

other options were to refer the matter to the Restrictive Trade Practices Commission for a public appraisal and report or to discontinue the inquiry.

Should the Attorney General decide upon legal action, there will be a public airing before the courts. Otherwise, the issues raised in the report, as well as the report itself, may well remain secret.

#### RTPC PLANS PRE-HEARING ON PETROLEUM INQUIRY AS SHELL RESPONDS TO BERTRAND CHARGES

The Restrictive Trade Practices Commission has scheduled a pre-hearing on July 27, 1981, to establish procedures and a timetable for public hearings on the Petroleum Industry Inquiry.

The full response by the industry to the Combines Director's "Green Book", The State of Competition in the Canadian Petroleum Industry, will only be unfolded as the hearings progress, probably in 1982 and beyond. Spokesmen for a number of petroleum companies have issued statements denying any wrongdoing. Late in March, Shell Canada released a 3,000 word preliminary response to the Green Book. The Shell statement said in part:

##### "Overview

The Bertrand report is the second major investigation into petroleum industry practices in five years. In 1976, Ontario's Royal Commission on Petroleum Product Pricing (Isbister Commission) basically concluded that the oil industry was competitive, and that earnings and profits were not high in relation to other industries. With respect to pricing, the Isbister Commission reported that consumers were being well served.

"Despite this existing evidence, the Bertrand report attempts to paint a damning picture of the role of the major oil companies.

"Individually and collectively, the major firms are accused of a variety of practices which badly served the Canadian consumer.

"The report concludes that these firms, including Shell Canada, 'imposed' extra costs on consumers to the tune of several billion dollars; and that unfair practices were used to lessen competition from independent marketers of gasoline and heating oils. Overall, the report concludes that the industry, because of its nature and structure -- i.e. dominated by large, integrated petroleum firms -- is anti-competitive.

"Shell Canada believes that the report's allegations are unwarranted and that its conclusions are without foundation.

"Unable to document any real evidence of illegal or unethical activity, the Bertrand report describes general industry practices and performance and then compares this information to completely unrealistic criteria based on an idealistic description of the market devised by the report's authors. On the basis of this comparison, industry practices are condemned.

"In attempting to build its case, the report frequently resorts to unsupported assumptions. These form the basis of the unfounded conclusion that the industry exploited consumers to the tune of \$4.6 billion between 1958 and 1973 (equal to about \$12 billion in inflated 1980 dollars).

"The calculations required to create this \$4.6 billion figure are divorced from economic reality. The report's authors assume conditions where every consumer buys solely on the basis of price (ignoring factors such as service and convenience).

"The report also maintains that refiners like Shell Canada should have always been able to buy adequate crude oil for their refineries on a day-by-day basis, and always at bargain prices.

"The impossibility of achieving such an objective is not even considered in the report. Judged against such unrealistic measurements of performance, any industry, and government itself, could be accused of exploitation with equal ease.

"Although the report is unable to demonstrate any illegal activity, it smears the industry through leaps of logic, twists of definition and debatable interpretations presented as if they were hard facts. Examples are:

- The reality that companies operating under similar legal and market conditions may arrive -- separately -- at similar marketing decisions is construed by the report as evidence of collusion.
- The attempts of companies operating independently on very low profit margins to avoid wide-scale and possibly financially-destructive price wars are presented as proof that the companies worked together to maintain prices at unduly high levels.
- The fact that various refining companies created service stations to provide a variety of consumer services rather than simply to

sell gasoline is interpreted as investment inefficiency. (Shell believes this situation actually benefitted consumers by offering them a wider range of choice.)

"The reality is that if any industry 'inefficiencies' did occur, the Bertrand document implicates the federal government in their creation.

"The report is critical of the National Oil Policy, which encouraged Canadian energy and economic development by requiring that then-expensive Canadian crude oil be used in markets west of Ottawa. It challenges the Import Compensation Program, the government's vehicle to maintain the price of petroleum products in this country below world levels. It is also critical of the National Energy Board for the way it has regulated pipelines; and as well, the report criticizes provincial regulatory boards.

"The Bertrand report then turns around and suggests the Canadian consumer will be better served by more government regulation. Yet the report itself offers evidence that it was just such imposed controls which shaped the structure of the industry -- a structure the Bertrand inquiry brands as anti-competitive.

"It is sadly ironic that the Bertrand report which alleges 'unfair' practices by the petroleum industry, is itself distinctly unfair and biased. Its ill-founded conclusions are based entirely on its limited and selective 'analysis' of the evidence. The result has been to consider the industry guilty until proven innocent -- a violation of all of the principles which protect the rights of individuals and corporations in our society."

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#### "The Cost of Imported Oil

During the years covered by the Bertrand report, Shell Canada relied on companies within the Royal Dutch/Shell Group to provide it with the foreign crude oil it needed. The report alleges that these arrangements were designed to enrich the parent company at the expense of the Canadian consumer.

"The report criticizes companies such as Shell Canada for not buying all of their crude oil at the low prices at which individual cargoes were sometimes available.

"This criticism is based on a severe oversimplification. It ignores the risk factor of relying on 'spot' suppliers. It does not take into account Shell's long-term need for assured supplies of given types

and qualities of crude oil -- assured supplies for the efficient production and distribution of petroleum products to consumers.

"It is incorrect to suggest that Shell Canada had any reasonable alternative than to obtain its supplies as it did -- supplies which were purchased at a fair price."

#### FEDERAL CABINET CONFIRMS CRTC DECISION PERMITTING ATTACHMENTS TO BELL SYSTEM

Communications Minister Fox and Trade Minister Gray, in a joint statement on May 7, 1981, announced a Cabinet decision not to vary or rescind the August 5 interim decision of the Canadian Radio-Television and Telecommunications Commission permitting the attachment of subscriber-provided terminal equipment to Bell's telecommunications system (see the Record of September 1980).

The CRTC has scheduled a hearing to commence November 17, 1981, to consider a number of issues including standards and the impact on the manufacturing sector before issuing its final decision of the matter.

The Ministerial statement left no doubt about the Government's support for the new policy. It states:

"Liberalized terminal attachment responds to the need for consumer choice, it stimulates the development of new retail and commercial sectors and it has been welcomed by major industrial and consumer groups."