

## AN INTERVIEW WITH CAL GOLDMAN: IMPLEMENTING THE NEW COMPETITION ACT

### IMPLEMENTING THE NEW COMPETITION ACT: A LOOK INSIDE THE BUREAU

The new Director of Investigation and Research, Calvin S. Goldman, and the Competition Bureau are hard at work on getting things into shape for full implementation of the new provisions of the *Competition Act*. With the exception of the merger prenotification requirements, the new provisions came into force on June 19, 1986.

Mr. Goldman, in an interview with the Competition Policy Record, discussed the range of implementation activities that the Bureau is currently undertaking.

"We are following a comprehensive implementation plan that has involved internal staff training, development of new procedures, elaboration of policies on compliance and interpretation, development of regulations for the yet-to-be-proclaimed merger prenotification provisions, and extensive public communications activities", he said.

The Bureau's implementation plan has also included an examination of the physical and human resource requirements as well as any necessary modifications to its security procedures to ensure that the provisions of the new legislation are implemented as effectively as possible.

According to Mr. Goldman, the Bureau is continuing to develop the analytical approach to be used in evaluating cases. The Bureau has teams working on a variety of areas including mergers, prenotification procedures, investigatory powers and procedures, abuse of dominant position, specialization agreements, banking, and crown corporations. The teams' work involves review of U.S. and foreign experience, relevant studies, and jurisprudence.

### Private Sector Consultants Assisting

To supplement the Bureau's own knowledge, outside (private sector) consultants and experts in various fields have been called in to assist with the implementation work.

Involvement of private sector expertise may become more commonplace in the future, according to Mr. Goldman. He believes that the complex nature and scope of the new cases that will have to be addressed by the Bureau and by the Competition Tribunal, may necessitate increased use of private sector consultants such as lawyers, accountants, and other business experts.

## CANADIAN COMPETITION POLICY RECORD

### **Private Sector Advisory Group Possible**

But input from private sector sources is not going to be limited to specific enforcement activities. Mr. Goldman is considering establishing an advisory group to the Director, made up of selected individuals from various sectors of the Canadian community. "Such a group could provide the Bureau with their perceptions of how effectively the legislation is being implemented and provide advice regarding areas they would like us to focus on in that regard", said Mr. Goldman.

### **Merger Prenotification Provisions for Early 1987**

A major area of the implementation work is, of course, the merger prenotification provisions which have not yet been proclaimed. The Bureau is in the midst of working with the Department of Justice and private sector legal and accounting consultants on the prenotification regulations and procedures. Under the provisions of the Competition Act, the regulations must be prepublished in the Canada Gazette at least 60 days before they are to come into effect. Mr. Goldman advised the Competition Policy Record that preparation of the regulations is proving to be a challenging task. He expects that, taking into account the statutory notice and comment period, the prenotification provision should be in force "as early as possible in 1987".

### **New Approaches to Compliance**

Another area being studied by the Bureau is the scope of its Compliance Program. In addition, consideration is also being given to possibly making

greater use of enforcement alternatives such as negotiated settlements. The Bureau is linking its work in this area with the Decriminalization and Compliance Enhancement Project of the Department of Justice which promotes and advises on innovative approaches to obtaining compliance with federal legislation.

In his recent speeches, Goldman has been stressing the Bureau's Compliance Program. He reiterated the importance he places on this, stating, "In view of both the statutory provisions, such as the ones pertaining to advance ruling certificates and consent orders, and the consideration we are giving to enhancing the program of compliance, we are certainly prepared to meet with members of the business community at a very early stage to discuss and attempt to resolve, if possible, the ways a proposed corporate plan may go forward without giving rise to contravention of the Competition Act."

The Bureau appreciates the need for a quick response to enquiries under the Compliance Program and the importance of keeping it responsive to the needs of the business community. "We will attempt to respond to enquiries from businesses under the Program of Compliance as quickly as possible, with preliminary opinions -- even on a 'no-name' basis", said Goldman. "In other words, we will deal with hypotheticals -- with appropriate caveats", he added.

Goldman took pains to make it clear, however, that it would be a mistake for the business community to assume that the Director's willingness to talk about things in certain cases, meant that the Director would be "soft" on enforcement generally. "We are certainly prepared to discuss ways and means of ensuring compliance with the legislation before conduct has occurred. In addition, even after certain conduct may have occurred,

## CANADIAN COMPETITION POLICY RECORD

we will be prepared to consider enforcement alternatives such as negotiated settlements in certain appropriate circumstances. But this should not and will not detract in any way from the vigorous manner we will proceed to enforce the legislation in cases where we find that the conduct in question is of a nature that requires the matter to proceed to the courts or the Tribunal in the ordinary course", he stated.

To illustrate the point, Goldman referred to the approach he would take with conspiracies under the new legislation: "If we determine in the course of an inquiry that the elements of a section 32 conspiracy have occurred, we will not hesitate to recommend that the matter proceed to a prosecution in an expeditious and effective manner."

"The new legislation provides us with stronger statutory means to address specific anti-competitive conduct in the Canadian economy. We will be addressing these issues in a fair, reasonable, and effective manner in order to achieve the legislative intent of those provisions", he said.

### **Emphasis on Public Communications**

The Bureau is continuing its reliance on speeches, papers, workshops, conferences, etc. to inform the business community about the new requirements of the Competition Act. The Director has been delivering speeches across the country on a continuous basis and the Bureau is actively seeking opportunities to spread the word. Information and Education activities are recognized as integral parts of the Bureau's overall efforts to ensure compliance with the legislation and a new communications strategy reflecting this orientation is being

developed as part of the implementation work.

Mr. Goldman indicated that some of the work being done by the implementation teams might ultimately find a broader audience. "The analyses our teams are preparing could form the basis for possible interpretation bulletins or guidelines that are being considered for publication", he said. "We are actively considering going ahead with broader and more regular dissemination of information material in order to assist the public's understanding of the approach that the Bureau is taking with the new legislation", he added.

Mr. Goldman's concluding remarks in the interview with the Competition Policy Record provide a good sense of where the Competition Bureau will be heading, and how it will be operating: "The Director will be playing a role in a good number of major business transactions where the Director has not had a mandate to intervene previously. This is a very challenging role that will have to be handled in a knowledgeable and careful manner to ensure that the intent of the legislation is properly carried out. I and other members of the Bureau are doing everything we can at this stage to enable us to fulfil that mandate and responsibility."