

House of Representatives

Supplementary Order Paper

Tuesday, 31 March 2015

Commerce (Cartels and Other Matters) Amendment Bill

Proposed amendments

Hon Paul Goldsmith, in Committee, to move the following amendments:

Clause 7, new section 30C

In *clause 7*, replace *new section 30C* (page 8, lines 3 to 28), with:

30C Temporal application of cartel prohibition

- (1) **Section 30(1)(a)** (which relates to entering into a contract or an arrangement, or arriving at an understanding, that contains a cartel provision) applies only to contracts, arrangements, or understandings that are entered into or arrived at after **section 30** comes into force.
- (2) **Section 30(1)(b)** (which relates to giving effect to a cartel provision in a contract, arrangement, or understanding) applies only to conduct occurring after **section 30** comes into force, but applies whether the contract, arrangement, or understanding was entered into or arrived at before or after **section 30** comes into force, and whether or not it has been suspended at any time.
- (3) **Subsections (4) to (6)** apply to a contract, arrangement, or understanding that was entered into or arrived at before **section 30** comes into force and that, at the time of that commencement, contains or may have contained a cartel provision.
- (4) Despite **subsection (2)**, no proceedings under section 80, 80B, 80C, 81, or 82 may be commenced for a contravention of **section 30(1)(b) or 80A** occurring during the transitional period.
- (5) However,—

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- (a) proceedings under former section 80, 80C, 81, or 82 may be commenced in relation to conduct occurring during the transitional period as if former sections 30 to 33 were still in force during the transitional period; and
 - (b) proceedings under section 80B may be commenced for a contravention of former section 80A occurring during the transitional period.
- (6) Former sections 30 to 33, 80, 80A, and 80C continue to have effect as if those sections had not been repealed or amended by the Amendment Act **2011**, and section 89 continues to apply, for the purpose of—
- (a) investigating a contravention to which **subsection (5)** applies:
 - (b) commencing or completing proceedings to which **subsection (5)** applies:
 - (c) imposing a penalty or other remedy or making an order in proceedings to which **subsection (5)** applies.
- (7) In this section,—
- (a) a reference to **section 30** or **section 80A** (or a provision of that section) is a reference to that section (or provision) as substituted by the Amendment Act **2011** (subject to **paragraph (b)**); and
 - (b) a reference to a former section (for example, former section 30) is a reference to that section as in force immediately before the commencement of this section; and
 - (c) **Amendment Act 2011** means the Commerce (Cartels and Other Matters) Amendment Act **2011**; and
 - (d) **transitional period** means the 9-month period starting on the commencement of **section 30**.

New clause 26

After *clause 25* (page 26, after line 17), insert:

26 Transitional provision for offences and contraventions under repealed or amended provisions

- (1) This section applies to an offence committed under, or a contravention of, any provision of the principal Act repealed or amended by this Act before the commencement of the provision that repealed or amended that provision.
- (2) The provisions repealed or amended by this Act continue to have effect as if they had not been repealed or amended for the purpose of—

- (a) investigating an offence or a contravention to which this section applies:
- (b) commencing or completing proceedings for an offence or a contravention to which this section applies:
- (c) imposing a penalty, or making an order, in relation to an offence or a contravention to which this section applies.

Explanatory note

This Supplementary Order Paper proposes the following amendments to the Commerce (Cartels and Other Matters) Amendment Bill (the **Bill**):

- the replacement of *new section 30C* of the Commerce Act 1986 (the **principal Act**), which comprises transitional provisions concerning existing arrangements entered into before the enactment of the Bill. The amendments proposed are to give full effect to the transitional regime as intended, which is to provide that, in relation to these arrangements,—
 - proceedings for a contravention of the new provision against giving effect to a cartel provision (*new section 30(1)(b)*), proceedings for banning orders or injunctions (sections 80C (as amended by the Bill) and 81), and private proceedings for damages (section 82) cannot be brought in relation to conduct occurring during a 9-month transitional period starting on the date that *new section 30* comes into force. However, section 30 (relating to price-fixing provisions) and sections 31 to 33 (providing for exemptions from the application of section 30), as now in force, continue to apply to these arrangements during the transitional period. In relation to conduct occurring during the 9-month period, proceedings can therefore continue to be brought under section 80, 80C, 81, or 82, as now in force, and the penalties, remedies, and other orders that can be imposed or made under the current law will continue to apply in those proceedings:
 - proceedings cannot be brought for a contravention of *new section 80A* occurring during the transitional period. However, section 80A, as now in force, also continues to apply during the transitional period. This has the effect that bodies corporate are prohibited from indemnifying directors, former directors, and others for liability for payment of pecuniary penalties for a contravention in relation to section 30, as currently in force, occurring during the 9-month period, or costs incurred for defending or settling any proceeding relating to such liability. Proceedings for a contravention of section 80A occurring during the transitional period can be brought under section 80B of the principal Act, and the penalties, remedies, and other orders that can be imposed under the current law will continue to apply in those proceedings also:

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- inserting *new clause 26* to clarify that, for the purposes of bringing and completing proceedings relating to conduct engaged in before the provisions of the Bill came into force, the principal Act's provisions continue to have effect as if they had not been amended.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.