The fourth point is often put forward as the most significant. We disagree. It requires proof that the reason for the refusal to supply is an inadequate degree of competition. Professor Donald Thompson, of York University in Toronto, has said that in his opinion the commission will simply establish concentration ratios for each section of Canadian industry. If these ratios are exceeded, then the commission will find inadequate competition. Because of the nature of Canada's market, most industries in Canada are fairly highly concentrated. In fact, the Department of Consumer and Corporate Affairs issued a report in 1971 giving the statistical analysis of concentration in Canada's manufacturing industries. We think the result will be that most industries in Canada will be deemed to be industries in which there is an inadequate degree of competition.

In other words, gentlemen, we believe that these four facts will be very easily found by the commission. This means, of course, that the commission will have jurisdiction.

Let me now deal with the thresholds for exclusive dealing outlined in section 31.4. The commission has only to find that exclusive dealing has been engaged in by a major supplier or is widespread in the market.

Let me say here that one of our main objections to this bill is that a "product" or a "market" is not defined. Although this is the case under the present law, the need for definition becomes critical when this bill proposes to make so many more trade practices subject to adjudication. In other words, it was bad enough before not to have definitions, but now, if the commission is to deal with all these matters, definitions of "product" and "market" are, we submit, essential.

Referring back to exclusive dealing, what we are saying is this. The definition of a major supplier will depend on the definition of the product. Let me give you an example. If the product is branded, for example, Chanel No. 5 perfume, then quite clearly the distributor of Chanel No. 5 is the major supplier, because he will be the only supplier. I should say in passing that there are two interesting sidelights to this example. If Chanel No. 5 is imported directly from France, then an order from the commission cannot touch it; international competitors in the Canadian market cannot be reached by the commission. On the other hand, if Chanel No. 5 is manufactured under licence, then the terms of the licence may be breached by an order if the commission orders the manufacturer to deal with types of distributors not sanctioned by the licence agreement.

When you look at the definition of "market" it is quite clear that a market could be defined as a shopping centre, a city block, a township, a province or the whole of Canada. It is left entirely to the discretion of the commission, so it is not hard for the commission to find either of the first two factors.

In addition, the commission must find one of three other factors. It must find either that the exclusive dealing is likely to impede a firm's entry or expansion in a market; or it must find that the exclusive dealing is likely to impede introduction of a product or the expansion of a product's sale in a market; or it must simply find that the dealing is likely to substantially lessen competition.

Bearing in mind what we have said about the lack of definition of a product and a market, we suggest to you that any one of those three additional factors could also be fairly easily found by the commission.

In the provisions on tied selling and market restriction, you can see a familiar pattern. For both of them the commission must find that the practice has either been engaged in by a major supplier or that it is widespread in a market. I think we have already indicated why this should not be hard to find. As far as tied selling is concerned, the commission must find at least one other additional factor which is exactly the same as those for exclusive dealing. As far as market restriction is concerned, the additional factor which the commission must find is only that the market restriction is likely to substantially lessen competition.

Honourable senators, the gist of all of this is that all these thresholds are in fact very easy to go through, and once through them the commission has a virtually unfettered discretion.

It is true, of course, that for exclusive dealing, tied selling and market restriction there is an exemption for affiliated companies; it is true that for exclusive dealing and market restriction an exemption is provided if it is only used as a temporary measure; and it is true that for tied selling an exemption is provided if there is a technological relationship between the products. But in practice these exemptions will not have a wide application, and that is why we say the commission will have an unfettered jurisdiction. By this we mean, of course, that the commission can decide whether or not the business marketing practice is legitimate or illegitimate without reference to any criteria, defences or guidelines in the act.

In a nutshell, we are saying that this bill may require a supplier to sell his product to customers he does not want, who are able to obtain supplies of his product elsewhere, and hence destroy the supplier's distribution system.

The bill is based on a philosophy of maximizing price competition to the exclusion of all other sorts of competition. It does not recognize the special needs of franchise systems, for example, which rely for their very success on the right to limit the number of franchises granted. Because franchise systems can introduce technical innovations to a number of industries, because they are a means to overcome barriers to industry entry for relatively unskilled persons and because they substantially increase inter-brand competition, it is surely desirable to exempt franchise systems.

The bill does not recognize the desirability of permitting private brands to be exclusive. It does not recognize that it is in the public interest to encourage private branding as an alternative to national brands and to encourage the price reductions and inter-brand competition which accompany private branding.

The bill does not recognize that for many industries suppliers seek in their dealers not only minimum levels of financial responsibility but also high levels of technical competence for presale and postsale customer consultation. This is not just for consumer goods but also for commodities like stainless steel which is sold to industrial buyers. If technical advice is deficient, then the dealer may cause the stainless steel to be used incorrectly and the manufacturer is the one who suffers from the dealer's incompetence.

There are many other factors which we think the Bill does not, but should recognize. Our submission, on pages 25 to 28, gives three