

Competition Tribunal Act

of legislation before this House which will be effective, perhaps not perfect, but be effective in restricting and controlling mergers and monopolies.

What does this Bill provide, Mr. Speaker? First, it makes a very substantial change in the previous law. It changes the whole concept of that law from a criminal law to a civil type of procedure for dealing with mergers and monopolies.

The criminal law proved to be ineffective in dealing with it and so we are going to take a stab at trying to deal with it as a civil offence. The Bill itself changes this method dramatically. First, it creates a competition tribunal composed of members appointed from the private sector, business people, people with experience in the whole area of dealing with business problems, mergers and amalgamations, people who will know what they are talking about when they are dealing with this sort of thing. At the same time, it puts in place with that tribunal judges who will officiate and provide an appeal panel once the competition tribunal deals with a particular case. The Bill abolishes the old Restrictive Trade Practices Commission. It requires in the case of mergers that certain things take place.

First, where a company which is involved in taking over another company has assets or sales in excess of \$500 million in Canada, and where the company that it proposes to take over has assets and sales in excess of \$35 million, a prenotification requirement is necessary on the part of the companies involved in that merger or amalgamation so that the competition tribunal will have the opportunity to review the application to see if it meets the standards set out in the Bill.

Let me outline some of those standards set out in the Bill. It is aimed at preventing, lessening, likely to prevent or likely to lessen competition substantially. In order to determine that, it sets out a number of tests. What is the extent of foreign competition in the market affected by the merger? Are any of the parties about to go out of business, go bankrupt? Are there substitute products available in the market? To what extent is there effective competition going to remain in the market-place? All of these things are provided in the Bill.

There is also provision with respect to a monopoly, changing the offence from a criminal one to a civil offence. The Bill sets out extensively the tests to apply in all these cases. It also sets out penalties that were not available before, not just criminal penalties of imposing fines and sending people to jail, but penalties which would also provide orders prohibiting the engaging in anti-competition acts and penalties which would require the divestiture of assets or shares. Those are the sorts of things that are contained in this Bill. Those are the sorts of things that are going to put some teeth in the competition law of the country. That is why I call upon the House to support this Bill and to pass it quickly.

• (1750)

Mrs. Finestone: Mr. Speaker, I have a question for the Member for York East (Mr. Redway). What does the Member see in the interaction under this proposed legislation

between the Investment Canada Act and this Bill? As an example, Investment Canada is looking at the impact of the Gulf and Western potential for merger. What would happen if it were being looked at under the Competition Act as unfair competition, as a restriction on the distribution of books or films? If that were in the cards, would it be examined under Investment Canada or under this Competition Act?

Mr. Redway: Mr. Speaker, I thank the Hon. Member for her question. Of course, I must offer only my own opinion on this. As a lawyer with some past experience relating to FIRA and the Combines Investigation Act provisions, as it now stands, it would be my opinion that any company contemplating a merger would have to comply with both of the provisions. In the past they would have had to have complied with FIRA and the Combines Investigation Act. With Investment Canada in place, it may very well be not as restrictive and, therefore, easier to comply with Investment Canada. However, in my view, they will still have to comply with the competition legislation. They will certainly have to satisfy all of the tests. If they can do so, fine, and if not, it will be caught by this piece of legislation.

Mr. Rodriguez: Mr. Speaker, I listened carefully to the Member for York East (Mr. Redway). He made the argument that he thinks this Bill will be effective. One of the reasons he gave was that it is now removed from the ambit of criminal consideration. Why does he think it is necessary to provide all these "outs" with words like "substantially lessen competition"? Why does the defence for conspiracy have to be built in? Why do you build in the defences against the breaking of the law?

Why is there no provision in the merger section to outlaw self dealing? That is one of the more potentially serious drawbacks to the mergers.

Mr. Redway: Mr. Speaker, I am delighted to have the opportunity to answer the Hon. Member's question. After the Hon. Member made his speech he was asked whether or not all mergers may be bad for consumers. My comments will relate to that question as well as to the questions he has put to me.

There was a recent case in which it can be argued that a merger took place which was good for the consumer. That was the merger involving Genstar and Canada Trust. That merger restricted the number of trust companies. In that sense it was restricting competition. On the other hand, by improving its financial position, it is now the sixth largest financial institution in the country and is very competitive with the chartered banks. Therefore, it is, in effect, increasing competition in the banking area.

At the same time, the amalgamation of the real estate sales operation of Canada Trust and The Permanent has created a larger and more effective competitor for the Royal LePage company which has been in the market for a number of years. There is an argument that in that case, even though competition was restricted, it will be beneficial for the consumer. I