REGULATORY DEVELOPMENTS

COMPETITION GAINS GROUNDS IN PROVINCIAL NATURAL GAS MARKETS

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The cautious approach which some provinces have taken to opening up natural gas markets has been replaced by a clear trend toward freer, more open market access for all end-users and suppliers.

The British Columbia Utilities Commission, in a March 11, 1993 decision, has established new rules for direct purchases of natural gas. British Columbia's previous policy had required commercial and residential customers to maintain a gas supply portfolio with an average rolling 5-year term for process loads and 15-year term for residential heating loads. The restrictive conditions had the effect of rendering direct purchases by residential end-users uneconomic. No residential end-users purchase gas directly under this policy. The new rules require only a 4-year gas supply contract backed by a commitment in the form of dedicated reserves and deliverability or a corporate warranty. Provision must be made for backstopping. The objective of the rule is to balance a traditional concern for supply security and reliability, particularly as they relate to residential customers who use natural gas for heating, with the obvious benefits derived from competition.

The Manitoba Public Utilities Board has also revised its policies in a September 3, 1991 decision. In accordance with this decision, all classes of customers may participate in the direct purchase of natural gas at their own risk. Brokers are required to have a 2-year rolling supply portfolio supported by transportation arrangements and daily deliverability assurances for residential and commercial users requiring natural gas primarily for space heating and no fuel-switching capability.

Ontario has permitted open access for direct sale to all customers since the beginning of natural gas deregulation. Direct marketers in Ontario recently agreed to maintain 3-year rolling supply arrangements for residential and small commercial customers. Consumer protection issues in Ontario have also led to the development by direct marketers of a standardized agency agreement and standard disclosure statement to ensure that core customers are aware of the benefits and risks of direct purchase. The direct marketers have also established a Code of Conduct which the B.C. Utilities Commission has adopted for use in British Columbia.

Hearings have recently been completed in Quebec to review Quebec's direct marketing policies. The Alberta Government also recently invited submissions on its policies concerning direct purchases in the Alberta market.

The reasons for these changes are simple. Restrictive policies denied some segments of the market access to direct sales. Meanwhile, the other segments of the market with such access have enjoyed the benefits of lower prices, increased choice among suppliers and increased supplier responsiveness to customer needs. The market has worked and the supply security and reliability concerns which formed the basis of protecting certain segments of the market, particularly the residential and commercial segments, are becoming difficult to maintain in the face of consumer pressure for the benefits of competition. The traditional concern for supply security and reliability remains but that concern is reflected in more realistic requirements for underlying supply portfolios and is becoming less of an excuse to impose economic impediments to direct sales.

Competition is not by any means perfect. Regulated utilities continue to supply gas under regulated rates to customers and traditionally have an obligation to supply such customers on demand, at least, to the extent of the supply which is available to them. This past winter when short-term natural gas prices increased and were above the average prices at which regulated local distribution companies sell gas, the local distribution companies found that customers were turning away from their direct purchases and returning to the system demanding supply. This has put the question of the rules governing returning customers squarely on the table, particularly in Ontario. Consideration of this issue may lead to consideration of other issues such as the continuing role of local distribution companies as regulated suppliers of natural gas, as distinct from simply transporters of gas, and the obligation of local distribution companies to supply natural gas.

TRANSPORTING CANADA INTO THE GLOBAL ECONOMY: AN INCREASING ROLE FOR THE *COMPETITION ACT*

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Background

The increasing globalization of trade and investment, the implementation of the *Canada-United States Free Trade Agreement* and the spectre of the *North American Free Trade Agreement* are forcing Canada and Canadian businesses to evaluate their international competitiveness and confront the challenge of adjusting structurally to the new competitive environment. It is within this context that the National Transportation Act Review Commission (the Commission) recently conducted its review of the *National Transportation Act, 1987* (the NTA).[1]

The *National Transportation Act* was revised in 1987 in response to the federal government's 1985 White Paper *Freedom to Move*.[2] The White Paper stated that "as the transportation sector matures, regulation should be relaxed and simplified to allow the system to respond to the changing needs of shippers and the travelling public". In order to ensure that this objective is fulfilled, section 266 of the NTA provides for a five-year review of the NTA.

Scope of Review

The Commission's mandate was to assess the impact of the NTA and related economic regulatory reforms affecting transportation; evaluate the state of competition in Canada's transportation sector;

examine impending issues; and determine whether the NTA is equipped to deal with present and future challenges.[3] The Commission acknowledged that, in conducting its review, it was faced with the difficult task of balancing the need to ensure Canada's ability to compete successfully in an international context with the power of transportation to unify the country.[4] The Commission recognized that an efficient transportation system is fundamental to keeping Canada competitive internationally and conceded that Canada's transportation industry "cannot be protected from domestic and international competitive pressures without paying a heavy price elsewhere in our economy, and at the cost of undermining of our export industries".[5]

Recommendations

General

The Commission concluded that the NTA has been successful in achieving its objective but makes several recommendations to improve competition in all sectors of the transportation industry on an ongoing basis. Several of the Commission's recommendations involve a greater role for competition policy in regulating behaviour in the rail, air and shipping sectors of the transportation industry. Some of the most significant recommendations regarding each of these sectors are discussed below.

In order to facilitate its review of the NTA, the Commission supervised numerous economic and legal research studies. One of these, *The Competition Act and Federal Economic Regulation of the Transportation Sector: A Comparative Assessment*[6] (the Assessment), discusses the administrative and jurisdictional overlap between the NTA and the *Competition Act*[7] (the CA) identifying several areas in which the NTA and the *Shipping Conferences Exemption Act, 1987*[8] (the SCEA) oust the jurisdiction of the CA in governing business conduct.

Administrative overlap occurs because the CA expressly applies to activities such as mergers, also covered by the NTA and SCEA. Part VII of the NTA grants authority to the National Transportation Agency (the Agency) to review certain acquisitions of Canadian transportation undertakings. A "Canadian transportation undertaking" is "any business or undertaking principally engaged in any transportation activity under the legislative authority of Parliament". The Agency must be notified of all proposed acquisitions which meet certain asset value or revenue thresholds. The Agency has authority to review proposed acquisitions which are notifiable only if it receives an objection to the acquisition. The Agency may disallow an acquisition on the basis that it is against the public interest.

The author of the Assessment perceives the NTA scheme as too sweeping and unnecessarily costly and recommends exclusive reliance on the better-developed merger provisions of the CA. However, it should be noted that, arguably, the Agency has greater scope to disallow a proposed merger than the Competition Tribunal which can only prevent or dissolve a merger on the basis that it prevents or lessens or is likely to prevent or lessen competition substantially. The Commission does not make any specific recommendations in this regard.

Jurisdictional overlap occurs in areas such as anti-competitive low pricing and other monopolistic practices in the rail mode. In several cases, the Commission recommends the repeal of legislative provisions which regulate transportation in favour

of the general application of the provisions of the CA, some of which are discussed below.

The Assessment predicts that continued deregulation in the transportation sector will continue to put pressure on the jurisdictional and administrative boundaries between the NTA (and the SCEA) and the CA.[9] The Commission reviewed the need for the NTA in light of the CA and considered how best to meet the objective of encouraging competition in the transport industry: through the CA or rules specific to the transport industry or sectors within it. The Commission heard evidence of shippers that, although they do not often use the provisions of the NTA designed to increase competition, the existence of such rules encourages fair bargaining on the part of carriers. The Commission noted that once carriers become accustomed to this bargaining process, competitive tools may no longer be necessary.[10] The Commission noted that "such *Competition Act* provisions as control of predatory pricing, abuse of dominant position, review of mergers and the consent order process may become more appropriate for ensuring competition in commercial transportation arrangements not yet foreseen" [11] The Commission concluded that anyone who recommends special procedures to encourage competition in any transport sector should be required to establish that the CA provisions are insufficient for such purpose and that a transport-specific rule would better facilitate such objective.[12]

Rail

The Assessment argues that the predatory pricing provisions of the CA are procedurally inadequate to deal with this problem in the transportation sector and recommends that the provisions of the NTA which deal with this behaviour, referred to as the compensatory rail rates provisions, be retained. However, it is argued in the Assessment that the NTA threshold for actionability against low pricing is obsessively high and argues that the current compensatory rates standard discourages beneficial price competition and ensuing gains in supplier and customer efficiency. It is noted in the Assessment that the substantive principles set out in the Predatory Pricing Guidelines[13] (the PP Guidelines) are more consistent with economic theory and provide the maximum scope for truly pro-competitive low pricing. Accordingly, it is recommended in the Assessment that the predatory pricing thresholds of the CA be incorporated into the NTA provisions.[14]

Under subsection 112(2) of the NTA, a railway may only charge a "compensatory rate" for transport services. A "compensatory rate" is one which is greater than the variable cost to the railway of transporting the goods. Five cases of non-compensatory rates have been brought before the Agency since 1988, which is statutorily required to disallow such rates; none was found to have been intended to lessen competition or harm a competitor.[15]

The PP Guidelines define predatory pricing as "a situation where a dominant firm charges low prices over a long enough period of time so as to drive a competitor from the market or deter others from entering and then raises prices to recoup its losses".[16] The predatory pricing provision of the CA requires that the prices charged be "unreasonably low". The PP Guidelines state that a price set below the average variable cost of the alleged predator is likely to be regarded as "unreasonably low" by the Director unless there is clear justification for such price, such as the need to sell off perishable inventory.[17] Accordingly, there is some scope for selling at below

average variable cost under the CA which is not present under the NTA provisions, although the difference between the standard imposed by the NTA provisions and the PP Guidelines is not as great as suggested in the Assessment.

It has been suggested by the Bureau of Competition Policy (the Bureau) that the compensatory rates provision has sometimes caused the railways to set higher, less competitive rates to avoid the possibility of an inquiry under the NTA which puts them at a disadvantage in relation to other modes of transport that are not subject to such control.[18]

In submissions to the Commission, the concern was expressed that if the compensatory rate provision is abolished, railways would raise rates for captive shippers in order to recoup losses from below-cost rates in very competitive markets. The Commission did not accept these concerns as justified. It found that the CA provides sufficient protection against predatory pricing in the rail market. Further, the CA applies equally to all forms of transport. Accordingly, the Commission recommended that the provisions of the NTA concerning compensatory rates be repealed.

Airline

Regulation of the domestic airline industry in Southern Canada was ended by the NTA.[19] However, in Northern Canada, the NTA still permits challenges to the entry of a new carrier provided the challenger proves that service to the region would be impaired. Further, basic economy fares can be reduced by the Agency if, acting on a complaint, it finds the fares unreasonable. The Commission found that air service in Northern Canada has improved since 1987 and did not recommend further government intervention despite submissions in that regard. Further, the Commission recommended that the provisions in the NTA regarding air service in Northern Canada be retained and reviewed in five years.[20]

The Commission does make several recommendations regarding national service. The Commission notes that the behaviour of Air Canada and Canadian Airlines International has caused inefficiencies in the industry in the form of excess capacity and higher prices for domestic travel.[21] The Commission suggests that the government should focus its efforts on maintaining competition and consumer choice. In this context, it has made two recommendations:

> 1. The definition of "Canadian" in section 67(1) of the NTA be amended, or the federal Cabinet exercise its present power contained in that definition, to alter the percentage of voting interests in air carriers owned and controlled by Canadians from 75% to 51%; and
>
> 2. In the event that restructuring in the domestic airline market results in a primary carrier monopoly, the federal Cabinet give policy directions to the Agency under section 23 of the NTA to license the granting of traffic rights within Canada to foreign carriers or to permit foreign carriers to establish operations within Canada.[22]

The Commission also notes that as carriers form international alliances and global networks, the central importance of a national airline is passing away but that airlines worldwide remain highly regulated and international air travel is governed by bilateral agreements between countries.[23] The Commission recommends that the federal Cabinet give a policy direction to the Agency to expedite its procedures for review of carrier applications concerning block space and code-sharing arrangements.[24] In addition, the Commission

recommends the liberalization of Canada-U.S. air bilateral arrangements.[25] Further, the Commission recommends that the government of Canada begin to lay the necessary groundwork for the development of multi-lateral trade agreements in air services.[26] The Commission also makes certain other recommendations which would facilitate access to international routes in order to reduce entry barriers to air carriers.[27]

As noted by the Commission, Canada's domestic airline industry is in financial difficulty. One of Canada's two national airlines, Canadian Airlines International Ltd. (Cdn.), a subsidiary of PWA Corporation (PWA), has incurred substantial losses over the past two years. Canada's other national airline, Air Canada (AC), offered to merge with PWA

PWA rejected AC's proposals. In the course of considering a related matter, the Competition Tribunal agreed that "the end result of [the failure of Cdn.] would undoubtedly be a substantial lessening of competition in most if not all airline passenger markets in southern routes in Canada".[28] The Commission also analyzed the possibility of a merger between AC and Cdn. and concluded that requiring divestiture of some or all of the regional carrier holdings of the merged entity would not be successful in counteracting any monopolistic effects of the merger.[29]

In its recent review of the proposed acquisition by Aurora Investments, Inc. (Aurora), a wholly-owned subsidiary of AMR Corporation, of a 25% interest in Cdn., and the proposed acquisition by Cdn. of an interest in Air Atlantic Ltd., Calm Air International Ltd. and Inter-Canadien (1991) Inc., the Agency echoed the views of the Commission, finding that, while there is inefficiency and excess capacity in the airline industry, the demise of one of the national airlines would not be in the interest of Canada and competition in the industry. In a decision released May 27, 1993,[30] the Agency concluded that the proposed acquisitions are not against the public interest and declined to disallow them under the provisions of the NTA.

As discussed above, the Agency has a mandate under the NTA to review certain acquisitions of Canadian transportation undertakings. In accordance with the provisions of the NTA, the Agency published notice of the proposed acquisitions and received 17 objections, from various parties including AC and other airlines. Accordingly, as required under the NTA, the Agency conducted a public hearing to determine if the proposed acquisition is in the public interest. Section 4 of the NTA defines "public interest" in part as the public interest that is consistent with the national transportation policy set out in subsection 3(1). National transportation policy includes the "... safe, economic, efficient and adequate network of viable and effective transportation services...". In considering public interest policy goals, the Agency must in addition to other requirements have "... due regard to national policy and to legal and constitutional requirements..."[31]

The primary legal requirement considered by the Agency is that found in Part II of the NTA which requires that persons holding domestic and certain international air licences must be Canadian. "Canadian" is defined as a "... Canadian citizen or a permanent resident within the meaning of the *Immigration Act*, a government in Canada or an agent thereof or any other person or entity that is controlled in fact by Canadians and of which at least seventy-five percent or such lesser percentage as the Governor in Council may by regulation specify, of

the voting interests are owned and controlled by Canadians..."[32]

The Agency assessed the voting interest to be purchased by Aurora and concluded that it would obtain a 25% voting interest and an approximate one-third economic interest in Cdn. However, the Agency found that Aurora's proposed economic interest in and of itself raises no concerns that Aurora would achieve control in fact of Cdn. After reviewing various provisions of the proposed agreements, the Agency concluded that Cdn. would continue to be controlled in fact by PWA and that 75% of Cdn.'s voting interest would continue to be owned and controlled by PWA. Accordingly, the Agency concluded that Cdn. would remain "Canadian" as defined in the NTA.

The remaining public interest factors considered by the Agency are competition, impact on international air services, impact on the Gemini Group Automated Distribution System (the Gemini System), employment impact, regional economic impacts, accessible transportation services, and safety and health concerns.

With respect to competition, the Agency considered the impact of the proposed transaction in the context of the national transportation policy which provides, in part, that a safe, economic, efficient and adequate network of viable and effective transportation services is essential to serve the needs of shippers and travellers and to maintain the economic well-being and growth of Canada and its regions.[33] The policy provides that these objectives are most likely to be achieved when all carriers are able to compete, both within and among the various modes of transportation, under a number of conditions including that "... competition and market forces are, wherever possible, the prime agents in providing viable and effective transportation services..."[34]

Air Canada and other airlines argued that the airline market in Canada is not improving and that the proposed transactions would not solve industry problems such as excess capacity. It was also argued that Canada can only sustain one international airline. The Agency concluded that it is probable that Cdn. will fail if the proposed acquisition and related transactions are not completed and a majority of its subsidiary feeder air carriers would also likely fail. The Agency noted that the proposed arrangements between Cdn. and Aurora cannot and should not be expected to solve all problems in the Canadian aviation industry and that saving Cdn. and its subsidiary companies from collapse is a worthwhile objective.[35] Further, the Agency did not accept that AC would be damaged by the proposed transactions and that AC "needs to solve its own problem".[36] The Agency concluded that competition and market forces should determine the future of the Canadian aviation industry. It also concluded that the demise of Cdn. would result in the disappearance of broad-based network competition in Canada.[37] As to whether Canada could sustain two domestic air carriers, the Agency concluded that this must be resolved by market forces and existing and future government policies. Accordingly, the Agency found that the survival of Cdn. will be of a major benefit to competition in Canada in keeping with the national transportation policy and accordingly the transactions are not against the public interest from a competition standpoint.

The Agency also found that the proposed acquisitions are not against the public interest in the context of

an international air services perspective, concluding that under current Canadian legislation regulations, it is not possible for AMR to gain control of the international and domestic routes of Cdn.[38]

With respect to the impact of provisions in the stock purchase agreement to be entered into by Aurora, Cdn. and PWA concerning the termination by PWA of the Gemini hosting contract or the dissolution of The Gemini Group Limited Partnership on the Gemini System, the Agency concluded that matters of termination relating to Cdn.'s participation in the Gemini System are matters of private contract and should be resolved by the parties themselves.[39]

The Agency also concluded that the proposed transactions are not contrary to the public interest in terms of employment impacts, regional economic impacts, accessible transportation services and safety and health concerns.[40]

Shipping Conferences

Shipping conferences, essentially cartels which regulate the rates charged and the conditions of service offered by member firms in liner shipping, have historically enjoyed broad exemption from competition laws in Canada. Canada's first shipping conferences legislation, introduced in 1970, provided that members of a conference could: (i) impose collective tariffs, (ii) implement loyalty contracts, (iii) allocate ports of call, (iv) regulate the scheduling of sailings, (v) regulate conditions of service, (vi) share cargo and profits and losses, and (vii) regulate membership in the conference. In 1979, the exemption for conferences was broadened by permitting agreements between members of the conferences and non-conference shipping firms and between members of different conferences.

Exporters' continuing dissatisfaction with the 1979 legislation and conference agreements, a political climate favouring deregulation and the implementation of U.S. legislation designed to make shipping conferences more responsive to the needs of users led to the enactment of the SCEA. The SCEA substantially narrowed the scope of the exemption from the provisions of the CA available to shipping conferences and included provisions designed to increase the likelihood of competition with respect to both rates and conditions of service. Confidential service contracts are now permitted between member firms and individual users, although the conference has the right to determine collectively the conditions upon which such contracts may be entered into. Individual conference members are also allowed to offer independent rates, provided they give notice and other conference members can opt to provide the same rates. There are new procedures for reviewing complaints and the availability of remedial measures where users are disadvantaged. In addition, the previous exemption for collusive agreements between conference members and non-conference firms was deleted. Finally, the exemption was made unavailable to conferences who engage, or conspire to engage, in predatory pricing and to conferences which collectively negotiate with inland carriers.

The Commission found that the effects of the reforms introduced by the SCEA have been less than anticipated because the shipping industry has changed and shipping conferences no longer have as much impact as they once did. The Commission noted that the rates set by conferences for a number of major commodities are below 1983 levels and that service has improved since 1988 as a result of the depressed shipping market and more competition from independent liners. As a result, legislative

provisions to encourage competition within conferences have not been extensively used. The Commission stated that it is opposed to the intent of the SCEA and that it is in conflict with the overall competitive thrust of the NTA. The Commission further stated that:

> ... exemption of shipping conferences from the prohibitions against the collective setting of rates runs counter to the general policy of encouraging competition. The Act legitimates a cartel and, unlike the situation in all other transport modes, shippers are unable to negotiate freely with individual carriers who are members of a conference. Canadian shippers are not happy with the exemption and disappointed with the limited success of the 1987 reforms. Shippers in Europe and the U.S. are also dissatisfied with current conference practices.[41]

While the Commission recommends the abolition of the SCEA, it believes that international action is necessary and that Canada should not repeal the SCEA until the U.S. and its trading partners are willing to act in concert. Abolition of the SCEA in the absence of contemporaneous action internationally might cause uncertainty in the industry until the jurisdiction of Canadian law and the application of the CA are tested in the courts. The Commission noted that if the SCEA is abolished, members of conferences might switch to U.S. ports, harming Canadian ports and carriers. Since independent lines are effectively competing with conference lines, there is no compelling reason for Canada to act alone. The Commission would encourage the federal government of Canada to actively promote the inclusion of shipping conference activity within the scope of competition laws by the international community.[42]

The House of Commons Standing Commission on Transport (the Committee) is presently studying the recommendations made by the Commission. The Committee was warned by Raymond Myles, Chief Executive Officer of Canada Maritime Services Ltd., that if Canada acts unilaterally to abolish the SCEA, "carriers would desert Canadian ports and Canada's foreign trade would be treated on a marginal basis by mega-carriers using U.S. ports".[43] The Canadian Shippers' Council and the Canadian Industrial Transportation League have argued that Canada should take the lead internationally in abolishing antitrust immunity for shipping conferences.[44] Federal Transport Minister Jean Corbeil has promised to propose such transport reform by the end of 1994.

It has been suggested that, without the SCEA, the conferences could continue to function like trade associations in compliance with the CA.[45] Whether the CA can be used effectively to govern price-fixing and other abusive behaviour of shipping conferences is debatable. Under the CA, Canadian authorities have jurisdiction to act to protect the competitiveness of Canadian markets. However, historically, Canada has taken a conservative attitude with respect to the jurisdictional reach of its own laws. The government of Canada has historically taken the view that effects-based jurisdiction is inconsistent with international law. However, there is some indication, at least on the part of the Bureau, that this attitude is changing. In a 1991 paper delivered by Mr. George Addy, Senior Deputy Director of Investigation and Research, Mergers Branch of the Bureau, Mr. Addy discussed the question of extraterritoriality and noted:

> A state's assertion of jurisdiction over acts, persons or things beyond its borders is limited by prohibitive rules of international law, the law of other states and its own domestic law. Unfortunately, there is considerable scope for disagreement over what international law is. **Even allowing for the principle of non-interference, international practise**

> **recognizes the right of states, in certain circumstances, to prohibit foreign conduct that causes harm on their territory.**[46] [Emphasis added]

Later, in the same paper, Mr. Addy concluded that:

> ...some extraterritorial reach may be essential in order to avoid allowing the transnational character of a business practise to remove it from the ambit of a state's law.[47]

Although the Bureau has not officially announced the position that it would take in respect of conduct which takes place outside Canada and that may substantially lessen competition in Canada, its practice in respect of such transactions strongly suggests that it is prepared to assert jurisdiction over such a transaction.[48]

Notes

1 R.S.C. 1985 (3rd Supp.), c. 28, as amended by R.S.C. 1985 (4th Supp.), c. 19, S.C. 1992, c. 21.

2 Transport Canada, *Freedom to Move: A Framework for Transportation Reform* (Ottawa, 1985).

3 National Transportation Act Review Commission, *Competition in Transportation, Policy and Legislation in Review*, Volumes I and II (Ottawa: Supply and Services Canada, 1993) Volume I at 1.

4 *Ibid.* at 2.

5 *Ibid.* at 5.

6 A synopsis of this study, written by John F. Blakney of Fraser & Beatty, is contained in the Commission report, *supra*, note 3, Volume II at 188.

7 R.S.C. 1985, c. C-34, as amended.

8 R.S.C. 1985, c. C-17 (3rd Supp.), as amended.

9 *Supra*, note 3, Volume II at 189.

10 *Ibid.* at 180-1.

11 *Ibid.*

12 *Supra*, note 3, Volume II at 181.

13 Director of Investigation and Research, *Predatory Pricing Enforcement Guidelines* (Ottawa: Consumer and Corporate Affairs Canada, 1992).

14 *Supra*, note 3, Volume II at 189.

15 *Supra*, note 3, Volume I at 135.

16 *Supra*, note 13, at "Executive Summary".

17 *Ibid.* at s. 2.2.2.

18 *Supra*, note 15.

19 *Supra*, note 3, Volume I at 118.

20 *Ibid.* at 126-7.

21 *Ibid.* at 120.

22 *Ibid.* at 121.

23 *Ibid.* at 122.

24 *Ibid.* at 123.

25 The Commission notes that the Canada-U.S. Bilateral Aviation Accord is considered to be one of the most restrictive in the world. Negotiations to revise it span four years. The primary impediment to success appears to be Canada's refusal to deregulate the air industry on the expedited timetable advocated by the United States.

26 *Supra*, note 3, Volume I at 123.

27 *Ibid.* at 124.

28 *The Director of Investigation and Research* v. *Air Canada* (unreported), CT-88/1, April 22, 1993, at 81.

29 *Supra*, note 3, at 216-8.

30 National Transportation Agency of Canada, Decision No. 297A-1993, May 27, 1993.

31 *Supra*, note 1, subsection 3(1).

32 *Ibid.*, subsection 67(1).

33 *Ibid.*, subsection 3(1).

34 *Ibid.*, paragraph 3(1)(b).

35 *Supra*, note 25, at 28.

36 *Ibid.*

37 *Ibid.* at 29.

38 *Ibid.* at 30.

39 *Ibid.* at 31.

40 *Ibid.* at 31-37.

41 *Ibid.* at 138.

42 *Ibid.*

43 *Journal of Commerce*, April 27, 1993, at 1B.

44 *Ibid.*

45 *Journal of Commerce*, March 29, 1993.

46 Address by George N. Addy, *International Coordination of Competition Policies* (HWWA-Institut Für Witrschaftsforschung-Hamburg (Hamburg: October 9-11, 1991)).

47 *Ibid.*

48 The Bureau indicated the direction it is taking in applying the effects test in its review of the acquisition of Square D Company by Schneider S.A. in May 1991 and its examination of the likely consequences of a proposal by Newell Co. to purchase shares of The Stanley Works. For further discussion in this regard, see Goldman, Cornish and Corley, *International Mergers and the Canadian Competition Act*, 1992, Fordham Corp. L. Inst.