

which they retail them. When such service stations do not possess railway trackage and capacity facilities they are compelled to buy in tank wagon quantities at the regular tank wagon prices or possibly such slightly better rates as they may be able to obtain if they command a substantial volume of business; in these events their margins are confined between the competitive prices at which they must sell retail and the tank wagon rates they pay.

When curb pump operators possess trackage and capacity facilities they are in a position—just as are service station owners—to buy gasolines in tank car quantities and to import the same, if they shall so require, from the United States of America upon favourable price movements or during distress markets. When they import they retain the margin between such import costs and retail selling prices and when they buy in tank car quantities they ordinarily buy at reductions below tank wagon rates. Otherwise and without such facilities their only medium of supply is by tank wagon delivery when, as a general rule, they pay the same prices as are charged to service stations owned or operated by wholesale distributors. When service stations compete with them they must meet their prices and this means that as a general rule a margin of three and a half cents per imperial gallon is obtained by retailers on gasolines sold through curb pumps in Ontario.

Efforts on the part of wholesale distributors to protect or expand their businesses have given rise to a practice which now serves to give them a measure of control over the operation of a large number of curb pumps in use in Ontario. Under such practice a wholesale distributor purchases a curb pump and then sells it to a retailer or garage operator on extended terms of credit—usually three to five years—or else leases it to him under the terms of a rental agreement. In either event the purchaser is required to restrict sales made through such pump to gasolines which are supplied by the wholesale dealer. In certain instances such restrictions run for a definite period of years but in others they obtain for so long only as the pump shall remain not fully paid for or the rental agreement continue in force. In the agreements which came before me no provisions were contained which sought in any way to control the prices at which gasolines were to be sold retail through such pumps and it was emphatically contended that such agreements were not originated or entered into for any such purpose. It is my opinion, after hearing the evidence given, that the practice did originate in efforts made by wholesale distributors to protect and enlarge their businesses; nevertheless it is apparent that with a retail dealer restricted to one source in the purchase of his gasolines and the prices to be paid for the same either left open or to be determined by the distributor, he does not remain a completely free agent but is largely under the control of the wholesale dealer notwithstanding the right which he may possess to complete payment for the pump and possibly free himself from the covenants mentioned. In this view I am of the opinion that the agreements do possess an influence upon retail prices in that they prevent a curb pump operator—who has entered into one—from buying from other sources if more favourable terms be offered, and in particular they prevent him from taking advantage of distress markets—fair or unfair as such competition may be. Otherwise I believe their effects are to a very large extent paralleled by the conditions hereinafter set forth.

The volume of business done through a curb pump varies according to its situation and locality, and the evidence of certain wholesale distributors is that it does not exceed 40 to 50 gallons per pump per day on the average throughout Ontario and 60 to 75 gallons per day—as an average—in larger centres like Toronto. With retail prices fixed by service stations, when pumps compete with them, and their costs by tank wagon rates (when they are unable to import direct) the ordinary margin of $3\frac{1}{2}$ cents per imperial gallon thus allowed gives an average gross earning to curb pumps in Ontario of \$1.75 per day and in centres