providing a simple, flexible and low cost satellite communication facility to deliver Basic News Packages to the Canadian electronic media". EN's function was not to be the preparation of news packages but only their delivery to its members by satellite. At the time of EN's establishment, BN had not yet developed its own satellite delivery system. The Director states:

> "15. EN entered into negotiations with the Respondent, BN, in January of 1984 in an effort to obtain access to the Basic BN News Packages for the purpose of delivering the Basic BN News Packages to those EN shareholders which, by means of contracts with BN, are entitled to receive such Basic BN News Packages.
>
> 16. Despite requests therefore, the Respondent, BN, has refused access to EN of the Basic BN News Packages for delivery by EN to EN's shareholders who are also subscribers to the appropriate Basic BN News Package, thereby impeding the entry and expansion of EN in the market."

The Order which the Director seeks would require BN to price and sell its News Packages separately from its delivery services. BN has not yet replied to the Director's allegations, and a last-minute settlement is always possible in proceedings of this kind.

COMBINES ACT HOCKEY INQUIRY DISCONTINUED BY DIRECTOR

National Hockey League President John Ziegler announced on December 10, 1985 that he had been notified of the discontinuance of the Combines Act inquiry into the League. The Director of Investigation and Research has informed Consumer and Corporate Affairs Michel Côté that the evidence obtained in the inquiry would not support allegations of misconduct, and the latter has agreed to the discontinuance.

The inquiry, which related a suspected monopoly offence, was launched in 1983 following the refusal of the League's Board of Governors to approve the transfer of the St. Louis Blues franchise to Saskatoon.

FOREIGN AND INTERNATIONAL

PRESIDENT REAGAN SENDS ANTITRUST REFORM PROPOSALS TO CONGRESS

Attorney General Edwin Meese and Secretary of Commerce Malcoln Baldrige revealed at a press conference on February 19 the details of the President's antitrust reform package. The proposals, which have been sent to Congress in five separate bills, reflect the administration's view that the antitrust laws have impeded industrial restructuring of the kinds required to meet foreign competition. Merger law would be made more permissive and industries

hurt by imports could seek a limited five-year antitrust exemption for mergers, the courts would be required to take more account of the concerns of foreign jurisdictions in international antitrust cases, the prohibition of anti-competitive interlocking directorates would be modified, and the provisions for treble damages awards would be narrowed. Strong oppostion to some of the proposals is expected in Congress.

A proposed Merger Modernization Act of 1986 would amend S.7 of the Clayton Act to reduce its reach substantially. The main provision of existing s.7 now is.

> "...no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

It is proposed to change the underlined portion above to the following:

> "...there is a significant probability that the effect of such acquisition will substantially increase the ability to exercise market power."

Amendments along the same line are proposed elsewhere in the Section, and the following new paragraph would be added:

> "For purposes of this section, the ability to exercise market power is defined as the ability of one or more firms profitabily to maintain prices above competition levels for a significant period of time. In determining whether there is a significant probability that any acquisition will substantially increase the ability to exercise market power, the court shall duly consider all economic factors relevant to the effect of the acquisition in the affected markets, including (i) the number and size distribution of firms and the effect of the acquisition thereon; (ii) ease or difficulty of entry by foreign or domestic firms; (iii) the ability of smaller firms in the market to increase production in response to an attempt to exercise market power; (iv) the nature of the product and terms of sale; (v) conduct of firms in the market; (vi) efficiencies deriving from the acquisition; and (vii) any other evidence indicating whether the acquisition will or will not substantially increase the ability, unilaterally or collectively, to exercise market power."

Another proposal, The Promoting Competition In Distressed Industries Act, would amend the Trade Act of 1974 which now allows the President to impose remedies such as tariffs or quotas to relieve industries found

by the International Trade Commission to have been seriously injured by imports. The amendment would provide, as an alternative remedy, for the granting of an exemption from the antitrust laws as they apply to mergers for a maximum of five years. The exemption would apply "unless there is a significant probability that such merger or acquisition would substantially increase the ability of the resulting firm profitably to maintain prices above competitive levels in such market for a significant period of time".

A proposed Foreign Trade Antitrust Improvements Act of 1986 would amend both the Sherman and Clayton Acts to expedite and clarify the manner in which the interests of foreign nations are to be taken into account by courts considering private cases brought under the antitrust laws. The bill instructs the courts to dismiss such cases when the exercise of jurisdiction would be unreasonable, taking into account the following six exclusive factors:

> "(1) the relative significance, to the violation alleged, of conduct within the United States as compared to conduct abroad;
>
> (2) the nationality of the parties and the principal place of business of corporations;
>
> (3) the presence or absence of a purpose to affect United States consumers or competitors;
>
> (4) the relative significance and foreseeability of the effects of the conduct on the United States as compared with the effects abroad;
>
> (5) the existence of reasonable expectations that would be furthered or defeated by the action; and
>
> (6) the degree of conflict with foreign law."

The bill also amends the Clayton Act to make it clear that the doctrine of forum non conveniens is applicable in antitrust cases. An official news release comments on the bill as follows:

> "In fact, the courts are already applying many of these principles. However, court decisions on antitrust cases are uneven and administrative officials believe that until the antitrust laws are clarified, businesses will not take many actions that can make them more competitive in world markets."

A proposed Interlocking Directorate Act of 1986 would amend Section 8 of the Clayton Act, which now prohibits interlocks of competing corporations where any of those corporations has capital, surplus and undivided profits exceeding one million dollars. The threshold has not been changed since 1914, and the bill raises it to $10 millions for each of the merging firms, and indexes the threshold to gross national product. There would also be exemptions

where the competitive overlap is small or the companies' sales are less than three percent of the relevant market.

A proposed Antitrust Remedies Improvement Act of 1986 would make significant changes in the antitrust law remedies provisions by amending the Clayton Act. At present, provision is made for recovery of treble damages by successful plaintiffs in nearly all private antitrust suits; the U.S. government is limited to actual damages when it succeeds in a suit. The bill would limit recovery of treble damages to cases where the plaintiff has been "overcharged or underpaid". That would restrict treble damages recovery largely to price fixing and bid-rigging cases. Many treble damages awards now involve predatory and distributional practices, which the present administration regards as potentially procompetitive. However, the bill would authorize the U.S. government to claim treble damages in cases where it has been overcharged or underpaid.

Another change proposed by the bill would discourage frivolous private suits. It would permit "substantially prevailing defendants" to recover costs and legal fees where the court determined that the plaintiff's claim was "frivolous, unreasonable, without foundation, or in bad faith".

The bill also addresses a problem which is often described as the "whipsaw" effect. Part of the cost of the damage caused by a defendant who settles out of court may eventually have to be borne by one who has refused to settle. The bill provides for claim reduction after a defendant settles so as to relieve nonsettling defendants of any liability for the conduct of the person who settled.

BRITISH TELECOM'S PURCHASE OF MITEL CLEARS ALL HURDLES

An agreement with the U.K. government on the conditions under which British Telecommunications PLC may purchase 51 percent control of Mitel Corp. was announced by the companies on February 21. Approval by Investment Canada was announced on February 26.

A report by the U.K. Monopolies and Mergers Commission had recommended against the purchase unless British Telecom stopped selling Mitel products in the U.K. for three years. However, the Trade and Industry Secretary decided to approve the purchase on somewhat less stringent terms. Acccording to Richard Blackwell in the Financial Post of March 1, the following are among the undertakings of British Telecom:

> "- British Telecom is restricted to using or selling existing Mitel products at the levels of 1985. This will be in effect until the end of 1988 when it will be reviewed.
>
> - BT can sell new products from Mitel, providing they amount to 15% or less of the British market or 50% of the sales level of existing products, whichever is higher.

- No cross subsidization between BT and Mitel products is allowed. The two companies' operations must be completely separate.

- Mitel must bid for any equipment sales to BT, through an open tendering process."

The acquisition posed a dilemma for British policy makers. On the one hand, they would welcome the emergency of British Telecom as Britain's world class competitor in information technology, and Mitel's position in the market for private branch exchanges (PABX's) might be of some assistance in that regard. On the other hand, British Telecom is already by far the dominant British producer of PABX's, and there is concern that the further vertical integration of British Telecom will damage competition by placing British competitors such as G.E.C. and Plessey at a disadvantage. Moreover, the Monopolies and Merger Commission noted the recent financial and technological difficulties experienced by Mitel and expressed reservations about how valuable the acquisition would prove to be for British Telecom. London's Financial Times of February 4 editorialized:

> "It looks as though the Trade and Industry Department has fallen between two stools. The Mitel decision may not contribute to the creation of a viable national champion yet it will almost certainly reduce competition in the domestic PABX market. In the longer term...the only way to guarantee domestic competiton may be to require BT to set up a wholly separate subsidiary to sell office equipment, if not divest this part of its business entirely."

U.K. LAW LORDS TERMINATE COPYRIGHT ROYALTIES ON CAR REPLACEMENT PARTS

A decision by Britain's highest legal authority has brought to an end the practice by automobile manufacturers of charging royalties under the Copyright Act on production of replacement parts by independent manufacturers (British Leyland Corporation Ltd. v. Armstrong Patents Co. Ltd., House of Lords, February 27, 1986).

The parts at issue were two lengths of muffler pipe. They were not eligible for protection either as a patentable invention or under the Design Copyright Act of 1949. However, by previous judicial interpretations in lower courts of a 1956 amendment to the Copyright Act, functional products made from copyrighted design drawings have copyright protection. On that interpretation, car manufacturers and other producers of standard products have been charging royalties on replacement parts. Moreover, copyright protection lasts for fifty years after the death of the designer, a span of time that could easily be one hundred years.