

STUDY OF COMBINES ADMINISTRATION
RECOMMENDS LESS INPUT BY CABINET
AND CANADA'S ATTORNEY GENERAL

A study by economist Paul K. Gorecki, which was released in April by the Department of Consumer and Corporate Affairs* calls for delegation by the Attorney General of Canada to the Combines Director of the right to appoint and instruct counsel, for means to induce the Minister of Finance to implement tariff reductions recommended by the Restrictive Trade Practices Commission, and for much higher fines in combines cases.

The study holds that allowing the Director to appoint and instruct counsel would contribute to speed and efficiency in processing cases. It states:

"At present the Attorney General has little incentive to process cases under the Act quickly, which are infrequent, often complicated, and less glamorous than drug or narcotic cases. Hence, little expertise is built up in the area, which undoubtedly adds to the delay. The problem is therefore to create an incentive for faster processing of cases by the Attorney General. It is suggested that one option which should be seriously considered is the delegation by the Attorney General to the Director of the responsibility to select and seek an opinion of counsel in a case. The Director would clearly have the incentive for faster throughput time and could, as well, attempt to develop a specialized bar in competition policy. This could be done in several ways. For example, lawyers could be hired by the Director on a short-term basis, while the Director could select from a pool of lawyers, possibly jointly selected together with the Attorney General, so that they have an incentive to maintain interest in the Act. The Attorney General would still retain the sole right to lay charges under the Combines Investigation Act."

S. 28 of the Act empower the government to reduce a customs tariff when "it appears to the satisfaction of the Governor in Council" that a restrictive practice is being facilitated by the tariff. According to the report, however, no recommendation by the Restrictive Trade Practices Commission for a tariff reduction has ever been implemented. The report proposes:

* The Administration and Enforcement of Competition Policy in Canada, 1969 to 1975: An Application of Performance Measurement, Research Monograph Number 6, Research Branch, Bureau of Competition Policy, Consumer and Corporate Affairs, Ottawa.

"...that after a finding that a tariff should be reduced or eliminated by the RTPC, ...the Minister of Finance would be required to implement the tariff reduction unless following the issuance of a show-cause order to the enterprises concerned, they were able to justify, in public hearings, a departure from the Commission's views. It might also be advisable to extend the right of being heard to any entrepreneur having a direct interest (eg. wholesaler or retailer) and to suppliers not involved in the restriction."

The 1976 amendments included a maximum fine of \$1 million for conspiracies under s. 32. The report proposes a maximum fine for all offences under the Act amounting to ten per cent of the sales of a convicted enterprise of the relevant products in the relevant market.

The study, which is quite technical, is largely an attempt to comply with a federal policy calling for all agencies and departments to develop indices or measures of efficiency and effectiveness. While the author does not claim anything like total success, the study will be of interest to those attempting similar tasks in areas where outputs are heterogeneous and very difficult to aggregate in a meaningful way, and where labour (the input chosen) is difficult to relate to output in any chosen period of time. It is also of interest for its description and analysis of the administration of Canadian competition policy.