

The Agricultural Products Marketing Act does not give the local or provincial marketing board any greater control over agencies outside the province than is possible through the control of the commodity by the board and whatever contractual arrangements it may make with such agencies outside the province. It does make it possible, however, for marketing boards to give groups within a province complete marketing control over any commodity produced in that province or any area of the province that may be defined.

Section 2.—Combinations in Restraint of Trade*

The purpose of Canadian anti-combines legislation is to assist in maintaining free and open competition as a prime stimulus to the achievement of maximum production, distribution and employment in a system of free enterprise. To this end, the legislation seeks to eliminate certain practices in restraint of trade that serve to prevent the nation's economic resources from being most effectively used for the advantage of all citizens.

By amendments which came into force on Aug. 10, 1960 (SC 1960, c. 45), all the provisions of the anti-combines legislation which previously had been divided between the Combines Investigation Act (RSC 1952, c. 314) and the Criminal Code were amended and consolidated in the Act. The substantive provisions now are contained in Sects. 2, 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.

Sects. 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 that 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; 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 service 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.

* Revised by D. H. W. Henry, Director of Investigation and Research, Combines Investigation Act, Department of Justice, Ottawa.