rejects the allegation in the Green Books that these kind of agreements have had an anti-competitive effect and views with alarm the Director's recommendation in the Green Books and the recommendations of the Director's recent witness panel that these agreements to regulated. In the event of refinery breakdowns, transportation difficulties, and similar emergencies, it is imperative that the industry have the ability to make immediate alternative supply arrangements in order to ensure that the products flow to the consumer without interruption. Government regulation, no matter how efficient, would lead at best to intolerable delays or alternatively, to actual product outages to the customers of individual companies."

FOREIGN AND INTERNATIONAL

CANADIAN TRUCKERS FACE U.S. ANTITRUST CHARGES

The United States Department of Justice filed a civil antitrust suit on June 10 against the Niagara Frontier Tariff Bureau Inc. of Buffalo and the following five Canadian trucking firms:

Bondy Cartage Limited, Windsor
Dominion-Consolidated Truck Lines Limited, Toronto
ICL International Carriers Ltd., Windsor
Inter-City Truck Lines (Canada) Inc., Toronto
TNT Canada Inc., Mississaugua

The Department of Justice issued a press release stating:

"Assistant Attorney General William F. Baxter, in charge of the Antitrust Division, said the complaint alleges that from at least as early as 1966 and continuing to at least 1981, the defendants and co-conspirators engaged in an unlawful combination and conspiracy to fix prices and inhibit or eliminate competition for the transportation of freight by motor carriers between the United States and Ontario.

"The defendants and co-conspirators are parties to the NFTB's collective ratemaking agreement which was approved by the Interstate Commerce Commission and which authorizes them to set rates collectively provided they adhere to the terms of the agreement and ICC regulations.

"Baxter said the suit charges that the defendants engaged in price fixing conduct beyond the scope of the antitrust immunity

conferred through the approved NFTB agreement. The suit alleges that the defendants did not comply with the terms of the NFTB agreement and interfered with the right of other motor carrier competitors to make rates independent of the NFTB agreed-upon rates.

"The lawsuit seeks an injunction against the NFTB and the five motor carrier defendants to permanently enjoin them from maintaining or renewing, directly or indirectly, the alleged combination and conspiracy. The suit also seeks an order requiring the NFTB to establish rules and procedures which ensure that the NFTB does not interfere with each member's right to make rates independant of the NFTB's agreed-upon rates.

"According to the complaint, the defendant motor carriers and co-conspirators account for most of the freight moved by all NFTB carriers between the United States and Ontario. For the period 1970 through approximately 1980, international traffic revenues of NFTB carriers were approximately $2.8 billion, the complaint says."

The suit was preceded by a grand jury investigation which was terminated without the laying of criminal charges. The Ontario government was not persuaded that it should Invoke the Ontario Business Records Protection Act in order to prevent the companies from complying with demands for documents.

The position under the Combines Investigation Act of rate fixing by motor carriers has not been before the courts and would depend in part upon the relevant provincial laws. Some of the issues may be clarified in the Alltrans case in which a number of motor carriers were charged with conspiracy in 1979. The trial has been delayed pending results of an appeal to the Supreme Court of Canada on whether the Attorney General of Canada is empowered to conduct criminal proceedings in Alberta. Also, a conspiracy case involving transportation of used household goods is scheduled for trial in Supreme Court of Ontario beginning November 21.

REAGAN ADMINISTRATION MODERATES ITS PROPOSED ANTITRUST LAW AMENDMENTS

President Reagan made public on September 12 a less extensive set of proposals for antitrust and intellectual property law reforms than the one of last March (see June issue of Canadian Competition Policy Record). Unlike the earlier ones, the new proposals would not reduce substantially the scope for treble damages awards in private antitrust suits. Strong congressional oppostion to the first set of proposals had emerged.

The earlier proposals called for retention of treble damages awards only for per se antitrust offences such as price fixing and not for violations such

as selective distribution policies which are judged under the rule of reason. That was in addition to measures relating to research and innovation: removing joint research and development ventures from the per se class of offences, making patent misuse cases more difficult to sustain and empowering holders of process patents to block unauthorized imports of products made by such processes.

The new set of proposals is entitled "The National Productivity and Innovation Act". It would ease the antitrust laws only in respect of offences involving r & d joint ventures and intellectual property. Treble damages awards would not be available for intellectual property abuses or for violations involving r & d joint ventures registered with the Department of Justice and the Federal Trade Commission. Courts could not find intellectual property licensing arrangements to be illegal without first considering the pro-competitive justifications, and they would have to consider whether the anti-competitive effects of r & d joint ventures were outweighed by their pro-competitive effects. Unauthorized imports of products made by a patented process could be blocked.

U.K. GOVERNMENT STOPS COMPETITION WATCHDOG'S STOCK EXCHANGE CASE

Trade and Industry Secretary Cecil Parkinson announced on July 27 an arrangement whereby a case by the Office of Fair Trading against the London Stock Exchange will not go forward and the Exchange will eventually discontinue some of the practices at issue. The arrangement is conditional upon its acceptance by two thirds of the exchange members. The case against the Exchange, which has been in preparation by the OFT for some six years, was to be heard next January by Restrictive Practices Court which decides whether or not to approve registrable agreements. The Court has agreed to a postponement pending a parliamentary order or legislation exempting the Exchange from the jurisdiction of the Court. In either case there will be a parliamentary debate. The government's move is unusual and has received a good deal of press criticism.

The exchange has undertaken to discontinue fixed minimum commissions by the end of 1986, to permit the Bank of England to nominate outsiders to as much as a quarter of the seats on the Exchange's governing council, to allow the creation of a body to hear appeals by those refused membership on the Exchange, and to accept closer supervision by the Bank of England and the Department of Trade and Industry.

The OFT wanted more drastic reforms. In particular, it wanted an end to the existing separation of the functions of brokers and jobbers. The jobbers carry out the floor trading and the brokers deal with the public; it is contended that the system increases transaction costs and lessens competition. It also wanted less rigid rules on the structure and control of stock trading firms; at present up to 29.9 per cent of ownership can be held by outsiders but most trading firms are partnerships with unlimited liability.

The Economist of August 13 complains that the existing restrictions have maintained a system of stock traders who are tiny by international standards and who are becoming less able to compete effectively in the increasingly international capital markets. The Wall Street Journal editorialized on August 9:

> "The Thatcher government let the LSE evade more than 150 charges of anti-competitive behavior; in return, the exchange grudingly agreed to a few changes that would be old hat in any other major world financial market. The result is that the stock exchange's rules of yore will continue to protect its members by sacrificing the interests of the public. In good medievil guild fashion, the exchange agreed to remain uncompetitive, keep out too-efficient foreigners and cut off its future nose to spite its current face. It's a vain stab at thwarting the inevitable linkage of the world financial markets."

Barry Riley of London's Financial Times expressed doubt that the broker and jobber functions could be kept separate without fixed minimum commission rates. He stated:

> "There are serious risks that when broking firms are competing on commissions they will be tempted to transact business outside the stock market. The Stock Exchange could not be sure of preventing this unless it acquired draconian powers to control dealing by non-member security firms."

U.K. - U.S. DISPUTE OVER LAKER AFFAIRS PERSISTS

Two developments over the summer have served to underline the differences between the U.S. and the U.K. over the antitrust legal proceedings involving defunct Laker Airways Ltd. On June 24 Trade and Industry Secretary Cecil Parksinson announced that the Protection of Trading Interests Act had been invoked to prevent British Airways and British Caledonian Airways from supplying any information either for the U.S. grand jury investigation into the collapse of Laker or for a U.S. court in Washington, D.C. which is hearing a civil suit launched by Laker's liquidator. On July 26 the Court of Appeal in London reversed a lower court decision and ruled that Laker's liquidator cannot include the two British airlines among the defendants in its U.S. suit.

Late last year Laker's liquidator filed a civil suit in the U.S. against the two British airlines, some American and European airlines and McDonnell Douglas. Damages of $1.7 billioin are sought, alleging violations of the Sherman Act on the basis that Laker was driven out of business by fare cutting and by placing pressure on McDonnell Douglas to stop supporting Laker. In March, 1983 it was revealed that the U.S. Department of Justice had commenced a grand jury investigation of airlines on the U.S.-U.K. route. The

British government has taken the position that the investigation is contrary to the Bermuda 2 airline agreement to which both countries are parties.

The Court of Appeal in London indicated that a decisive factor in its decision of July 26 was that the action taken by the U.K. government under the Protection of Trading Interests Act would render the British airlines unable to defend themselves before the U.S. courts. However, the British airlines are stil lby no means immune from litigation in the U.S. Raymond Hughes, writing in London's Financial Times of August 10 recalled that the U.S. judge in the civil case had earlier raised the possibility of his appointing a trustee to continue the action against the British airlines.

EEC COMMISSION PROPOSES ACTION TO REDUCE CAR PRICE DISPARITIES

A draft regulation which should help to reduce the wide disparties in prices of similar cars among EEC countries was published in the Official Journal of the European Communities of June 24.

The regulation would make it clear that automobile manufacturers' selective distribution agreements are conditionally exempt from the competition provisions (Articles 85 and 86) of the Treaty of Rome. The exemption would not apply where a price difference among member states on the same car model exceeded twelve per cent for more than six months. It would also not apply where, for example, a manufacturer refused to supply an EEC dealer outside the U.K. with right hand drive vehicles for ultimate sale to a resident in the U.K. The Commission hopes to put the regulation into effect early next year.

The action follows widespread publicity about findings by the European consumers' organization that car prices in the U.K. were far higher than in most other EEC countries. The same organization has more recently found wide disparities in video recorder prices, those in Greece being more than twice as high as the average in other EEC countries. The Economist of July 23 growled, "More evidence has emerged that the Common Market does not exist."

PUBLICATIONS NOTED

The Ontario Public Commercial Vehicles Act Review Committee, Responsible Trucking: New Directions, Final Report, Ontario Ministry of Transportation and Communications, Toronto, June, 1983. The Committee, whose membership includes both truckers and shippers as well as provincial officials and others, was appointed by the Minister in 1981 to advise on the general direction in which the Province should develop new legislation for the economic regulation of the for-hire trucking industry in Ontario. The Minister has indicated he plans to use the report as a basis for developing new legislation over the next two years.