply of data by the Bell group would enable the Commission to discharge its regulatory responsibilities effectively in the absence of adequate structural solutions. He stated:

> "... I view structural solutions to the problem of creating a fair and long-lasting competitive environment in telecommunications services to be superior to reliance upon complex service costing methodologies - although I feel that service costing can provide some valuable information to regulatory boards in the supervision of rates for monopoly services. After having participated actively in Phase III of the CRTC's Telecommunication Cost Inquiry, I am persuaded that available service costing methodologies can provide, at best, only broad brush approximations of the costs of service categories, and cannot be applied with the degree of precision, or be adapted with the speed necessary, to allow such methodologies to be the means of ensuring a competitive telecommunications environment which is free of cross-subsidy."

QUEBEC CABINET REVERSES DECISION BY REGULATORY AUTHORITY TO DECONTROL WHOLESALE MILK PRICES

The Québec Minister of Agriculture, Fisheries and Food announced on April 1 that the provincial Cabinet had reversed a decision by the Régie des Marchés Agricoles to deregulate wholesale milk prices and to increase the controlled range of retail prices.

Hearings on whether wholesale and retail prices of milk should be retained were held by the Régie in January. They followed wide-spread publicity and the institution of legal proceedings over allegations that large retailers had received kickbacks from dairies in contravention of the controls. The Régie does not have the resources to police the controls effectively. The Director of Investigation and Research under the Combines Investigation Act and the Association des Consommateurs du Québec, the latter affiliated with the Consumers Association of Canada, both called for decontrol. In his submission, the Director noted that controls had not prevented a rise in the market share of the four largest dairy firms in Québec from 39.9 per cent in 1976 to the current 80 per cent. He also pointed out that distributive margins were no lower and were in some cases higher in provinces with controls than in provinces without.

The Régie announced on March 3 that it would abandon wholesale but not retail price controls effective April 4 and that the range of retail prices would be increased on the same date. That decision was successfully appealed to the provincial Cabinet by three separate groups. One was the Fédération National des Associations de Consommateurs du Québec, which represents various local associations. The others were l'Association des Distributeurs

indépendants du Québec and the Conseil de L'Industrie Laitière du Québec Inc. They feared that, with decontrol of wholesale prices, large dairies would drive out small ones by offering discounts to large retailers. They were also of the view that, while decontrol might reduce consumer prices in the short to medium term, the result would be higher retail prices in the long run.

APPOINTMENTS

Mr. Lawrence R. Wilson became a Member of the Restrictive Trade Practices Commission effective December 2, 1982, filling a vacancy that was created by the retirement of Mr. Luc-André Couture at the end of 1981. Mr. Wilson, who is fluently bilingual, was a partner in the law firm of Clarkson, Tétrault of Montreal.

Mr. Roy Atkins became Director of the Regulated Sector Branch of the Bureau of Competition Policy, Department of Consumer and Corporate Affairs, effective April 1, 1983. He replaces Dr. D.A. Dawson who returned to academic life. Mr. Atkinson comes from the Department of Finance where he was Assistant Director to the Economic Development Division.