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.

The report decribes the existing system as an antiquated patchwork and notes the additional pressures for change stemming from deregulation in the United States. It calls for measures to reduce barriers to entry while tightening controls over the performance of truckers. However, beyond expressing a preference for regulation by transportation legislation and the Transportation Board rather than being subject to the Combines Investigation Act, it does not deal with the central questions of rate setting, rate bureaus and rate filing and proposes the creation of another committee to consider those issues. It cites the current uncertainties stemming from combines cases involving trucking which are before the courts and the federal proposals for revising competition law. The report states:

> "The matter of rate filing is inextricably linked with the issue of collective rate making. The Review Committee has addressed those subjects. They are contentious matters, with opinions that differ in fundamental respects on either side. For many reasons, it will not be easy area in which to make changes.
>
> "On the other hand, there is agreement that the current system of rate filing is unsatisfactory, and in need of reform. In addition, very current issues raised by the Federal Competition Bill and the Combines cases now before the courts increase the importance and urgency of these issues.
>
> "During the next year a government industry committee should be commissioned to address both collective rate making and rate filing questions. The Committee should be asked to consider the consequences of the Federal Competition Bill, the Combines cases, and the impact of new information technology on the role of tariff bureaux. They must consider the isues of enforcement of rate requirements."

Consumer and Corporate Affairs Canada, Compulsory Licensing of Pharmaceuticals: A Review of Section 41 of the Patent Act, Supply and Services Canada, 1983, Cat. No. RG 15-2-1983. This is a discussion paper which was released shortly after Consumer and Corporate Affairs Minister Andre Ouellet's statement on May 27 that the government intends to revise s. 41 of the Patent Act which provides for compulsory licensing of prescription drug patents. The paper describes the industry, the application of s. 41, Canada's international obligations in respect of patent protection, and policies of other countries on drug patents. It also advances a number of alternatives proposals to improve the position of drug patent holders under s. 41.

Roy Davidson, In Place of FIRA, Policy Options, Vol. 4, No. 3, May, 1983, Mr. Davidson proposes the elimination of the Foreign Investment Review Agency and its replacement by a prohibition of acquistions of Canadian-owned companies by foreign interests except for "toehold" acqusitions. He describes the principles of his proposal as follows:

> "First, it would prohibit acquisitions of Canadian-owned companies by foreign interests except where what was sought was simply a toehold in the Canadian market. The foreign company would therefore be new to Canada, or at least new to the sector being entered. A toehold acquisition would be defined in the legislation as not more than, say 1 or 5 or 10 per cent of the national market for the product, depending on how stringent Parliament wanted to be in the application of the policy.
>
> "Secondly, foreign interests would be free to make any greenfields investments whatever, except of course in key sectors as already defined under existing law. The reason for the different treatment of take-overs and new investment is that new entry, whether by completely new invetment or by toehold acquisition, is likely to be pro-competitive, whereas take-overs of well-established firms simply substitue one player for another.
>
> "Thirdly, the policy would not apply to a merger of firms which were already foreign-owned, except where they operated in the same market. The rationale for making this exception is that, in view of the potential divergence between the interests of the corporation and the interests of the country, foreign firms should not be allowed simply to purchase an increased share of the market; they should have to demonstrate their superior efficiency by winning an increased market share from existing rivals."

Parenthetically, in July a GATT panel found that FIRA is in violation of GATT by requiring some companies to promise to buy materials in Canada as a condition of entry.

Consumer and Corporate Affairs Canada, How to Avoid Misleading Advertising: Guidelines, 1983, Supply and Services Canada, Catalogue No. RG52-18/1983E. ($15.95). Prepared by the Marketing Practices Branch of the Bureau of Competition Policy, this is a useful guide to the application of the misleading advertising and deceptive marketing practices provisions of the Combines Investigation Act. It deals with such topics as image advertising, contests, double ticketing, liability of advertising agencies and misleading warranties, and provides examples of prosecuted cases.

William Watson, A Primer On The Economics of Industrial Policy, Ontario Economic Council, Toronto, 1983. Prof. Watson warns against governmental "pick the winners" types of industrial development policies and points to the generally poor records of such approaches. He advocates industrial policies to establish an environment from which winners can emerge and to compensate the victims of economic or technological change. Coincidentially, the thrust of the book is not unlike that of an article on the front page of the Wall Street Journal of September 19 on the sources of Japan,s industrial strength. Relying upon a number of studies by American economists, the article seeks to counter suggestions that the interventionist policies of Japan's Ministry of International Trade and Industry have been a major positive factor. Many examples of seriously misguided interventions by MITI are cited. Rather, Japan's industrial successes are attributed to such factors as a relatively small state sector with consequent lower taxes and higher private savings and investment, good labour relations and a highly motivate labour force, and the economies associated with borrowing foreign technologies.

Department of Justice, Digest of Business Reviews, Legal Procedure Unit of the Antitrust Division, Room 7416, Washington, D.C. 20530. The Department's announcement states:

> "The Business Review Procedure permits firms to submit proposed business activity to the Antitrust Division and receive a statement as to whether the division would challenge the action as a violation of the federal antitrust laws.
>
> "The Digest, which will be updated annually, contains summaries of all business review letters issued since 1968, and indexes them by topic, commodity or service involved, and name of the requesting party.
>
> "William F. Baxter, Assistant Attorney General in charge of Antitrust Division, said that 'the Digest will facilitate antitrust counseling and be a useful research tool for antitrust practitioners and scholars'."

In addition to obtaining copies of the Digest, the public is permitted access to the business review letters themselves at the above address.

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HIGHLIGHTS

ARMSTRONG'S BOOK ON COMPETITION VS. MONOPOLY

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SUPREME COURT RESTORES COMBINES PROSECUTION POWERS OF ATTORNEY GENERAL OF CANADA

THE NEWSPAPER CHAINS CASE

FEDERAL COURT OF APPEAL CONFIRMS COMBINES ACT POWER TO CALL FOR PERSONS AND PAPERS

EXCESSIVE RETAIL MARGINS UNDER DRUG PLANS FOUND

ONTARIO LAWYERS REJECT FEE ADVERTISING

THE BANKS VS. THE STOCK BROKERS

CORPORATE SHAREHOLDING LIMITATION BILL SHELVED

DEVELOPMENTS ABROAD

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