

*Competition Tribunal Act*

emphasis is on punishment rather than on correction, on penalties for damages already done. Under civil law, which is where these matters will be dealt with in the amended Act, it will be possible for the tribunal to get the practice itself stopped by issuing a cease and desist order, as an example, or ultimately, if necessary, by ordering to restore competition to the market-place they order divestiture.

This Bill will also give us a law that can deal with anti-competitive behaviour more effectively. The amended Act will provide examples of these practices for the guidance of the tribunal. This list of examples is something that has traditionally been very important and valuable to the small business community.

The other improvements have to do with the focus on the provisions. In some respects the present Act misses the point. These amendments will focus on the real problem. For example, the monopoly provisions in the present Act deal with situations in which market power is used, or is likely to be used, and I quote, "to the detriment of the public". That really does not give the courts a precise course to steer by. It does not point the process at the really crucial question: "Does this practice reduce competition or doesn't it?"

That is one reason why, as we have heard so often in recent days, there has been only one conviction for monopoly in 75 years. These changes will put the focus on the question and in so doing they will give us a better tool with which to defend small growing firms against the abuse of market power of their larger rivals.

Another aspect of the Bill that concerns small business directly is conspiracy. It is a major concern of small business. The conspiracy provision is, of course, the backbone of the competition law. It is the most pernicious of anti-competitive behaviour—it is what the gang has to do before it gangs up and it has to agree to lessen competition unduly. Conspiracy, under these amendments, remains what it has always been—a serious criminal offence.

Ideally these provisions should have a deterrent effect. They should stop a conspiracy before it starts. In cases where conspirators are not deterred the law must be an effective basis for prosecution. The conspiracy sections of the present law have worked fairly well. The sections are a century old and time has caught up with them. One major problem is the type of evidence which must be produced to get a conviction in court. When the unscrupulous get together to conspire they are not likely to leave a paper trail of written agreements.

Until a few years ago it was possible to infer conspiracy from all the surrounding circumstances—you could base your case on circumstantial evidence as long as you could prove, beyond any reasonable doubt, an agreement to lessen competition unduly. But in 1980 the Supreme Court of Canada handed down the Atlantic Sugar judgment which created a number of ambiguities in the law. For that reason the Bill now before us contains an amendment under which the existence of

a conspiracy may be inferred from circumstantial evidence. This merely restates the law as it was prior to 1980.

The second change is in penalties. The Act now allows for fines up to one million dollars. In the last attempt to amend this Act by the former Government the anti was raised to two million. To be truly effective, though, the penalty must be much higher. The Bill before us increases the maximum penalty to five million dollars.

However, the Government recognizes that when you're competing in export markets the law should allow firms to get together to promote Canadian export overseas. Bill C-91 proposes to relax the rules on the formation and operation of export consortia and these changes should help small business to take advantage of the enormous potential in greater Canadian trade with other countries.

Finally, there is a change in this Act that deals with pre-notification of mergers. The amended law will require companies with combined assets or sales in excess of five hundred million dollars planning mergers representing a value of more than 35 million to tell the Government about them in advance. It is high time we were able to evaluate the merits of mergers before they have taken place. Small businesses in Canada have let us know through their organizations that they attach a high importance to this change.

We know how important small business is to our economic future; it is a matter of record. We know its importance as a source of jobs and national income, but we should never forget another aspect of its contribution, one that does not necessarily show up in surveys from Statistics Canada. Small business is a well-spring of another kind. It is the source of new products, new ideas and new thinking. Small business is the challenge that keeps the established older sectors alert, uncomplacent and competitive. Small business is the youth of the economy.

To meet the economic challenge of our time at home and abroad we need the full, unimpeded contribution of this sector operating at its full potential. These amendments will take us a step toward that objective. They merit our support. I support these amendments and I urge the Hon. Members to do the same. I hope that finally after 75 years we will see a Competition Act passed in this House that will be current with the times, will address the needs of the small business community, will make it possible to close in on areas where conspiracy occurs and will allow parliamentarians, on a clear conscience, to say that they have done their bit collectively to deal with a nasty situation that is, in some cases, getting out of control in no small part due to the long years of procrastination and delay in dealing with changes to the Competition Act.

**Mr. Orlikow:** Mr. Speaker, I would like to ask the Member a question. Is the Member aware that the Conservative chairman of the finance committee, the Member for Mississauga South (Mr. Blenkarn) and the Member from Don Valley East (Mr. Attewell) have expressed their concern publicly about the takeover of Genstar by Imasco and pointed out the possibility that they can use that power which they will