

University School of Business to examine pricing in the Ontario drug benefit plan. Last October a Southam News investigation found that all provincial governments except British Columbia and Saskatchewan had for years been paying excessive prices to pharmacists for drugs supplied to aged and welfare recipients.

FOREIGN AND INTERNATIONAL

OECD ISSUES SUGGESTIONS FOR INTERNATIONAL CO-OPERATION IN INFORMATION COLLECTION FOR ANTITRUST ENFORCEMENT

The organization for Economic Co-Operation and Development has published a report entitled Competition Law Enforcement: International Co-Operation in the Collection of Information. The report, publication of which was approved by the OECD Council, was prepared by the Committee of Experts on Restrictive Business Practices. It notes the essential role of information collection in antitrust enforcement, the increased internationalization of business, the jurisdictional disputes which have resulted from some attempts by countries to collect information abroad, and the enactment of blocking legislation by some countries to prevent the transfer of information abroad. The Report makes the following "Suggestions for Action":

"173. In accordance with the 1979 Council Recommendation, C(79) 154 (Final), Member countries should supply each other with such relevant information on restrictive business practices as their significant national interests permit them to disclose. Where confidentiality considerations constrain such cooperation, Member countries should consider such measures as may be necessary and appropriate to enable them to supply information or reply to requests from foreign competition authorities, provided that adequate assurances to preserve the confidentiality of the information are received from those authorities. Member countries should also consider such measures as may be necessary and appropriate to enable them to safeguard confidential information which they receive.

"174. In the course of private litigation permitted under competition laws in which foreign national interests are involved, the government in the forum where the suit is brought should intervene in appropriate instances to offer its views to the Court on questions of international comity and the national interests involved. In instances where a foreign government has requested such an intervention, the government of the forum should provide an

opportunity for consultation with the affected foreign governments, before concluding that an intervention would not be appropriate. In addition, the government of the forum should encourage the use of procedures to enable the legitimate interests of those affected countries to be taken fully into account, for example by way of amicus curiae briefs.

175. Member countries should continue to observe moderation and self-restraint and take into account the substantive laws and procedural rules in the foreign forum when exercising their investigatory powers to obtain information located abroad. They should endeavour to ensure that requests for information are framed in terms that are as specific as possible.

"176. Where applicable under national laws, Member countries should seek to cooperate to the fullest extent possible with foreign authorities while preserving their national interests. When they apply or adopt laws to prohibit the transmission of information abroad, it would be desirable if governments retained the authority to determine when information should be provided. The countries that have adopted legislation to prevent or restrict the provision of information to foreign competition authorities should monitor and review developments in the application of such legislation so as to evaluate the continuing need for such measures.

"177. Unless contrary to national laws or to significant national interests, Member countries should not discourage compliance with information requests from foreign authorities.

178. Member countries which have not yet done so should consider entering into bilateral agreements or understandings for mutual assistance in the collection of information abroad in antitrust proceedings. The Committee will review at an appropriate time the experience with such agreements with a view to examining the feasibility and desirability of developing common elements for such bilateral conventions. In the meantime, it would be useful if Member countries could, in accordance with the interests of the countries involved, inform the Committee of the outcome of negotiations and of experience with the operation of any bilateral agreements or understandings into which they have entered.

179. The 1982 OECD Council meeting at Ministerial level has asked the Committee to consider whether the 1979 Council Recommendation concerning cooperation between Member countries on restrictive business practices affecting international trade can be strengthened and further elaborated. In the light of the Ministerial request, and taking into account the results of the present study, the Committee should review the 1979 Recommendation so as to strengthen co-operation in competition investigations."

The Committee of Experts on Restrictive Business Practices is now working on a study of issues arising at the frontier of competition and trade policies. The work, which is chaired by Mr. Lawson Hunter of Canada's Bureau of Competition Policy, will also touch upon jurisdictional issues. The United States has recently been evincing a greater willingness to consider more carefully the interests of affected countries before it applies its laws extraterritorially. Secretary of State George Shultz made a major speech on the subject to the South Carolina Bar Association on May 5. After outlining various measures being taken by the U.S. to deal with jurisdictional conflicts, he stated:

"Such measures will not end conflicts of jurisdiction, but they are an earnest of this country's determination to do what it can to avoid conflicts where we can and to minimize the harm that the unavoidable conflicts can do. The United States, for its part, will continue to maintain that it is entitled under international law to exercise its jurisdiction over conduct outside the United States in certain situations. We will continue to preserve the statutory authority to do so. But we will exercise the authority with discretion and restraint, balancing all the important interests involved, American and foreign, immediate and long term, economic and political.

"The essence of our approach is to reduce the problem from an issue of principle to a practice of problem-solving. This is because, in the final analysis, there is a higher principle at stake: the political unity of the democratic nations. That unity, as I said earlier, is the key to our common security, freedom and prosperity. The system of law that we and our allies so cherish, and the free economic system that so nourishes us, are under severe challenge from adversaries who would impose their own system by brute force. If the free nations do not stand solidly together on the fundamental issues, we all risk losing much that is previous - far more precious than the subject matter of any particular dispute."

EEC CASE AGAINST IBM NEAR DECISIVE STAGE

A spokesman for the Commission of the European Communities revealed on April 25 that it is preparing to take a decision upholding abuse of dominant position charges against IBM. The Commission could impose a heavy fine and issue a remedial order, both of which would be subject to review by the Court of Justice of the European Communities. A negotiated settlement is also possible and discussions were reported to be continuing.

The case is an extremely important one because of the company, the products and the issues that are involved. IBM, a U.S.-controlled multinational, has over half the European market for mainframe computers and a European work force of about 100,000. Its products are of tremendous economic and military significance, and a number of European countries have been trying to develop their indigenous producers into world class competitors. The focus of the charges is that IBM has abused its dominant position by withholding technical information about its mainframes until they are shipped, thereby delaying the development of compatible equipment by competitors. The U.S. Justice Department case against IBM, which was dropped by the Reagan administration in 1982, also involved that issue.

Each side accuses the other of extraterritoriality. The Europeans point to U.S. attempts to control relocations of IBM equipment in Europe. IBM points out that forcing it to disclose technical information earlier in Europe would affect its business everywhere including in Japan.

London's Financial Times sees the case as being the wrong way to try to assist IBM's European competitors. It editorialized on January 19:

"We have to learn to live with the fact that the contradiction between the multi-national company and the territorial state unavoidably leads to extraterritorial effects of national laws, and the ultimate solution depends on the recognition that such conflicts are of a political nature and have to be solved by the governments concerned.

"The lesson for national governments is either that they must co-ordinate their approach to technology exports and to monopoly power - the ideal solution - or that they must pursue their national aims in ways which have the least possible extraterritorial consequences.

"In trying to preserve opportunities for IBM's European competitors, governments should work together in helping to establish international technical standards for computers and related equipment. Experience has shown that attempts by national governments to create a counterweight to IBM through subsidies and protection are self-defeating; such policies are unlikely to be any more successful if carried out at the EEC level."