

OUTSIDE THE COURTSCOMPETITION DIRECTOR OFFERS
GUIDELINES FOR EXPORT ASSOCIATIONS

Mr. R.J. Bertrand, Director of Investigation and Research under the Combines Investigation Act, in an address to the World Trade Committee of the Vancouver Board of Trade on February 15, has listed standards of conduct to which he suggested export associations should adhere in order to comply with the Act. He stated:

"I would suggest that to remain in compliance with the Combines Investigation Act an export association should adhere to the following standards of conduct:

- (1) An export association should not engage in any actions which may serve to reduce the volume of exports from Canada.

Obviously to offend this standard would be in direct contravention of subsection 32(5)(a) and would mean almost certain loss of the exemption.

- (2) An export association should not represent itself to foreign buyers as the sole Canadian exporter of a product.
- (3) An export association should not arbitrarily deny supply to Canadian non-members.
- (4) An export association should not require compulsory membership.
- (5) An export association should not in any way impede the entry of new producers or potential exporters.
- (6) An export association should not discriminate in any way against any Canadian firm or individual.

Standards (2) through (6) correspond generally subsections 32(5)(b) and 32(5)(c) which are concerned with restrictions placed upon or injury done to domestic competitors of the cartel.

- (7) An export association should not enter into restrictive agreements with non-members.

- (8) An export association should not enter into agreements with cartels in other countries for the purpose of setting world prices or allocating markets.
- (9) An export association should take no action which may serve to limit or impede the import of products ~~from~~ ^{to} Canada.
- (10) An export association should not accept foreign members.
- (11) An export association should not engage in any action which may serve to artificially or intentionally affect competition or prices in the domestic market.
- (12) An export association should not restrict the use of patents or innovative processes by its members or non-members.

These latter standards provide examples of how subsection 32(5)(d) might be offended."

The Director recalled complaints by exporters that the exemption for export agreements is too narrow. In particular, agreements might offend the Act by unintended and ancillary effects on the domestic market. Also, a price increase might reduce export volume and thereby lose the exemption in subsection 32(5)(a). He outlined ways in which these criticisms might be met along the lines of what had been proposed in the Stage II amendments in 1977.

COMPETITION DIRECTOR'S ANNUAL REPORT
CALLS FOR LEGISLATIVE ACTION ON
SHARED MONOPOLY AND MERGERS

The annual report of the Director of Investigation and Research under the Combines Investigation Act for the year ending March 31, 1979 was tabled in the House of Commons on April 15, 1980. The report would normally have been presented last autumn and its delay was probably due to the prorogation of Parliament for the election.

The Report refers to the difficulties experienced by independent heating oil and gasoline distributors or resellers through declining margins and describes efforts by the Department of Energy Mines and Resources and the Bureau of Competition Policy to assist them. The Director states:

"Some of the shortcomings of the current Combines Investigation Act as it applies to predatory and exclusionary price squeezes emerged in the course of responding to these problems. As the Minister and Director have pointed out in discussions with, or speeches to members of various industries, the joint-monopolization provisions contained in the Stage II proposals to revise competition policy legislation were designed to deal with predatory and exclusionary price squeezes. It was brought to their attention that had the proposals been in force, the Director would have had the authority to apply to a specialized board for an order to give relief to the victims of such squeezes. Circumstances similar to those in the petroleum industry exist in other industries such as corrugated box converters, concrete products, tires, structural and steel shapes and forestry products. The proposed amendment on joint-monopolization was intended to overcome the weaknesses in the present legislation, which prevent rectification or formal review of instances that are as anti-competitive as those allegedly affecting not only the independent resellers in the petroleum industry but also members of other industries who are victims of similar practices."

The Director also discusses the implications for competition of the number of large mergers which occurred. He states:

"The merger provisions of the present Act have again proved inadequate to cope with the situation...

...In so far as particular industries are concerned, mergers among competitors change the very structure of the industry, making subsequent structural changes almost unfeasible and the enforcement of the Combines Investigation Act increasingly difficult. Canadians should realize the dangers of increasing economic power in the hands of a few, especially when this power is acquired through mergers among competitors and is not the result of active competition whereby a firm gains market power by being more efficient than its rivals."

COMPETITION BUREAU BUDGET DOWN SLIGHTLY IN REAL TERMS

The estimates for 1980-1 provide for total expenditures by the Bureau of Competition Policy of \$8,955,000 compared with estimated expenditures during 1979-80 of \$8,943,000. Person-years authorized are 239 compared with 258 for the previous year.

CANADIAN COMPETITION POLICY RECORD

RESTRICTIVE TRADE PRACTICES COMMISSION SCHEDULES PUBLIC HEARINGS ON THREE ISSUES

Hearings before the Restrictive Trade Practices Commission in respect of the Telecommunication Equipment Inquiry, the first of which was held in June, 1977, are expected to continue through June, 1980. It is a general inquiry under section 47 of the Combines Investigation Act. In his Statement of Material of December 20, 1976, the Director of Investigation and Research concluded that the vertical integration between Bell Canada and Northern Electric (now Northern Telecom) appeared contrary to the public interest.

A hearing with respect to Bombardier Limitee - Bombardier Limited (snowmobiles) is scheduled to be resumed for the one day of June 9 and hearing of argument is expected during the week beginning June 16. This relates to an application by the Director of Investigation and Research pursuant to section 31.4 of the Combines Investigation Act for an order that would require Bombardier to cease the practice of exclusive dealing in their snowmobile products and to resupply specified snowmobile dealers that the Company had cancelled for carrying a competing line of snowmobiles.

A hearing in respect of Imperial Oil, Petrofina and K.C. Irving was scheduled for the week beginning May 26, 1980. This relates to an application by the Director of Investigation and Research pursuant to section 31.2 of the Combines Investigation Act for an order that would enable Perrette Dairy, a chain of convenience stores in the Province of Quebec, to obtain supplies of gasoline.

CANADIAN MANUFACTURERS' ASSOCIATION AFFIRMS POSITION ON COMPETITION POLICY

The C.M.A., in a discussion paper entitled "Trade-Offs; crucial economic Choices", released in February, 1980, takes the following position on competition policy:

"There has been a great deal of controversy over this policy for a decade and there is a general view that industry opposes competition legislation. This is not the case. We believe, however, that the previous legislative proposals did not achieve the objectives of promoting dynamic market forces in the economy, minimizing bureaucratic fine-tuning and limiting intervention to the restraint of abuses of market power which prevent the achievement of real cost economies. It is particularly important that the overall legal framework for carrying out business in Canada be practical and workable and that issues such as monopolization, price discrimination, mergers, etc. be satisfactorily

resolved in the coming legislative proposals. We have made specific detailed proposals to this end in a number of submissions."

FOREIGN AND INTERNATIONAL

UNITED NATIONS CONFERENCE APPROVES SET OF PRINCIPLES AND RULES FOR CONTROL OF RESTRICTIVE BUSINESS PRACTICES

The Second Session of the United Nations Conference on Restrictive Business Practices has completed and approved A Set of Multilaterally Agreed Equitable Principles and Rules For The Control Of Restrictive Business Practices Having Adverse Effects On International Trade, Particularly That Of Developing Countries, And On The Economic Development Of Those Countries. The code, the full text of which is appended hereto, will be presented to the United Nations General Assembly in the autumn for adoption as a resolution. The agreement culminates five years of negotiation within the United Nations Conference on Trade and Development (UNCTAD).

The code includes recommended standards of conduct for enterprises, and its reception by the business community will have an important bearing upon its overall impact. Prior to the Second Session, the International Chamber of Commerce issued a paper outlining its views on the draft code as it stood at that time. The paper called for a number of changes including some which were described as minimum conditions. Those conditions and the treatment of the relevant issues in the final code were as follows:

"(1) The code should contain an express statement that its provisions are voluntary and non-mandatory." The Preamble "Transmits to the General Assembly at its thirty-fifth session this Set of Principles and Rules, having taken all decisions necessary for its adoption as a resolution;". According to the U.N. Charter, resolutions of the General Assembly constitute recommendations.

"(2) Section E 3 should be amended to require 'non-discriminatory' treatment of enterprises." The section was amended to call for treatment "on the same basis to all enterprises".

"(3) With respect to transactions and relationships between affiliated enterprises, a general exemption of affiliated relationships and behaviour...must be added." Para. (a) of the footnote to D 4 was enlarged by the addition of "such as in the context of relations within an economic entity and not having restrictive