with privatization and leave the regulatory and competition problems for later resolution.

Investment analysts and persons in public life stressed that, even after a target for privatization has been carefully selected, the process will be long and complex. The public must be convinced of the wisdom of the move in terms of public interest and that it is not being made on ideological grounds or to benefit some specialized group. It is important to have the cooperation of the labour and management that will be affected. Decisions must be made about any existing political or non-economic functions of the corporation; examples which were cited included locational factors and the policy of bilingualism.

The kinds of buyers to be sought depends upon the circumstances of each case. A number of speakers favoured wide public ownership where large Crown corporations offering services to the public are involved. Support was expressed for encouraging labour and management to become owners of a relatively small regional entity such as Northern Transportation Ltd.

Issues in the valuation of the assets to be sold were discussed. The temptation to obtain the highest price should not be allowed to obscure the central goal of improved economic efficiency. In particular, the buyers should not be artificially protected from competition.

Mr. John Thomson of the Progressive Conservative Task Force on Crown Corporations was among those who emphasized the complexity of the privatization process. Judging from his remarks, it is unlikely that any Crown corporation of the stature of Air Canada or Canadian National Railways will be privatized during the present electoral mandate of the government. Nevertheless, the subject is clearly on the government's agenda, and Treasury Board President Robert de Cotret has general responsibility for it.

FOREIGN AND INTERNATIONAL

EEC HOLDS PULP FIRMS VIOLATED COMPETITION RULES: WEST COAST FIRMS AMONG THOSE FINED

The Commission of the European Communities announced a decision on December 20, 1984 holding that a number of Canadian, U.S., Finnish and Swedish woodpulp producers and three trade associations had violated Article 85(1) of the EEC Treaty. Fines of some four million ECU (roughly equivalent to $Can. 4 millions) were imposed, including the following fines on Canadian firms:

British Columbia Forest Products Ltd.	100,000	ECU
Canadian Forest Products Ltd.	125,000	
MacMillan Bloedel Ltd.	150,000	
St. Anne-Nackawick Pulp & Paper Co. Ltd.	200,000	
Weldwood of Canada Ltd.	50,000	
Westar Timber Ltd.	150,000	

In addition, the firms have undertaken to invoice at least half of their future sales of bleached sulphate woodpulp in the local currency of the buyer instead of entirely in U.S. dollars as heretofore. The firms only agreed to that undertaking in order to avoid fines ten times as large as those which were actually imposed. Several of the Canadian firms have announced they intend to appeal the decision to the European Court of Justice.

The Commission's findings were summarized in a press release as follows:

> "The producers and their associations were found to have restricted price competition in the EEC and hindered trade between the Member States of the EEC by
>
> - concerting regionally and internationally on the prices announced and charged in the EEC for the sale of bleached sulphate woodpulp to customers located in that market,
>
> - exchanging individual information on these prices on a regional and international level,
>
> - prohibiting resale or export in the EEC of woodpulp sold to European customers.
>
> "The practices affected some 60% of the total consumption of bleached sulphate woodpulp in the EEC. The impact on this market, worth about 4 billion ECU per year, and on the European paper makers, who depend on imported woodpulp as raw material for their production, was very considerable."

With reference to the firms' undertaking to invoice at least half their sales in the local currency of the buyer, the press release states:

> "The use of a greater number of local currencies in the EEC is likely to reduce substantially the artificial transparency of this market and thus make future concertation on prices much more difficult. In the eyes of the Commission, this concession justifies a substantial reduction of the fines imposed on these producers."

The Commission has made little reference to evidence of an agreement among the producers such as would be required to obtain a

conviction in a domestic case under the U.S. or Canadian antitrust laws. Rather, the case seems to have focussed essentially on conscious parallelism.

Pulp is sold largely under long term contracts according to which prices are established by the seller to take effect at the beginning of each calendar quarter. To constrain the seller's pricing power, the contracts frequently contain a clause entitling the buyer to the lowest price at which the seller sells to any other buyer in that market. Canadian West Coast contracts also usually require the seller to meet any lower price offered to the buyer by any other large West Coast supplier. The Finns, Swedes and Americans sell through their respective trade associations but the Canadians do not. The sellers' quarterly price announcements to their respective customers quickly become generally known in the trade.

One effect of the system has been highly uniform world pulp prices quarter by quarter, and EEC officials have inferred the existence of concerted action. For their part, the producers deny concerted action and contend that the market is highly competitive. They point to chronic excess capacity, technological obsolescence and increasing competition from the southern regions of the world.

U.S. JUSTICE DEPARTMENT RELEASES VERTICAL RESTRAINTS GUIDELINES

The United States Department of Justice released its Vertical Restraints Guidelines on January 23, 1985. They focus primarily on the Department's enforcement policies respecting territorial and customer restraints and exclusive dealing; they contain a separate section on enforcement policy respecting tying arrangements. The policies are quite permissive by earlier standards, reflecting trends in court decisions and the views of the present administration.

The Guidelines do not deal with resale price maintenance, which the courts have held to be illegal per se. The Guidelines also exclude restrictions in intellectual property licenses on the ground that the rule of reason analysis in such cases may be "even more lenient" than those set out. The Guidelines state:

> "Unless restrictions in intellectual property licenses involve naked restraints of trade unrelated to development of intellectual property, or are used to coordinate a cartel among the owners of competing intellectual properties, or suppress the creation of or development of competing intellectual properties, the restrictions should not be condemned."

With regard to the restraints covered by the Guidelines, the accompanying press release points out that the Supreme Court in Continental

T.V. Inc. v. GTE Sylvania Inc., 433 U.S. 36, 54-37(1977) held that the legality of a vertical restraint in each case depends on its economic effect, assessed under the antitrust rule of reason standard. The press release states:

> "The courts have been applying the rule of reason standard required by the Supreme Court to the facts of individual cases, but the exact coverage of the law in this area remains somewhat uncertain. As a result, businesses may be deterred from using procompetitive vertical practices by the prospect of long and costly litigation and uncertain results, to the detriment of the economy."

The Guidelines adopt a two-stage approach for analyzing vertical restraints. Using a number of specially designed measures of market structure, the first step will be to screen out the use of vertical restraints by firms with less than a ten percent market share, by firms operating in unconcentrated markets, or by firms a significant share of whose capacity or sales is not subject to vertical restraints. The vast majority of cases are expected to pass those tests. For those that do not, the Department will apply a "structured rule of reason analysis; the press release states:

> "Under the structured rule of reason, the Department first will ask whether it is easy to enter the market for supplying or distributing the product under restraint. If entry into both the supplier and dealer markets is easy, anticompetitive collusion and exclusion are not possible, and the restraint under study will be presumed legal. If, however, entry into supply or distribution is difficult, the Department will analyze other factors bearing on the likelihood that the restraint is anticommpetitive rather than procompetitive. Such factors include the degree of concentration in the markets under study, whether conditions in these markets are conducive to collusion, the extent to which a restraint is exclusionary, whether there is evidence of intent to exclude or collude, whether new or small firms use the restraint, and whether the firms engaging in the restraint can identify credible procompetitive efficiencies from the practice. If, on balance, these factors suggest that a vertical practice is not anticompetitive, it will not be challenged."

The focus, according to the Guidelines, will be on the effects on interbrand competition rather than on competition among dealers of only one manufacturer's brands.

With regard to tying arrangements, the Department will screen out those where the party imposing the tie has a market share of thirty percent or less in the market for the tying product unless the arrangement unreasonably restrains competition in the market for the tied product. The second stage analysis is described in the Guidelines as follows:

> "If the market share in the tying product is over thirty percent, the Department will attempt to determine whether the seller has 'dominant' market power. Where the seller has dominant power, and the other factors necessary to find a per se violation are present, a tie will be considered per se illegal. In those situations where dominant market power is not present, the Department will apply a rule of reason analysis. Employing this analysis, it will only challenge those ties that unreasonably restrain competition in the tied product market, taking into account the competitive considerations previously described."

The Guidelines will undoubtedly be debated at length before congressional hearings and elsewhere.

PUBLICATIONS RECEIVED

John R. Baldwin, Paul K. Gorecki and John S. McVey, Imports, Secondary Output, Price-Cost Margins and Measures of Concentration:Evidence for Canada, 1979, Economic Council of Canada, Discussion Paper No. 263, Ottawa, 1984. The authors summarize new measures of concentration in 140 Canadian manufacturing industries for the year 1979 which contain two significant statistical refinements of census data not hitherto available.

The first adjustment concerns shipments by an industry of products which are the primary products of another industry. On average, about ten percent of an industry's shipments are of that category. The data used by the authors assign those secondary shipments to the industry of which they are primary products. As it turns out, this adjustment does not result in a substantial change in the overall level of concentration in manufacturing.

The second adjustment concerns imports. Previous studies have either ignored imports or have classified all manufactured imports to the appropriate industries. The problem with the latter approach is that a significant proportion of imports of a particular class may in fact consist of imports by the domestic producers of that class of product, whether for further processing or to fill out their product lines. In other words, such imports do not in fact compete with domestic shipments. The data presented by the authors take advantage of recent work by Statistics Canada which enables imports by a firm of products primary to that firm to be deducted from total imports of that class of product. As it turns out, that refinement results in substantial differences in overall concentration measures as compared with data which exclude imports and with data which include all manufactured imports.

Taking the two adjustments together, the authors find, for example, that the average four-firm concentration ratio in 1979 was 42.7 compared to a ratio of 52.6 with data which take no account of secondary products or imports. Also, since imports as a percentage of GNP have been rising, the authors