

Mr. Hemens: Well, the third one suggests, senator, certain specific defences as being a proper answer to any such complaint.

Senator Connolly: That is right, yes; I am sorry.

The Chairman: Yes. If you look at that one for the moment, Senator Connolly, this part of the bill does provide for a hearing in which the person who is being inquired into may appear and may give evidence; but in order to give relevant evidence I would think that there would have to be some amplification of the provisions of the bill. It would appear that way to me, and I think that is the sum and substance of your point.

Mr. Hemens: That is our proposition, sir.

Senator Connolly: Could I ask just one simple question here, Mr. Chairman, in connection with section 31.2? For example, when the commission embarks upon a hearing, is it Mr. Hemens' submission that the commission should find that a person not only is adversely affected in his business, but that he is unduly adversely affected in his business? Is that the point where the undue restriction or restraint is to be injected by way of amendment? Or do you propose that that should be done in the sections referred to by Senator Hayden dealing with trade practices? At the moment I do not know what that section is; I cannot put my finger on it.

The Chairman: The trade practices which are reviewable by the commission start on page 16, and they start with section 31.2. Now, these are not offences.

Senator Connolly: I see.

Mr. Hemens: Your question, senator, really asks for a drafting answer, I think; and I think we have tried, in general, not to enter into competition with the Department of Justice. I think the answer could well be the addition of a subparagraph which would state that the commission "shall not make an order unless the trade practice complained of constitutes an undue restraint on competition," or, "unless the trade practice complained of is the result of an otherwise unlawful activity," et cetera.

Senator Connolly: I think that is helpful. That helps me a good deal.

The Chairman: Would you carry on to your third point, which may very well not be open to a person who is charged with a matter on which he can adduce evidence at the hearing?

Senator Connolly: Say that again, Mr. Chairman, would you? I am sorry, I did not get the beginning.

The Chairman: What I said was that the third point which is developed by the Association is the suggestion, as they develop it on page 29 in their brief, that they should be able to establish that there is adequate distribution as a matter of evidence, that the form which the distribution takes is a proper and justifiable form, having regard to the nature of the product and the market they are serving, and that those things should be elements which could be raised.

Senator Connolly: As a defence?

The Chairman: By way of defence, yes; by way of answers. This is a hearing, I suppose, and not a trial, to establish that there is adequate distribution, in the circumstances as they relate to the carrying on of this particular business.

Senator Connolly: Well, to summarize what Mr. Hemens' point seems to be, would it be appropriate to say this, Mr. Chairman, that what Mr. Hemens is suggesting is that section 32 should have a further clause in it in which the substance of the points made on page 29 of his brief should be reflected?

The Chairman: I gather that that was his point. Is that right?

Mr. Hemens: Yes.

Mr. R. Snelgrove, Member, Legislation Committee, Canadian Manufacturers' Association: Mr. Chairman, may I add some comments to expand on what Mr. Hemens said about the philosophy that is apparently behind the refusal to deal, in Part IV.1 of Bill C-7, which describes the matters which are reviewable by the Commission?

As Mr. Hemens indicated, the philosophy behind the drafting of these sections is one relating to, affecting price competition, to the exclusion of non-price competition factors.

Senator Connolly: Not supply; it is price?

Mr. Snelgrove: Price competition. The CMA, of course, recognizes that price competition is important, but it is not important to the exclusion of non-price competition, like the service of the product, pre-delivery, and post-delivery service, and many of these items that are set out in paragraph (iii) on page 29 of the brief that the chairman has referred to are directed to trying to offset the thrust of the philosophy in the bill of sole reliance on price competition.

The philosophy of price competition, certainly in many industries, does not reflect the practices of the real world. For many manufacturers of vehicles, automobiles, trucks, farm machinery, industrial construction machinery and many other hard goods, although pricing is important—and it is important to the consumer—the manufacturer, the distributor and the dealer are concerned, as well as the consumer, with how well the product is serviced after sale—Does the manufacturer or retailer stand behind the warranty? What repair facilities are there? What is the dialogue between the retailer and the consumer? What is the effect upon a consumer as it relates to the reputation of the retailer or manufacturer? Things of this nature are important.

For my own industry, the farm machinery industry, we have since 1970 gone through five years of a royal commission on farm machinery, and the royal commissioner had a study on the subject of the farmers' attitude towards farm machinery purchases. I refer to this not because it relates to farm machinery only, but the application of the study relates to many other hard goods. This study, which is available, resulted from an independent survey made