

OUTSIDE THE COURTS

**RTPC REPORT ON INTERCONNECTIONS PHASE OF
TELECOMMUNICATIONS INQUIRY RELEASED;
HEARINGS ON SECOND PHASE COMPLETED**

The report of the Restrictive Trade Practices Commission, Telecommunications in Canada: Part 1 - Interconnections, was released by the Minister of Consumer and Corporate Affairs on October 9. The Commission has recommended that consumers of telecommunications services be allowed to purchase or lease telecommunication terminals from sources other than telephone companies and that the market for all terminal equipment be deregulated by 1990.

The origin of the report was an investigation into suspected merger and monopoly offences which was launched in 1966 by the Director of Investigation and Research under s.8 of the Combines Investigation Act. The Director believed that Bell Canada's ownership of Northern Electric (now Northern Telecom) was likely to spread monopoly from Bell's regulated activities to Northern's unregulated activities. In January, 1973 the Director concluded that his evidence did not disclose any offence but that a monopolistic situation existed. Accordingly, he launched the present general inquiry under s.47 of the Act into the Manufacture, Production, Distribution, Purchase, Supply and Sale of Communications Systems, Communication Equipment and Related Products. The report on Interconnections will be followed in 1982 by a report on other issues in the inquiry.

The broad lines of the Commission's recommendations were not unexpected and were welcomed by the Director and by competitors of Northern. The Canadian Radio-Television and Telecommunications Commission, in an interim decision on August 5, 1980, ruled that Bell Canada must permit the attachment of subscriber-provided terminal equipment to its telecommunications system pending a final decision on the matter. On May 7, 1981 a federal Cabinet decision not to vary or rescind the decision was announced. The CRTC commenced hearings on November 17, 1981 to consider a number of issues including standards and the impact on the manufacturing sector before issuing its final decision on the matter.

However, the major factor underlying the recommendations of the RTPC was the rapid development of the technology of attachments and the establishment in Canada of numerous firms offering attachments with features not available from the telephone companies. The Commission stated:

"While the arguments in favour of end-to-end telco control of all equipment are not compelling, their relative weight would be much

greater in an environment in which there was very little differentiation between equipment. When PBXs performed few functions beyond basic switching and all the telephones were one shape and colour, the disadvantages of monopolistic supply were far less important than at present, when offerings of new products laden with features are commonplace. In addition, the competitive spur to cost minimization, absent under monopolistic supply, is probably more important when there is a considerable equipment variety and shorter equipment-life cycles which require more frequent reactions and shorter reaction times."

The two largest telephone companies each have manufacturing and research affiliates. Bell has a controlling interest in Northern Telecom and in Bell Northern Research. B.C. Telephone owns AEL Microtel Limited, which owns Microtel Pacific Research Limited. The major telephone companies recognized that there would be advantages to telecommunications users in permitting interconnections. At the same time, they expressed concern that their own ability to compete in the field not be unduly restricted and that the Canadian market not be exposed to unfair competition from abroad. Bell pointed out that success in the field required very large research and development expenditures, and that the current viability of the Canadian electronics industry could be eroded if the industry became fragmented. The major telephone companies, as well as the Government of Ontario, expressed particular concern about competition from producers in countries which effectively prevent the importation of Canadian made attachments. The Commission noted that selective exclusion of such suppliers from the Canadian market would be contrary to The General Agreement on Tariffs and Trade (GATT), and it stated:

"Interconnect suppliers from a number of countries whose markets are not open to Canadian firms, are now selling their equipment in Canada. It is urgent that it be determined whether these countries have adopted policies or set up technical barriers resulting in the closure of their markets to Canadian firms in contravention of the international obligations assumed under GATT."

While cracks in the walls of European nationalistic procurement policies are evident, it will be some time at best before anything like free access to those markets is achieved. The U.K. has taken some action (see the June, 1981 issue of the Record, page 35). Also, according to the Financial Times of London of October 23, the European Economic Commission's competition authorities are conducting an investigation of the German Bundespost monopolistic policies in respect of procurement.

The summary by the Restrictive Trade Practices Commission of its findings and recommendations is as follows:

- "1. Customer ownership of terminals and an increased number of suppliers would be a growing source of increased efficiency and must be accommodated.
2. Unregulated sale and rental markets should be permitted to develop in terminal equipment.

There are reasonable solutions to the various concerns expressed by Bell, Northern and B.C. Tel about the difficulties which interconnection might create:

3. Although interconnection would result in increased sales of foreign-made equipment in Canada, the Canadian industry has reached a level of strength and maturity sufficiently high that it is not premature to expect fair competition in the Canadian market. Steps must be taken, however, to ensure that markets closed to imports through non-tariff barriers are made accessible to Canadian manufacturers in accordance with the spirit and the letter of GATT.
4. To the extent that net revenue from terminal equipment rental has served to keep local service rates down, and should it be considered desirable for this cross-subsidy to continue, it would be very easy to apply or increase extension and network access charges for extension telephones, PBX trunks and lines for key-telephone systems to make up for any such losses in revenue.
5. Standards should be established through the Terminal Attachment Program for all terminal equipment and a deadline should be set by the government for the completion of this task. CRTC should have the authority to review standards should parties to the certification program establish to its satisfaction that the standards were unnecessarily restrictive and would eliminate certain equipment from the market.
6. The telecommunications companies must be assured that a planned and orderly transition of the networks can occur. To ensure that this will entail little risk or cost to owners of terminals, the maximum possible notice of changes in the network should be given to the public.
7. To assure an orderly transition and fair and unfettered competition in the terminal market, it is recommended that the year 1990 be the time set for the deregulation of all

terminal equipment. This would provide a sufficient period of adjustment for the telcos, CNCP and their subscribers.

8. CRTC's requirement in its interim decision on interconnection that subscribers obtain their basic telephone service from the telco (telephone company) should be continued until further experience with interconnection is obtained.
9. Regulated telecommunication carriers (telcos and CNCP) should be permitted to sell or rent equipment, except single-line telephones, without filing tariffs with their regulators. These offerings should be made through arm's length subsidiaries so that cost and net revenues separation from regulated activities can be achieved.
10. All suppliers of terminal equipment should have equal access to lists of non-household subscribers, who rent key systems and PBXs from the telcos, arranged in some meaningful way such as by area, equipment category or line size.
11. Telecommunication carriers should not acquire interconnect sellers competing against them. As well as probably being anticompetitive, such acquisitions would raise doubts about the reason for allowing the regulated carriers to participate in unregulated markets, i.e., the important contribution they can make as the result of their previous experience as suppliers of terminal equipment.
12. Bell and B.C. Tel should not directly or indirectly acquire terminal equipment manufacturing companies in Canada which are in competition with those telephone companies' affiliates.
13. Telecommunication carriers should also be prevented from utilizing their buying power to obtain exclusive selling rights to terminal equipment on their own behalf or on that of their subsidiaries."

The final set of hearings on the second phase of the inquiry were completed in November, 1981 and the Commission is now preparing its report on the remaining issues. Much of the evidence adduced by the Director concerns the alleged refusal of Bell to purchase equipment from competitors of Northern Telecom. The principal remedy which the Director originally sought was the divestiture of Northern by Bell. However, in his argument before the Commission last July he called for the introduction of competitive bidding as the principal remedy and placed much less emphasis upon divestment. The reasons appear to be changes in circumstances which have occurred, including

the CRTC interim decision of August, 1980 permitting interconnections. In his final reply argument in November, 1981 he stated:

"It was initially the Director's position in these proceedings that divestiture of Northern Telecom from Bell Canada was the most effective remedy to meet the monopolistic situation resulting from the Bell Canada foreclosure policies. That recommendation, however, was made in an environment where customer ownership of terminal equipment was not permitted by Bell Canada. Since that time the CRTC has ordered Bell Canada to permit customer ownership of terminal equipment on a liberal basis.

"In this new environment the Director submits that the competitive bidding procedure outlined in the Director's argument, will thus serve as an effective remedy. The fact that the CRTC has already ordered the British Columbia Telephone Company to engage in competitive bidding supports the Director's position."

The Director also contends that Bell has extended its activities in telecommunications equipment and service markets beyond what is authorized by the Bell Canada Special Act, largely by the creation of subsidiaries of its subsidiary, Capital Telephone Limited. He contends that this has created regulatory problems and difficulties for competitors. As a remedy to control further extensions, he has proposed that the Bell Canada Special Act be amended to provide for CRTC approval of the direct or indirect acquisition by Bell of shares of any company. The proposal is modelled on a clause in the British Columbia Telephone Company Special Act.

The governments of Ontario and Quebec have both stated their support for the existing Bell-Northern relationship. Bell has contested the Director's allegations and his proposed remedies, and has called into question the jurisdiction of the RTPC to inquire into regulated activities and other aspects of the case.

COMBINES DIRECTOR MEETS STRONG OPPOSITION AS PETROLEUM INQUIRY HEARINGS COMMENCE

The first public hearings before the Restrictive Trade Practices Commission in the Petroleum Industry Inquiry, which were held in Ottawa on October 19-22, were marked by strong attacks by the oil companies on virtually all aspects of the Combines Director's seven-volume Green Book entitled The State of Competition in the Petroleum Industry.* The Director was also criticized by counsel for the Commission for a lack of precision in his opening statement as to the goals of the Inquiry. Spokesmen for the Consumers Association of Canada, service station operators and independent petroleum marketers were generally supportive of the Green Book.

*The full text of the 16 page official "Backgrounder" summarizing the Green Book was distributed to subscribers of the Record along with the March 1981 issue.