

Combines Investigation Act

conglomerate had the effect of lessening competition to the detriment of the interests of the public with regard to a particular trade or industry the matter could still be dealt with under this section.

When it comes to the drafting of statutes I am not a lawyer but I understand that the courts will use this approach. Where something is restrictive, as subparagraphs (i), (ii) and (iii) are, they are inclined to view anything outside of the restriction as having no connection and the law would therefore have no applicability to it. I wish to refer to the proposed change in the new subsection 2 of section 32 only for purposes of comparison. The new subsection 2 reads as follows:

Subject to subsection 3, in a prosecution under subsection 1 the court shall not convict the accused if a conspiracy, combination, agreement or arrangement relates only to one or more of the following—

Then (a), (b), (c), (d), (e) and (f) are listed and are followed by subparagraph (g) which is in these words:

(g) some other matter not enumerated in subsection 3.

That is a sort of all inclusive catch-all phrase to indicate that there may be fields other than those listed in subparagraphs (a) to (f) in which co-operation or agreement may be entered into. Subparagraph (g), "some other matter not enumerated in subsection 3" is designed to be all-embracing and to take in these other possibilities. I think the same thing should apply to the proposed definition of a merger. There should be another provision there so that if a case does come before a court the court will have no hesitation in understanding that it was meant that the provision should be broad enough to apply to mergers in areas not contemplated by subparagraphs (i), (ii) and (iii). I have an amendment I should like to move which I think will deal with this matter. I move:

That paragraph (e) of subclause 2 of clause 1 be deleted and the following substituted therefor: "(e) 'merger' means the acquisition by one or more persons, whether by purchase or lease of shares or assets or otherwise, of any control over or interest in the whole or part of the business of a competitor, supplier, customer or any other person, whereby competition

- (i) in a trade or industry,
- (ii) among the sources of supply of a trade or industry,
- (iii) among the outlets for sales of a trade or industry, or
- (iv) otherwise than in subparagraphs (i), (ii) and (iii), is or is likely to be lessened to the detriment or against the interests of the public, whether consumers, producers or others;"

You will note, Mr. Chairman, that the only change is to add another subparagraph, if that is the proper designation, reading: "otherwise than in subparagraphs (i), (ii) and (iii)". The proposal we have put forward

will mean that the provision will not be as restrictive as it is now and will be broad enough so that if the question arises in the courts whether or not a merger has taken place in some field other than those set out in (i), (ii) and (iii) which has lessened competition the courts will be able to find along these lines and be able to protect the public interest properly in this regard.

Mr. Pickersgill: Mr. Chairman, while I think we would have preferred the amendment of the hon. member for Ottawa West, the committee has made its decision on that and I think I can say that this amendment commends itself to me at any rate.

Mr. McIlraith: As I understand the amendment, and I find it a little difficult to understand some of these things when they come before us quickly, its effect is merely to remove the limitation now contained in the provision by reason of subparagraphs (i), (ii) and (iii).

It will provide for the acquisition of one company by another and the words, "whereby competition is or is likely to be lessened to the detriment or against the interests of the public", will still remain.

Mr. Howard: Yes.

Mr. McIlraith: So far as I am concerned, it is in order.

Mr. Fulton: It seems to me that in the enumeration (i), (ii) and (iii) we have really listed every possible field in which a merger could operate with reference to the lessening of competition. I would be inclined to say that this is a case where we have made an exhaustive enumeration and we do not need to put in any saving words. However, if that is true, then the worst I can say about the amendment is that it changes nothing; it adds nothing, and it is unnecessary. I am not putting that view forward now in the sense of saying, for that reason, I will not accept the amendment. I do not believe it does any harm. My inclination is, rather than to divide the committee, to simply accept the amendment because I do not think it changes anything. I do not believe it does any harm.

I am not prepared to quarrel about it and I will accept it, subject to the indication that if in thinking it over tonight my advisers and draftsmen should tell me that it does have some undesirable effect, then I would have to come back to the committee on another occasion and ask that this portion be rescinded.

Mr. Howard: May I say that the minister's statement is quite acceptable to us.