

which will usually also insist that the interrogation be conducted by the courts of the state of execution.

c. Antitrust matters.

The Competition Act does not limit to the territory of Canada any of the formal powers which the Director of Investigation and Research may exercise (Statutes of Canada 1986, c. 26). Although the Act does not require that the Director seek the permission of a foreign government to exercise such powers, their exercise must be preceded by notification and consultation as provided by the O.E.C.D. and informal bilateral antitrust co-operation arrangements to which Canada has subscribed.

It should be mentioned that section 9(2) of the Competition Act provides that where the person against whom an order is sought for the production of records is a corporation, and the judge is satisfied that a foreign affiliate of the corporation has records that are relevant to the inquiry, he may order the corporation to produce them.

Once a legal action has begun, the courts may resort to other means of compulsion by virtue of the Criminal Code or provincial legislation (*see supra*).

Canadian courts will not ordinarily make orders that require someone to compel another person in a foreign state to break the laws of that state. However, they are not prevented from compelling a witness in Canada by the fact that giving the evidence sought, may constitute a crime in another state.

Evidence may be secured from legal or natural persons resident in foreign states in the case of an inquiry conducted in Canada pursuant to the Act.

Where the person whose testimony is sought, or who will be requested to produce documents, agrees to do so without resort by the Canadian authorities to legal compulsion, such evidence will likely be taken according to Canadian procedures. However, the government of the state concerned must consent to this procedure after prior notification and consultations.

Where the person will not agree voluntarily to comply with the request to give evidence, either oral or documentary, the Canadian Government will retain counsel in the foreign state and seek the foreign court's authority to issue and enforce subpoenas