changes. At first blush this power seems disarmingly simple and reasonable. But upon further examination one can see that its practical implementation may have a radical impact on the nature of distribution systems for products in Canada which may well be inconsistent with the real economic and structural facts of life in this country.

The provision effectively will put the onus on the seller to justify his distribution system when he is called before the commission. That will likely be the general approach since the act invites the imposition of sanctions if the commission finds that the reason for inability of the person to obtain adequate supplies of the product is "an inadequate degree of competition in the market". There is no onus on the Director of Investigation and Research who brings the initial application to prove the inadequate degree of competition. Clearly, there is an open invitation for the commission merely to find it. The conclusion that refusal to sell is synonymous with inadequate competition may be too inviting for the commission under these circumstances.

But perhaps even more important than this reversal of the onus of proof is that this section represents a denial of the fundamental right of any seller to deal with whomsoever he wants. Not only does this right have a solid foundation in the common law of English jurisprudence, but the American legislation, with all its sophisticated provisions, clearly has no restrictions of this nature. Neither was any such restriction ever considered by congress when the legislation was last amended. Yet in that country, discount selling, which apparently is the aim of the minister in proposing the power for Canada, is flourishing to a far greater extent than in this country.

From the manufacturers' and distributors' point of view, taking away their right to refuse to sell in Canada would have a huge impact on their existing marketing systems of distribution. The provision also raises serious questions for various franchise systems, the practice of private branding, offshore suppliers and technical servicing requirements. These are matters of detailed substance which will have to be explored at the committee stage of this bill. One would hope that the minister might provide a fuller explanation of what he is trying to achieve and how he justifies the means that he has adopted. Also, one would hope there would be some explanation as to why this provision permits the commission to single-out one supplier for attention rather than merely authorize an order of general application to be applied to all suppliers in the same position.

There are also problems of procedure with the powers that are granted to the RTPC over refusals to sell, exclusive dealing practices, tied sales, market restrictions, etc. The minister very ably went through some of the procedural problems and provided some of the answers. While the act does specify that in the exercise of these powers the parties affected must be given "a reasonable opportunity to be heard", and that is a matter subject to judicial review in the Federal Court, the commission is left to make its own rules for the regulation of its proceedings and the performance of its duties and functions under the act. This may well lead to uncertainty and possible arbitrariness in proceedings before the commission, problems which might otherwise be overcome through specifying certain minimum procedural protections in the legislation itself. That is the drafting approach we would favour.

● (1610)

For example, the act is silent as to a right of reasonable notice of the hearing, the right to call and examine witnesses and to cross-examine other witnesses, the right to reasonable adjournments of the hearing and the right to a written decision with reasons. Perhaps more important as a practical matter is the silence of the act on the extent to which a party to be affected by an order of the commission will have access to and advance notice of the research done by the commission's staff in preparation for the hearing. With respect to a hearing on a refusal to sell application, for example, a manufacturer or distributor would want to have some advance information as to the concentration ratios the commission would be likely to adopt as its test for determining who is the dominant seller supplying goods in conditions of "inadequate degree of competition."

Even more important is the relationship of the commission research staff to the commissioners who will, after all, be making judicial and quasi-judicial decisions on many of the applications before them. In order to maintain the decision-making integrity of the commission in a quasi-judicial context, should not the commission's staff be attached to the Director of Research and Investigation, who makes the initial application, instead of the commission in order to guarantee fairness and the appearance of fairness?

Finally, it is our view that the standing committee giving clause by clause study to this bill should examine carefully whether there is need for a substantive right of appeal to the courts from an order of the RTPC. It is acknowledged that sections 18 and 28 of the Federal Court Act provide a comprehensive right of review of commission decisions made on a judicial or quasi-judicial basis. The minister is quite in error when he calls it a right of appeal. I hope the minister will provide the rationale for the sufficiency of this review right in light of the recommendations in many of the briefs already submitted for a broader right of appeal.

One of the significant and more desirable aspects of the bill before us today is the application of many of the prohibitions of the act to service industries. This obviously has been included as a result of a very strong recommendation of the Economic Council of Canada in its interim report on competition policy released in August, 1969. The importance of this change is demonstrated by the fact that service activities previously not subject to the prohibitions of the act make up approximately 20 per cent of the gross domestic product of Canada.

There are various classes of service industries which are exempted for one reason or another. The largest, most important class of exemption is service activities which will be covered by laws, usually of a province or municipality, which regulate or authorize them. For reasons not entirely clear, the minister has not specifically included the exemption in the provisions of the bill but has taken the position that it flows from judicial interpretation.