

32, 33, 33A, 33B, 33C and 34 of the Combines Investigation Act. The Act was enacted in 1923 and was amended extensively in 1935, 1937, 1946, 1949, 1951 and 1952 as well as in 1960.

Sect. 32, generally speaking, forbids in Subsect. (1) combinations that prevent or lessen "unduly" competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of an article of trade or commerce or in the price of insurance. Subsect. (1) derives from Sect. 411 of the Criminal Code which was enacted originally in 1889. While Subsect. (2) provides that no person shall be convicted for participation in an arrangement relating only to such matters as the exchange of statistics or the defining of product standards, etc., Subsect. (3) provides that Subsect. (2) does not apply if the arrangement has lessened or is likely to lessen competition unduly in respect of prices, quantity or quality of production, markets or customers or channels of distribution, or if the arrangement "has restricted or is likely to restrict any person from entering into or expanding a business in a trade or industry". Subsect. (4) provides that, subject to Subsect. (5), no person shall be convicted for participation in an arrangement which relates only to the export trade. Subsect. (5) provides that Subsect. (4) does not apply if the arrangement has had or is likely to have harmful effects on the volume of export trade or on the businesses of Canadian competitors or on domestic consumers.

Sections 2 and 33 make it an offence to participate in a merger which has or is likely to have the effect of lessening competition to the detriment or against the interest of the public. These Sections also make it an offence to participate in a monopoly which has been operated or is likely to be operated to the detriment or against the interest of the public.

Sect. 33A deals with what are commonly called "price discrimination" and "predatory price cutting". It provides that a supplier may not make a practice of discriminating among those of his trade customers who come into competition with one another by giving one a preferred price which is not available to another if the second is willing to buy in like quantities and qualities as the first; and it also forbids a supplier from selling at prices lower in one locality than in another, or unreasonably low anywhere, if the effect or tendency of such policy is to lessen competition substantially or eliminate competitors or the policy is designed to have such effect.

Sect. 33B provides that where a supplier grants advertising or display allowances to competing trade customers he must grant them in proportion to the purchases of such customers; any services he exacts in return must be such that his different types of customers are able to perform; and if such customers are required to incur expenses to earn such allowances, such expenses also must be proportionate to their purchases.

Sect. 33C makes it an offence for any person, for the purpose of promoting the sale or use of an article, to make any materially misleading representation to the public concerning the price at which such or like articles have been, will be or are ordinarily sold.

Sect. 34 prohibits a supplier of goods from prescribing the prices at which they are to be resold by wholesalers or retailers or from cutting off supplies to a merchant because of the merchant's failure or refusal to abide by such prices, i.e., the practice of "resale price maintenance". The Section also provides that it shall not be inferred that a person practised resale price maintenance simply because he refused, or counselled the refusal of supplies to a merchant if there was reasonable cause to believe and the supplier did believe that the merchant was making a practice of using articles of such supplier as "loss-leaders" or as bait advertising or was making a practice of engaging in misleading advertising in respect of such articles or of not providing services that purchasers of such articles might reasonably expect.

The Act provides for a Director who is responsible for investigating combines and other restrictive practices, and a Commission (the Restrictive Trade Practices Commission) which is responsible for appraising the evidence submitted to it by the Director and the parties under investigation, and for making a report to the Minister. When there are reasonable grounds for believing that a forbidden practice is engaged in, the Director may