

CANADIAN COMPETITION RECORD

THE FIRST SECTION

RATING THE REGULATOR – GLOBAL COMPETITION REVIEW

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In early April 2000 the Global Competition Review published a survey of competition authorities in twenty-four countries, which survey provided a rating of each of the authorities, like generals in the United States Army, using a one to five star system. The Canadian authority, like eight other authorities, including the U.K. Office of Fair Trading, France, Denmark and Belgium, was given only two stars, which Eric Reguly of the Globe & Mail called “a failing grade.” Germany was the only five star authority. The six four stars ratings were Finland, Israel, Italy, Sweden, Switzerland and the Department of Justice in the United States (the FTC being awarded three stars).

The survey results were based on the answers submitted by hundreds of respondents to a questionnaire, although ratings were made for countries where only ten responses were received. There were six key areas:

1. satisfaction with the speed with which merger cases were handled – Canada got 2½ stars;
2. satisfaction with the speed with which non merger cases were handled – Canada got 2½ stars;
3. satisfaction with technical expertise – Canada got 3 stars;
4. satisfaction with procedures used – Canada got 3 stars;
5. satisfaction with the authority’s independence – Canada got 3 stars; and
6. satisfaction with the authority’s leadership – Canada got 2½ stars.

No other country with an overall two star rating got so many individual stars.

Each authority was also subject to brief comments by the Global Competition Review. There were essentially three comments related to Canada. The first was that the government’s intervention in both the bank merger and the airline merger not only showed a schizophrenia between busting domestic concentration and promoting national champions but also tarnished the competition authority’s reputation for independence. While it is very messy indeed to have legislation that allows politicians to trump the competition authority, that is not an appropriate criticism of the competition authority itself. The letter put out by the Commissioner of Competition in October 1999 with his recommendations to consider the introduction of foreign competition or modification of the cabotage rules, was courageous and pro-competitive.

The second ground of complaint set out by the Global Competition Review is perceived incompetence of and reliance on junior staff to handle key cases. This

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criticism is more likely a feeling of frustration that some senior officers who were extremely knowledgeable and effective, like Jim Bocking and Margaret Sanderson, are no longer at the Competition Bureau. Clearly the Bureau does need more knowledgeable staff and hopefully will get an appropriate increase in its budget to enable it to hire better qualified individuals. It also needs funds to send members of the present staff to courses, such as those given at Harvard, which will upgrade their knowledge of a rather complex field of law and economics.

Finally, the survey alleges that the Commissioner seeks the media spotlight instead of fielding complaints. Most practising lawyers in the field that I have spoken to believe the Bureau staff spends too much effort fielding unworthy complaints. While this Commissioner, like his predecessors, is often portrayed in the media, the Commissioner would have to be a masochist to seek the type of publicity to which he has been recently subjected. He could reduce his media exposure by specific delegation of some important matters to his senior officers, which would be a welcome change.

But the Global Competition Review rating did raise an important issue for all of those who are intimately involved in competition and competition law in Canada today. Canada does need more effective enforcement of competition policy by the authorities in order to improve the competitiveness of the Canadian economy. That result can only be achieved by devoting more resources to the Bureau and limiting political interference. The Commissioner is clearly a very intelligent and energetic leader. But he needs more senior officers who have a real knowledge of the principles of competition law and

experience in that field. Only then will he have a team that can articulate clearly as a team. He has senior officers who are fluently bilingual and are very articulate, intelligent individuals but several of them have no background in competition law. It would be advantageous if they were offered a structured competition law course. Then they could function together with the Commissioner, more like a Commission.
