

of the commission to deal with that. Now we have the commission given full authority, as provided in the Aeronautics Act, to enact regulations and when one refers to the regulations which have been enacted we see contained in section 14(1)(m), in Part II, the language that: respecting traffic, tolls and tariffs and providing for

- (i) the disallowance or suspension of any tariff or toll by the Commission,
- (ii) the substitution of a tariff or toll satisfactory to the Commission, or
- (iii) the prescription by the Commission of other tariffs or tolls in lieu of the tariffs or tolls so disallowed;

Section 14(1)(n) then continues:

respecting the manner and extent to which any regulations with respect to traffic, tolls or tariffs shall apply to any air carrier licensed by the Commission or to any person operating an international air service pursuant to any international agreement or convention relating to civil aviation to which Canada is a party;

Now, the power of regulation specifically deals with tariffs, tolls and a variety of matters. The power is given by the one undoubted authority under our law which has the authority so to deal with it. In those circumstances, to impose restrictions under which the Combines Investigation Act could be made to apply and enable a study to be made and proceedings to be taken to investigate the quality and the scope of the authority exercised, seems to be going a long way. This is the point which bothers us; at least, it bothers me.

Hon. Mr. Ouellet: Mr. Chairman, I have listened to you very carefully and the argument that you are making is precisely, I suspect, the argument that a lawyer would be making on behalf of a company, if ever a company were accused. That type of argument is along the lines of the cases, the *Canadian Breweries Ltd.* case or the farm marketing products case, which have been sustained by the court in the past. In my opinion, such types of argument meet right on the points that indicate that the Combines Investigation Act should not apply in such cases, because the industry is properly regulated. In my opinion, you have yourself answered the questions.

The Chairman: Yes, but I am not a judge.

Hon. Mr. Ouellet: Well, you are a very good lawyer.

The Chairman: Whatever my opinion may be, I am stating it only as an opinion; I cannot make a pronouncement as a judge.

Hon. Mr. Ouellet: Yes.

The Chairman: Referring to the questions posed by Mr. Justice McRuer at the end of his judgment in the *Canadian Breweries Ltd.* case, the two questions are very short and are as follows:

... Has it been proved beyond a reasonable doubt that the merger has conferred on the accused the power to carry on its activities without competition, or substantially without competition? I think the irresistible answer is no.

I ask myself this further question: Has it been proved beyond a reasonable doubt that the merger has conferred on the accused the power to control the market so that the provincial authority in the exercise

of its duty in fixing prices cannot protect the public interest? To this question I think the irresistible answer is no.

Those were the two questions which marked the approach of Chief Justice McRuer to his judgment in this case, where he held that there was no detriment to the public interest in the acquisition of quite a number of breweries by Canadian Breweries Ltd.

Now, it may well be that the law goes so far—I am not ready to express that opinion yet—that if there is provincial regulation there is no place for the federal authority. I do not know whether the McRuer judgment goes that far, but it may well. By the same token, it may well be that the Supreme Court of Canada, if the same point were developed today, might have a different view.

Mr. Cowling: There may also be some aspects of the business of the air carrier which do not come under the authority of the CTC as clearly as do tariffs. For example, scheduling, as I understand it, has traditionally been something on which the airlines were expected to make agreements. In fact, the CTC in issuing orders have even gone so far as to state that the order is conditional upon the two or more airlines getting together and making agreements as to scheduling. For example, it was pointed out to me that if there was no such rationalization the public would get service from airlines only at peak periods. You would then have two or three airlines operating flights around the same time because there were plenty of passengers. That would not be proper; there should be a service throughout the day, even in non-peak periods. Obviously it is wasteful to have two or three airlines operating at times during the day when there is not the load factor. They have traditionally agreed that such-and-such an airline will handle the morning flights and another will handle the afternoon flights, and they will all operate at peak periods. It is not absolutely clear that this is something that the CTC can prescribe, although, as I say, I believe they have made it a condition in the issuance of orders. Perhaps this is an area where they could not get the benefit of the McRuer judgment. That is just one example.

The Chairman: We have discussed this problem pretty thoroughly. I am still concerned about the nature of the undertaking, if any, that the minister indicated he might be prepared to give. We could discuss this subject for a much greater length of time and still not resolve anything this morning. We have other points that we wish to develop with the minister while he is here.

Hon. Mr. Ouellet: Before moving to another point, Mr. Chairman, could I, in capsule form, express to the members of the committee what they are asking me and why it is difficult for me to give an answer, because some of the points raised are outside my jurisdiction.

Firstly, I refer to new section 32.

I am sure that everyone agrees that services should be under the Combines Investigation Act. That applies in other countries and we believe that Canada should have done this a long time ago.

Secondly, because all services are now under the act, it creates some difficulties for a certain type of regulated industries.

Senator Flynn: Trades and professions.

Hon. Mr. Ouellet: Yes. I outlined the many quasi independent federal regulatory agencies, and so on. You, as