

*Competition Tribunal Act*

The lack of sensitivity to the non-economic arguments for antitrust enforcement and the concomitant absence of a fundamental distrust of economic power concentrations account, in large measure, for legislation which is largely behavioural in orientation and which relied exclusively on the criminal law until 1976.

Professor Irving Brecher of McGill University has written, quite correctly, that the reason we have such weak laws is that neither the Liberals nor the Conservatives have been prepared to take on the tremendously powerful business and financial interests which really do not want tough anticompetitive legislation because it would interfere with the way in which they do business.

Over the last few days of debate I was particularly interested to hear Liberal Members of Parliament criticize this legislation as inadequate. After all, they were in power for more than 50 of the last 65 years and they had innumerable opportunities to bring in legislation but they did not do it. I was also interested to hear them attack the present Government because it has not, as my colleague, the Hon. Member for Churchill (Mr. Murphy) just indicated, adopted the unanimous recommendations of the Standing Committee on Finance, Trade and Economic Affairs that the takeover of Genstar by Imasco be stopped. Why do Members of Parliament from all Parties want that stopped? They realize that a company like Imasco, which is in the manufacturing business, the service industry, the retail business, could use the financial clout in the Genstar ownership of Canada Trust for its own purposes, which might very well be contrary to the interests of the Canadian consumer. That is a very valid argument.

● (1710)

I find it strange that the Liberals have suddenly learned that lesson. Just six years ago when the Liberals formed the Government the same thing took place which they are opposing in the takeover of Genstar by Imasco. Six years ago Brascan, which owns Noranda, a large mining corporation which owns McMillan Bloedel, one of the largest lumber, pulp and paper corporations in Canada, formed Trilon. Trilon is precisely the same kind of company as Genstar which owns Canada Trust. Trilon, which started six years ago while the Liberals were in power, owns Noranda and McMillan Bloedel and many other companies. Trilon took over the London Life Insurance Company and then it secured control of the Royal Trust Company. The Royal Trust Company took over A.E. Lepage, which is a property and real estate company, and then it took over Wellington Insurance. It is into the trust and financial services business, the insurance business, the corporate financial business, the investment business, the trust business, the money market operations and bond trading business, the loan and investment business and the leasing business.

While the Liberals were in power, Brascan did precisely what the Liberals are now opposing in the takeover of Genstar by Imasco. What we see, as we have seen so many times over the years, is how progressive and people-oriented the Liberal Party and the Liberal Members can be when they are in the

Opposition and how, as soon as they win an election and form the Government, they immediately show their true colours because their concern for people disappears. What we see is their real concern and their real support of the financial and business corporations which use their power to fleece the ordinary Canadian.

Let us just look at what has happened over the years. If we review the major aspect of the competition law we have, we see how barren the record of success has been. When former Governments acted against illegal mergers, there was one successful prosecution. When they acted because they believed there was price discrimination, it was regarded as unenforceable except under the most extreme conditions. When they looked at conspiracy to fix prices and share markets, we find that the law was regarded as weak but workable, and of limited use because of continuing court decisions.

When we look at the record with regard to misleading advertising and resale maintenance, we find that only these recent sections dating from 1951 and 1969 legislation respectively appear to be fairly effective, according to Professors Stanbury and Reschenthaler. We see a record of futility. Of six major sections of the law two are almost completely failures, one is mostly unenforceable, one is extremely weak and two appear to work. For futility, that takes some beating.

The Conservatives are going to try to beat that record with the legislation we are dealing with now. There is no need to wonder why competition reform is required. Another consensus position, except for big business, is that the courts are not the place where competition cases should be heard. The Minister has not been quite successful in convincing businesses of this requirement. The result is we have this proposal for a high bid competition tribunal.

What about these remedies? Even with a mixed tribunal and civil law procedures there is little optimism among those who have studied the record—and I am talking about the academics to whom the Minister really did not want to listen—this Bill will deal with anti-competitive offences more effectively than the previous law. Here is an assessment of the major enforcement sections of this Bill made by, as I said, some very competent, knowledgeable academics who spent years studying this.

Dealing with the question of monopoly or abuse of a dominant position, they say that to win a monopoly case the Director of Investigation and Research now has to meet a number of tests, first of all, to prove that there was substantial control of a market in a persistent way; second, that anti-competitive acts mean less competition; and third, that the practice will lessen or prevent competition substantially.

Given the difficulties of meeting all these parts and the built-in defence that a superior competitive performance brought these results means to many people who study this Bill that there is little chance of the Director winning a case. When we look at the question of mergers of the kind we have had in the past where a steel company took over a smaller steel