

*Competition Bill*

struction Association recommends that those agreements related to the clarification of tendering provisions made with the full knowledge and consent of the owner or his agent should be expressly exempted in the interests of efficient and economical tendering practices. They further request that the necessary practice of evaluating whether a customer is bona fide, together with the other risks of undertaking a project resulting in differing prices, not be the subject of discrimination charges.

I think there must be very few subcontractors in this country today who would not readily admit that the amount of profit they are likely to make on any one project can vary enormously depending on who the general contractor may be. It depends on such factors as the scheduling of the general contractor, his efficiency in keeping the site clean, the manner in which he provides access to the site, the ease and the timing in providing equipment for hauling materials to higher levels, and so on. All these factors have a tremendous influence on whether a subcontractor will make a profit or a loss.

Unfortunately, in the public image the contracting business is big profit business. This comes about from the fact that it is a very high-risk business. It is acknowledged that in some instances a general contractor and his subcontractors can make what might be considered, on a percentage basis, high profits. However, because of the fact that it is a high-risk business, these high profits have to be balanced against losses or often jobs on which the margin is negligible. I might refer hon. members to an interesting study that was done in my company several years ago. We found that by taking all the projects that we had undertaken over a period of several years and looking at the profit margins, if we had had the foresight—or call it ability if you like, but there is a certain amount of luck in the construction industry also—to have picked only the profitable jobs, we would have done about one-third of the total volume of work and we and our partners in the company would have been millionaires. I can assure you that that situation does not exist; I am not in that fortunate category today. All I want to emphasize is that in the construction industry we have to permit more discretion than is applicable in other lines of business.

The minister, in speaking of the situation where some contractors are not considered to be good business risks and would therefore not receive bids from subcontractors at the same level as contractors enjoying their full confidence, admitted that this might well constitute a breach of section 34(1) of the act. In other words, a subcontractor might be forced into a position of loss. I think this is contrary to the intention of the act.

I want to speak now about the complaints of small businessmen in connection with this bill. Small businessmen are clamouring to protect themselves from the growth of large corporations. They are particularly concerned about two practices—predatory pricing and loss leader selling. Let us look at section 31(4) of the bill, which is new. It deals with tied sales, exclusive dealing and market restriction imposed by a supplier of products. The government's view is that while these practices are often acceptable business methods, they may in other instances have an adverse effect upon competition, especially when

[Mr. Herbert.]

engaged in by a major supplier or when they are widespread in a given market.

The common objection is that they prevent the free operation of market forces and consumers' choice. Accordingly, the Restrictive Trade Practices Commission would be empowered under the amendments to review such situations and to make remedial orders as required. The term "market restriction" has been adopted for the practice in which a supplier requires his customer to sell only in a prescribed market area or to pay a penalty for selling outside it. One European car manufacturer adopted it and allotted precisely defined territories to his dealers. This discouraged dealers from seeking business outside their allotted area and had the effect of depriving customers of effective price competition for that particular product.

● (1740)

Under his system, dealers who sold outside their franchise area had to pay part of their profit margin to the dealer in whose territories the customers resided. I must say that in this particular proposed amendment I am most pleased to see that provision is made to terminate this market restriction, because at the present time—again referring to the construction industry—we are aware that by agreement, or perhaps by chance, suppliers will find it more economical to supply in areas near their warehouses and supply depots, so that the materials in short supply in the construction industry at the present time are being restricted by region, thus making it impossible for contractors to obtain competitive pricing when in effect there is only one supplier open to them.

The term "tied sales" describes the situation where a supplier requires his customer to purchase a second product as a condition of being supplied with the product he really wants. One example of this is where a film distributor requires exhibitors to rent additional films in order to obtain the film of their choice. Another example is where makers of machinery have made it a condition of sale or rent that supplies used in connection with the machinery be obtained only from them. Tied sales also extend to a requirement that the product not be used in combination with some other product. This covers a situation where more favourable terms of sale are offered in order to induce the customer to engage in the tying arrangement.

Again referring to the construction industry, there is a practice common at the present time where, for example, if one wants to buy insulation material the supplier may state that the customer must stay with a particular brand and purchase other materials which he is already purchasing elsewhere. So at the present time we find ourselves in the ridiculous situation where a contractor, placing an order for materials that are quite plentiful, suddenly finds a tied sale condition imposed upon him, and in certain instances he has had to return materials already delivered to his construction site to the original supplier and receive alternative materials from the supplier of materials which are not in plentiful supply.

Exclusive dealing and tied selling are dealt with in section 31.4(1) of the proposed amendments which include certain criteria for the guidance of the commissioners. The commission would not prohibit the practice where it is found that an exclusive dealing or market restriction