

would be a simple matter to deal with them — they could all be blocked. But takeovers can be of benefit to Canada, and it was this fact that persuaded the Government that, as a general policy, a review process is preferable to other approaches such as the designation of additional key sectors or mandatory Canadian shareholdings. This decision, of course, does not rule out entirely the possibility that other approaches might be required at some time in the future.

A takeover review process is more flexible in its ability to take into account both the benefits and costs of a foreign acquisition. Through its operation, it would permit the negotiating of greater benefits for Canada and increase the level of economic activity in Canada. Most other industrialized countries, even with lower levels of foreign ownership and control, have some kind of mechanism to ensure that foreign takeovers are in their national interest. Our review process will be familiar to the international business and investing community.

#### REVIEW PROCESS AND HOW IT WORKS

In order to clarify the Government's intentions, I shall now describe the review process and how it will be administered.

A foreign investor — and that includes any enterprise which is foreign controlled — will be required to file notice of any proposed takeover of a business with assets valued at more than \$250,000 or with gross revenues exceeding \$3 million. Investors will be required to provide relevant information with the notice. The investor may also take the initiative to make specific commitments to the Government concerning undertakings which would bring benefits to Canada.

The Government will then consider the proposed acquisition, taking into consideration these five factors:

- (a) the effect of the acquisition on the level and nature of economic activity and employment in Canada;
- (b) the degree and significance of participation by Canadians;
- (c) the effect of the acquisition on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
- (d) the effect of the acquisition on competition within any industry or industries in Canada; and
- (e) the compatibility of the acquisition with Canadian industrial and economic policies.

#### CABINET WILL DECIDE ISSUE

The assessment of the proposed transaction will be made by the Minister of Industry, Trade and Commerce, who will make the appropriate recommendation to the Cabinet.

If the takeover is clearly of benefit to Canada, the Government could then formally allow the acquisition. If, on the other hand, the Minister is unable to recommend this course, he would take steps to negotiate with the investor with a view to

increasing the benefits to Canada. This negotiation might then result in additional undertakings which would permit the Government to allow the acquisition. But if the Government still considered that the takeover would bring no significant benefit to Canada, it would not be allowed. This decision would be taken only after a thorough examination including the opportunity to make full representations.

The process is designed to ensure that the Government will make its decisions with a minimum of delay.

Written undertakings by the purchaser will be binding and the Government will be authorized to take action in the courts to ensure that they are observed. There will be appropriate penalties for failing to file notice of a proposed transaction.

The legislation will not, of course, apply to takeovers by Canadians — that is, acquisition of control of firms in Canada by Canadian citizens ordinarily resident in Canada, by landed immigrants who have lived here six years or less, or by firms which they control. Some companies have a very large number of shareholders, some Canadian, some foreign. Such companies would be able to apply for an advance ruling in order to determine their status as a Canadian-controlled company or otherwise.

#### CONTROL OF COMPANY

With regard to control, it is proposed that the acquisition of less than 5 per cent of the voting shares of a corporation whose shares are publicly traded will not by itself be considered to constitute control, nor will the acquisition of less than 20 per cent of the voting shares of a corporation whose shares are not traded publicly. There will be a presumption that ownership of voting shares above those levels will constitute control, but this presumption can be rebutted. Acquisition of more than 50 per cent of voting shares will automatically be considered acquisition of control, as will a takeover through the purchase of substantially all the property used in carrying on a business.

We shall encourage international organizations to pursue the study of the multinational enterprise and foreign direct investment with a view to cooperative international action. To this end we shall be examining whether specific Canadian initiatives might be appropriate.

Our objective as Canadians — which is to exercise greater control over our domestic environment — cannot be achieved by exclusive reliance on a takeover review process. As part of its response to this issue, the Government will continue to develop positive policies to encourage Canadians to participate more fully in the development of their country, and to encourage the growth of Canadian sources of capital, technology and management. Our policy is designed to ensure that this country continues to develop as rapidly as possible in a way which is consistent with Canadian needs and aspirations and which safeguards our vital interests.