

Competition Tribunal Act

There are further costs to the economy which everyone pays for having a sluggish economy. Highly sheltered markets mean a sluggish economy which is slow to adapt. These uncompetitive markets also breed persistent and powerful private attempts at manipulation of the political process to sustain the economic status quo. Thus, New Brunswick is dominated by the Irving family, Newfoundland is dominated by Water Street merchants, and the western provinces were formerly dominated by the CPR. Throughout the country a very small number of large corporations have an inordinate sway in economic decision-making. The public pays the price through higher costs.

Over the years the Liberals have been involved in introducing better competition Bills and then not following through with them. Neither the Liberals nor the Conservatives have ever articulated a clear philosophy of competition or a real commitment to its vigorous enforcement. However, in the time of Liberal Governments we had somewhat stronger Bills from which they backed off. The present Conservative Government is not even attempting to come up with something tough to begin with.

I would like to discuss some of the particular provisions in Bill C-91 and indicate what is wrong with them and what enforcement practices to date should suggest to us that we need. The sad fact of the matter is that there is very little enforcement. The loopholes in the current legislation are so enormous that there are very few successful prosecutions in the area of competition.

In the case of illegal mergers there has been one successful prosecution. There has been one successful prosecution with regard to monopoly of a market. Independent academic researchers consider price discrimination to be unenforceable except under the most extreme conditions. The legislation with regard to conspiracy to fix prices and share markets is regarded as weak but workable, but of limited use because of continuing court decisions of a very weak nature. With regard to misleading advertising and resale price maintenance, only the recent sections dating from 1951 and 1969 respectively appear to be fairly effective. Therefore, the majority of the enforcement mechanisms are extremely weak. After a very long period of time these laws are still not being enforced.

This is a record of futility. Of six major sections of the law, two are almost absolute failures. One is mostly unenforceable, one is extremely weak, and two appear to work. That is not a very good record, and Bill C-91 will do nothing to correct that unhappy record of failure. Even with a mixed tribunal and civil law procedures, there is little optimism that this Bill will deal with anticompetitive offences better than the previous law did.

Let us consider once again the specifics. To win a monopoly or abuse of dominant position case, the Director of Investigation and Research must now meet the following tests: substantial control of a market in a persistent manner, anticompetitive acts resulting in less competition, and practice which will lessen or prevent competition substantially. I emphasize the word "substantially".

It is extremely difficult to meet all the parts of this test. The built-in defence that superior competitive performance brought these results leads the people who study this field to believe that there is little chance of the director of investigation actually winning a case. Section 51 of the Bill should be rigorously examined to ascertain whether its weakness means that it will just become another inoperative section of the law.

There are the same types of difficulties with regard to mergers. The Director of Investigation and Research will have to demonstrate a substantial lessening of competition. Another built-in defence of the merger bringing gains and efficiency could result in no conviction. However, there is a far worse defect in the mergers section in that it does not cover conglomerate mergers. That is surely one area which should give rise to a great deal of concern. Much has been said about conglomerate mergers, and people are concerned. Yet, this Bill is silent on this fact of life.

With regard to conspiracy, price-fixing, market-sharing, and restricting entry to competitors are at the heart of any competition law and Canada's law in this area has become less effective in recent years. It has been shown, for example, that prior to 1976 the Crown won close to 90 per cent of all conspiracy cases. Since that time, the Crown has only won 55 per cent. Yet, Bill C-91 does not really change the provisions in this area.

In conclusion, this is a very inadequate piece of legislation. There has been better legislation in the past which was not passed. This is surely the time to give Canadian consumers the decent and adequate protection which they deserve. The cost to the economy of any such competition should not be borne by consumers. Let us put this Bill on the back-burner for six months, have a proper study, and produce tough legislation which will give Canadian consumers the deal they deserve and ensure that we have a well-functioning economy.

Mr. Rod Murphy (Churchill): Mr. Speaker, I welcome the hoist motion moved by one of my colleagues in the New Democratic Party. If that motion were passed this Bill would not be debated in the House for the next six months, which would give the Government the opportunity to redraft this legislation. That would allay a lot of the concerns which I and others who have spoken in this debate have expressed since this Bill was introduced on Monday.

It is clear that this legislation will not go the route. It will not do what it is supposed to do. It will not create effective competition in the country or stop the increased concentration of ownership which exists. No one has refuted the fact that big business wrote this legislation. The active role of the Manufacturers Association and others in writing this legislation indicates the problem which exists with it. The legislation was written by the very people from which the legislation is supposed to be protecting the public.

Our competition legislation will not halt the increased control of our economy by a small number of families. It will do nothing to prevent the situation occurring at the present