

*Combines Investigation Act*

The minister has indicated on several occasions that he wants competition in the marketplace and that this is what this bill is designed to do. The only way we can ensure competition is to support the kind of amendment we have put forward. It is also very interesting to note that the minister, in replying in the House to a question with respect to loss leading, said that he was prepared to support an amendment. But this is the kind of clause he brings into Bill C-2. As a matter of fact, the subject was raised in the House on October 4, 1974, just over a year ago, when the minister said:

I think this is another example of the urgency to amend our competition act and I hope that the hon. member will persuade his colleagues on the other side to support my action.

This is the action he wants supported. He wants us to permit loss leading so long as it does not endanger what he calls competition. I have tried to indicate to the House that we are permitting a monopolistic kind of approach by the large corporations and chain stores which are not interested in encouraging competition. In fact, what they are interested in is the monopoly of their particular sector. So long as this continues, loss leading will be employed as a practice to obtain that end. The minister has only one course to follow, if he is really serious about ensuring competition and if he is really interested in providing protection for the consumer: he can support the amendment of this party with respect to loss leading. It is a practice which should be outlawed in Canada. It does nothing for the efficiency of business and nothing to provide better prices for the consumer, even though it leads the consumer into thinking that he is getting a deal when in reality he is being shafted.

● (1630)

It seems to me that the remarks I have made this afternoon should have fully convinced hon. members that the amendment ought to be supported. I am reminded that I may have convinced reasonable members of this House, and of course all hon. members are reasonable, including the hon. member for Edmonton West. I am quite sure that when hon. members see the wisdom of this amendment, they will support it.

**Mr. Hal Herbert (Vaudreuil):** Mr. Speaker, the hon. member for Nickel Belt (Mr. Rodriguez) dealt only with the second part of his proposed amendment, so to be logical I will discuss the second part first and then turn to the first part of his amendment.

The arguments of the hon. member for Nickel Belt have concentrated on the increased share of the market which has gone in the past several years to the food chain stores. He appears to attribute this shift in consumer buying to loss leaders. The standing committee studying Bill C-2 spent considerable time listening to representations with regard to loss leader selling. The questioning by the members of that committee was aimed at trying to find concrete evidence that the loss leader has eliminated or reduced competition. As many hon. members know, this has been a subject of discussion from time to time since at least the 1930s, and particularly since the publication of the report of the MacQuarrie committee to study combines legislation in 1951.

That committee decided not to recommend the prohibition of loss leader selling, but suggested that a special study of it be made by the Restrictive Trade Practices Commission. The very extensive study of the commission

[Mr. Rodriguez.]

which appeared in 1954 recommended against the introduction of such legislation. The Economic Council of Canada, in its interim report on competition policy in 1969, also found itself unwilling to recommend legislation against loss leader selling.

When Bill C-2 was first introduced, it proposed deletion of the so-called loss leader defence against a charge of resale price maintenance, which is to be found in section 38(5)(a) and (b) of the Combines Investigation Act. That defence has been reinstated in the amended version of Bill C-2 and is to be found in clause 38(9)(a) and (b). It is not believed that we should go further than that, at least for the present. It will be the subject of further consideration, however, in the context of phase two of the legislative revisions.

Whatever decision is finally made, the wording of the amendment before us brings out some of the problems in drafting legislation against loss leaders. For example, it is very difficult to design a statute which will enable the courts to judge how low a price must be in order to be a loss leader, and how to judge what the motives of the seller were. The courts have tended to interpret existing section 38(5)(a) to mean a price below direct acquisition cost to the seller. The difficulty is that those who call for prohibition of loss leader selling want a higher threshold price, but surely this is no time to adopt a general rule which would prohibit sellers from selling below some arbitrary price which more than covers their direct costs.

The hon. member for Nickel Belt did not deal with the first part of his motion. If I may, I will refer to it under paragraph (a) of motion No. 10. The effect of this part of the amendment would be to require every seller of a product in Canada to adopt a policy of selling his goods at a uniform price everywhere in Canada. It would have the effect of placing businesses in a strait-jacket in their effort to survive in a competitive market. Just to take one example, a manufacturer might decide to sell at a low price, which nevertheless made some contribution to overhead, on the west coast in order to meet intensive import competition from overseas in that area. He would be faced with the choice, under this proposal, of abandoning the western market or of lowering all his prices to a point at which he could not survive.

The two parts of this amendment proposed by the hon. member for Nickel Belt have some emotional impact. However, anyone who listened to the deliberations in committee and to the representations from all sectors surely concluded that the bill as it is now introduced adequately takes care of the situation in which we find ourselves at the present time, and we should not cloud the issue, particularly on this amendment, by a discussion of the increased share of the market which is presently being taken by the large food chains. I am sure this applies to members of the official opposition as well as to members of this party. Surely that is a subject for discussion in another place, and this particular amendment is not the way to handle that particular problem. On that basis, I suggest that this amendment should be defeated.

**Mr. Bill Kempling (Halton-Wentworth):** Mr. Speaker, I would like to say a few words about the amendment proposed by the hon. member for Nickel Belt (Mr. Rodriguez). He always manages to become quite emotional