PRICES SURVEILLANCE BILL 1983

Date Introduced: 30 November 1983
House: House of Representatives
Presented by: Hon. P.J. Keating, M.P., Treasurer

Short Digest of Bill

Purpose

To establish the Prices Surveillance Authority to monitor and examine prices for goods or services in selected parts of industry and commerce, and to abolish the Petroleum Products Pricing Authority.

Background

The Prices Surveillance Authority is intended to have a supervisory and investigative role. It is flexible in that the areas of industry supplying goods and services where prices are to be under surveillance, are to be determined by the Minister or subject to the Minister's approval, the Authority. At the National Economic Summit Conference the Treasurer, the Hon. P.J. Keating, indicated that the Authority would "focus only on corporations which operate in industries whose prices have pervasive effects throughout the economy and where, at the same time, effective market disciplines are not present"[1]. Oil and aluminium have been indicated to be areas of particular interest (Australian Financial Review, 22 November 1982).

The scope of the Bill is set out in clause 4. The Bill derives effect from several constitutional provisions, including those relating to interstate trade and to trading corporations. Commonwealth authorities are subject to the Bill, although State and Territory authorities are exempt.

The competitive market model assumes that no individual participant in the market is able to significantly influence the outcome, and predicts an eventual outcome with no 'excess' profits. Moreover, with free movement of resources between industries, rates of profit, disregarding varying risk factors, will equalise across industries. 'Excess' profits are most readily obtainable where barriers to new entrants in the market permit a monopolist or oligopolists to charge higher than competitive market prices.
Some forms of pricing behaviour are prohibited by trade practices legislation. Section 46 of the Trade Practices Act 1974 is, however, directed at conduct with the purpose of eliminating or substantially damaging a competitor, preventing new entry to the market, or deterring competitive behaviour in the market. For one or more sellers to charge without collusion, what the market will bear, is not a contravention. The 'excess' profits may merely attract new entry. Use of market power to maintain a high price contradicts predatory price cutting by which monopolists may exclude intending entrants to the market. Only the latter is prohibited conduct.

In Australia, small markets and long distances may discourage competitive new entry[2]. Economies of scale in some markets result in natural monopoly.

The scope of price surveillance was argued at the National Economic Summit to cover the level of prices but not the variations applied at any given time according to a discriminatory scale, a matter for trade practice law[3].

The Prices Justification Tribunal was established by legislation in 1974. Amendments in 1976 and 1979 limited its role in amassing information on price movements and expanded its role in price surveillance and ad hoc inquiry. The need for prices adequate to maintain investment and employment was specifically referred to. The Tribunal was abolished by the Commonwealth Functions (Statutes Review) Act 1981. Experience with the Tribunal emphasized the need for selectivity in inquiry and specialized skills for staff involved[4]. The advantage to small business of the Price Surveillance Authority was seen in stability in "key multiplier areas" including raw and basic materials, fuel and energy and essential services[5].

The Premier of Victoria, the Hon. John Cain, referred to the need to specify effective operational criteria[6]. The Bill specifies in clause 17 overriding criteria for the Prices Surveillance Authority in exercising its functions, of profits, investment and employment, and the need to prevent suppliers taking advantage of market power in setting prices.

Main Provisions

The Bill would commence on a date to be proclaimed. The Bill establishes a Prices Surveillance Authority in Part II (clauses 6-16). Consequent to the transfer of its area of responsibility to the new Authority, the Petroleum Products Pricing Authority is terminated by the repeal provisions in Part V (clauses 46-51).
The Prices Surveillance Authority consists of a Chairman and 3 other members, although associate members may be appointed, including appointments for the purpose of a particular inquiry (clause 12). Under clause 30, the Authority may sit in Divisions.

Part III details the functions of the Authority, viz. to hold inquiries and report to the Minister on prices for particular goods and services, and to consider price proposal notices from declared suppliers of "notified" goods or services. Without approval by the Authority of such a notice, a penalty of $10,000 applies for supply at a price greater than the highest previously charged. Price increases pending inquiry carry a similar penalty (clause 26).

Clause 21 permits the Minister, or the Authority with the Minister's approval, to specify "notified" goods and services, "declared" suppliers, and "exempt supply" circumstances.

The criteria for operation of the Authority in clause 17 comprise the need for investment and employment, and the need to discourage persons from "taking an advantage in setting prices" of their power to "substantially influence" a market. The Minister may specify further considerations by direction under clause 20.

For further information, if required, contact:

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References

4. loc.cit.
5. op.cit., p.148.
6. op.cit., p.133.