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November 6, 2003

Delivered

The Editors
The Financial Post
300 - 1450 Don Mills Road
Toronto, Ontario
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Dear Sirs:

In his pointed attack of November 6 on Competition Law Reform and the new Commissioner of the Competition Bureau, Terence Corcoran manages to mix several distinct themes.

One very important point which must be made is that when proposals for Competition Law Reform were introduced last June, many competition law specialists were gratified, not aghast that, at long last, suggestions had emerged which would bring the law into conformity with that of Canada's trading partners and into the realities of the 21st Century.

The risks to the economy of competitors conspiring to fix prices is readily apparent. Among the proposed amendments are provisions to address that simple reality. It is difficult to imagine circumstances where such price fixing could be said to represent "normal pricing strategies that actually encourage competition".

In addition, the proposals address one of the largest defects in the current statutory regime. The weakness which must be addressed is this. For companies which have no objection to become involved in legal proceedings, there is currently very little discouragement to engaging in anti-competitive practices. There is also the chance that no one will challenge the conduct, and there is the virtual certainty that if the conduct is challenged, it will take a very long time for any remedy or order to be obtained. While proceedings are ongoing, the conduct can be continued and if the Commissioner succeeds, the worst that is likely now to happen to the anti-competitive party is that its conduct will have to be stopped. In the meantime that anti-competitive party will have reaped the benefit of conduct that has been found to be anti-competitive.

The proposed legislation, by imposing penalties and affording parties who have been damaged the right to civil remedies, would rectify this real weakness.

The personal comments made by Mr. Corcoran are, unfortunately, characteristic and hardly deserving of comment. As the new Commissioner, Ms. Scott, will have her challenges. But gratuitous sniping at her is surely unwarranted. And to suggest that Konrad von Finckenstein, the former Commissioner has been the recipient of patronage in accepting an appointment to the Federal Court is absurd. An observer as acute as Mr. Corcoran knows very well that Mr. von Finckenstein gave up many lucrative opportunities in order to pursue continuing public service.

Yours very truly,

Bill Rosenfeld
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