

Rt. Hon. R. J. Seddon.

TRADE MONOPOLIES PREVENTION.

ANALYSIS.

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A BILL INTITULED

AN ACT to protect Legitimate Trade and Commerce by prohibiting Monopolies detrimental to the Interests of the People. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. The Short Title of this Act is "The Trade Monopolies Prevention Act, 1904." Short Title.

2. In this Act, if not inconsistent with the context,— Interpretation.
10 "Court" means the Court for the investigation of monopolies provided for by this Act :

"Goods" means any of the following articles, whether in the state of raw material, or in any preparatory or final state of manufacture :

- 15 (i.) All articles of food and drink ;
- (ii.) Tobacco, cigars, and cigarettes ;
- (iii.) All kinds of building material and furniture ;
- (iv.) All articles of clothing, including boots and shoes ;
- 20 (v.) All articles of fuel ;
- (vi.) Soap and candles ;
- (vii.) Gas and electricity when used for lighting ;
- (viii.) All kinds of agricultural implements :

“Manager” means any secretary, foreman, overseer, or other officer of any company in any position of control or authority :

“Reasonable trade competition” means such competition in any trade as will not prevent or tend to prevent individual traders or firms or limited companies engaged in such trade, and possessed of sufficient capital, knowledge, and business capacity for carrying on such trade, from earning the fair average profits commonly earned by traders in such trade in the absence of any trade monopoly : Provided that in determining what amounts to reasonable trade competition the Court shall be guided not only by the interests of the traders concerned, but principally by the following considerations :

(i.) The interests of the consumers or purchasers of the goods sold by those engaged in such trade ;

(ii.) The interests, material and social, of the public generally in respect of such trade ;

(iii.) The distinction between competition in the wholesale and retail branches of such trade respectively :

“Trade monopoly” means—

(a.) Any agreement, whether in writing or not, whether express or implied, and whether all or only one or some of the parties thereto are resident in New Zealand, the dominant or one of the main objects, whether direct or indirect, of which is—

(i.) To destroy, restrain, or prevent the reasonable trade competition of other traders in the same or a similar trade, and whether in New Zealand or not, with the parties to such agreement ; or

(ii.) To enhance the price of goods sold by the parties to such agreement, whether such parties are engaged in the same trade or not, beyond the price reasonably obtainable for such goods if such price were determined by the operations of reasonable trade competition in the absence of such an agreement :

(b.) Any method of conducting or carrying on trade (including in the term “method” the formation of a trust or combination of any sort, whether corporate or unincorporate, with an abnormal amount of capital or abnormally extensive operations for any particular trade), whether such method is employed by one trader alone or by several traders, the dominant or one of the main objects (whether direct or indirect) of which is that hereinbefore specified in subparagraphs (i.) and (ii.) of the last preceding paragraph (a) hereof :

(c.) In particular, and without affecting the generality of the foregoing definition, a trade monopoly includes any agreement or method of trade whereby the supply of any goods for retail sale is restricted to any persons or class of persons, or any person or class of persons is precluded from purchasing any goods for retail sale ;

“Trade” means any business one of the purposes of carrying on which is to sell goods, whether such goods are produced or manufactured by the person or company carrying on such business or not :

5 “Trader” means any person, incorporated company, or trust, carrying on any trade, and includes the agent in New Zealand of any British or foreign company or of any person carrying on trade outside New Zealand.

3. Trade monopolies are hereby declared to be illegal.

Trade monopolies
illegal.
Court of Monopolies.

10 4. For the investigation of trade monopolies there shall be one Court, consisting of three members, as follows :—

The Chief Justice ;

15 The Judge of the Supreme Court, other than the Chief Justice, usually presiding in the judicial district within which the defendant is resident (within the meaning of the Code of Civil Procedure of the Supreme Court), or if more than one defendant, and they are resident in different districts, then for that judicial district in which that defendant is resident whose name appears first in the information referred to in section *twenty* hereof ;

20 The Judge of the Supreme Court whose usual place of residence is nearest to the usual place of residence of the Judge selected in manner provided by the *last preceding* paragraph hereof :

25 Provided that in any case where in the opinion of the Chief Justice it is otherwise impossible to constitute the Court under this section he shall nominate two of the Judges of the Supreme Court to be members of such Court, and thereupon the two Judges so nominated shall, together with the Chief Justice, constitute such Court :

30 Provided also that where the Chief Justice is unable to sit he shall nominate some other Judge of the Supreme Court to be a member of the Court.

35 5. (1.) The Court shall be constituted to hear and try each matter as it arises, and shall, *ipso facto*, be dissolved when it has pronounced its final judgment or order in each such matter.

When Court to be
constituted.

(2.) The validity of the constitution of the Court shall in no case be questioned.

40 6. The Court shall have a seal, which shall be judicially noticed in all Courts of judicature and for all purposes.

Court seal.

7. The Chief Justice shall be President of the Court, or, if he be not a member of the Court, the senior puisne Judge of the Court shall be President.

President.

45 8. The Court may decide all questions submitted to it by the opinion of the majority of its members, and the determination of the majority shall be deemed a determination by the whole Court.

Majority to
determine.

50 9. The Court shall sit in such town in New Zealand as the President deems most convenient for the hearing of each case, and may adjourn from time to time and from place to place as it thinks fit.

Sittings of the
Court.

10. The Court shall, in addition to the powers conferred on it by this Act, have all the rights, powers, and privileges of the Supreme Court, so far as they are applicable or necessary for the purposes of

Powers of the Court.

carrying out the objects of this Act; and, in the case of any interlocutory application, any member of the Court shall have power to hear the same, and make any order thereon he thinks fit, provided that any such order may be set aside or modified by the Court on application in that behalf.

Procedure.

11. The Court shall follow, *mutatis mutandis*, the procedure of the Supreme Court in civil cases, except where such procedure is expressly or impliedly modified by this Act or the regulations made under this Act.

Amendment of orders, &c.

12. Whenever it is necessary to alter or correct any order, judgment, direction, or decree made or given by the Court so as to express the real intention of the Court, the Court may of its own motion, or on the application of the Registrar or of any other party to the proceedings, make such alteration or correction, and the President of the Court at the hearing at which such order, judgment, direction, or decree was made or given may from time to time, notwithstanding that the Court may have been dissolved, ask the other two members of the Court to sit with him, and such sitting shall for all purposes be deemed to be an adjourned sitting of the sitting at which such order, judgment, direction, or decree was made or given.

Evidence to be given by persons summoned.

13. In all prosecutions, hearings, and proceedings under this Act no person shall be excused from attending and testifying as a witness, or producing to the Court any books, papers, letters, contracts, or other documents in his possession or under his control relating in any manner to the subject-matter of such prosecutions, hearings, or proceedings: Provided that no person called as a witness by the informant in any prosecution under this Act shall be subject to any fine for or on account of any transaction or thing concerning which he gives evidence, or with respect to which he produces any books, papers, letters, contracts, or other documents; but this shall not prevent the Court from exercising any of the powers conferred on it by section *twenty-four* hereof other than that of imposing the fine therein provided for upon the person so called.

Appointment of officers.

14. (1.) The Governor may from time to time appoint one or more persons to assist in carrying out the purposes of this Act, and may define their powers, functions, and duties.

(2.) Every Registrar of the Supreme Court shall be deemed to be a Registrar of the Court under this Act.

Registrar to forward complaints that trade monopoly exists to Inspector of Police.

15. Any Registrar of the Court shall, on receiving a notice in writing under the hand of either the Minister of Labour or the Minister for Industries and Commerce, or a petition in the form in the Schedule hereto or to the like effect signed by not less than fifty respectable persons, that there are reasonable grounds for believing that a trade monopoly exists, forward the same to the Inspector of Police for the district in which any alleged party to such trade monopoly is resident within the meaning of section *four* hereof.

Procedure when Inspector of Police believes trade monopoly exists.

16. (1.) On receipt of such communication the Inspector of Police shall make inquiry as to the truth of such complaint, and if as the result of such inquiry he has good reason to believe that any trader is guilty of a trade monopoly he shall report such belief, and the grounds on which it is based, to the Commissioner of Police, who shall thereupon forward to the Solicitor-General and to the Auditor and Controller-General copies of such report.

(2.) The Solicitor-General and the Auditor and Controller-General may in their discretion call upon such trader to produce to them, or to any Crown Solicitor and Audit Inspector appointed by them in writing for that purpose, all such books, papers, accounts, contracts, letters, or other documents as the Solicitor-General and Auditor and Controller-General require.

(3.) Thereupon such trader shall produce to the Solicitor-General and Auditor and Controller-General, or to the Crown Solicitor and Audit Inspector appointed as aforesaid, all such books, papers, accounts, contracts, letters, or other documents, accompanied by a statutory declaration to be made by such trader, or, in case of a corporate company, by its manager, to the effect that a full and complete discovery has been made to the Solicitor-General and Auditor and Controller-General, or to the said Crown Solicitor and Audit Inspector, as the case may be, of all such books, papers, accounts, contracts, letters, or other documents in the possession or under the control of such trader, and that the same have been produced to the Solicitor-General and Auditor and Controller-General or to the said Crown Solicitor and Audit Inspector.

17. Every trader, whether a corporate company or not, who fails to produce such books, papers, accounts, contracts, letters, and other documents to the Solicitor-General and Auditor and Controller-General, or to the Crown Solicitor and Audit Inspector appointed as aforesaid, accompanied by such declaration as aforesaid, is liable to a fine not exceeding *three hundred pounds*.

Failure to produce documents.

18. (1.) If as the result of their investigation the Solicitor-General and Auditor and Controller-General find *prima facie* that a trade monopoly exists they shall report accordingly to the Attorney-General, who shall prepare an information against the trader appearing to be guilty of such trade monopoly, and direct the Registrar of the Court at the Supreme Court office in which the information is to be filed under section *twenty* hereof to lay the same.

Information if *prima facie* case.

(2.) If the office of Attorney-General is vacant the Solicitor-General shall act under this section without the necessity of such report.

19. The information shall in every case be on behalf of His Majesty, and shall be in the form or to the effect stated in the regulations made under this Act, and shall state generally the grounds upon which such information is laid.

Form of information.

20. (1.) Such information shall be filed in the principal office of the Supreme Court in the judicial district in which the defendants are resident, or if resident in different districts, then the principal office of the judicial district in which that defendant is resident whose name appears first in such information; and in case of any doubt or uncertainty as to the office in which such information should be filed, the Chief Justice, on application to him in that behalf, shall determine the office in which such information shall be filed.

Summons.

(2.) The Registrar of the Court shall thereupon issue and cause to be served upon every defendant named therein a summons in the prescribed form, requiring him to appear before the Court on the day and at the hour named in such summons, being not earlier than *twenty-one days* from the service of such summons, to answer the charge contained in the said information.

Evidence.

21. On the hearing of any information as to a trade monopoly the Court may admit any evidence it thinks fit, whether such evidence is strictly legal or distinctly relevant or not.

Primâ facie evidence of monopoly.

22. It shall be *primâ facie* evidence against a defendant of a trade monopoly that since its commencement the goods sold by the defendant have been sold at prices uniformly higher than before the date of the commencement of the alleged trade monopoly, and that the profits made by the defendant in the business in which such goods are sold have since such date have been abnormally high.

Abnormal profit.

23. In determining the profits made by any trader for the purposes of the *last preceding* section, the Court shall, if it thinks fit, first ascertain the full market value of all the assets of the said business (excluding goodwill), assuming such business were sold as a going concern, and if the rate of profits made by the defendant, calculated upon such full market value, is in excess of the fair average profits made by other traders in the same trade as the defendant, calculated in the same way, such profits may be deemed abnormally high within the meaning of the *last preceding* section.

Order of the Court.

24. At the time and place fixed for the hearing of such information the Court shall hear evidence as to such alleged monopoly, and if satisfied that the defendant has been guilty of a trade monopoly it may in its discretion, by order or decree, do any one or more of the following things:—

- (a.) Declare that the defendant has been guilty of a trade monopoly;
- (b.) Declare all or any agreements it thinks fit tending to establish or promote such monopoly illegal, including agreements for supplies of goods to the defendant guilty of such monopoly;
- (c.) Declare that all or any contracts thereafter entered into with such defendant in furtherance of such monopoly, including contracts for the sale and supply of goods by such defendant, shall be void and be unenforceable: Provided that the Court may, in making such declaration, qualify it in such manner as it thinks fit in order to protect any person contracting with such defendant *bonâ fide* and in excusable ignorance of such declaration;
- (d.) Enjoin such defendant from further carrying on business in any manner amounting to a trade monopoly; and such injunction shall have the force, effect, and consequences of an injunction granted by a Judge of the Supreme Court in any action under "The Supreme Court Act, 1882";
- (e.) If such defendant is a corporate company, may order such company to be wound up, and thereupon the company shall be wound up in the same manner as if an order for the compulsory liquidation of the company had been made by the Supreme Court under "The Companies Act, 1903";
- (f.) Impose a fine upon such defendant of a sum (exclusive of costs) not exceeding *one thousand pounds*;
- (g.) Order any defendant to pay to the Crown such costs and expenses, including expenses of witnesses, as it may deem

reasonable, and may apportion such costs between the defendants (if more than one) as it thinks fit ;

(h.) Declare any defendant not guilty of an alleged monopoly, and award to him such costs and expenses (including expenses of witnesses) as it may deem reasonable, and thereupon such defendant shall be entitled to be paid by the Crown the moneys so awarded to him.

25. For the purpose of enforcing payment of any moneys payable by any defendant under any order of the Court, a certificate in the prescribed form, under the hand of the Registrar of the Court and the seal of the Court, specifying the amount payable and the respective defendants by whom the same is payable, may be filed in any Court having civil jurisdiction to the extent of such amount, and shall thereupon, according to its tenor, be enforceable in all respects as a final judgment under "The Crown Suits Act, 1881," of such Court in its civil jurisdiction.

26. Proceedings in the Court shall not be impeached or held bad for want of form, nor shall the same be removable to any other Court by *certiorari* or otherwise; and no proceeding, judgment, decree, or order of the Court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any Court of judicature on any account whatever, but shall have full effect and shall be observed, acted upon, and obeyed by all Courts of judicature.

27. No proceedings in the Court shall abate by reason of the death of any party to such proceedings, but the same may be continued and disposed of by the successor in office of such member or legal personal representative of the party so dying.

28. If any member of the Court dies, resigns, or refuses or is unable to sit before the Court has pronounced its final judgment, decree, or order, the proceedings shall not abate, but the Chief Justice, or, if he is such member, then the two other Judges of the Court, may appoint another of the puisne Judges of the Supreme Court to take the place of the member so dying, resigning, or refusing or being unable to sit.

29. All moneys payable to the Crown under this Act shall be paid into the Public Account and form part of the Consolidated Fund; and all moneys payable by the Crown shall be paid out of moneys to be appropriated by Parliament.

30. The Governor may from time to time, by Order in Council gazetted, make such regulations as he thinks fit prescribing the mode of convening the Court, the procedure of the Court, the payment of fees in respect of proceedings, and generally carrying into effect the purposes of this Act.

Enforcement of orders.

No *certiorari*.

No abatement on death of party.

Or of Judge.

How moneys payable under Act.

Regulations.

