

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 1, 1974.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine and consider any bill relating to the Combines Investigation Act in advance of the said bill coming before the Senate, or any matter relating thereto.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we are commencing our hearings on the reference made by the Senate to this committee with respect to the substance of the proposed combines investigation legislation. Appearing before us this morning are representatives of the Canadian Manufacturers' Association. I am glad to see we have quite a few members of the committee in attendance.

I have read the brief submitted by the Canadian Manufacturers' Association, as I am sure all honourable senators have, and I might say they have done a good job of coverage. The opening statement will be made by Mr. Hemens, and when he takes his place beside me I will have him introduce his "supporting cast."

Would you come to the dais now, Mr. Hemens, and introduce your supporting membership in the order in which they are sitting?

Mr. Harry G. Hemens, Q.C., Member, Legislation Committee, Canadian Manufacturers' Association: Thank you, Mr. Chairman. On my immediate right is Mr. Bruce; next to him is Mr. McPherson; next to him Mr. Snelgrove; then Mr. Hughes; and next to Mr. Hughes is Mr. Jupp.

Mr. Chairman and honourable senators, we thank you for giving us the opportunity to submit our views to this committee today and to answer any questions which honourable senators may care to put to us.

[*Translation*]

Honourable Senators, at the outset of my remarks I would like to thank you for this opportunity to appear before you, but in view of the complexity of this matter, I will, with your permission, continue my remarks in English.

[*Text*]

Honourable senators will find that our submission deals only with those provisions which we suggest require further consideration and amendment. There are, however, many other provisions on

which we do not comment. The consumer protection provisions relating to bait and switch selling, referral selling and permit selling are supported by this Association. Furthermore, we recognize that the provisions dealing with foreign judgments, laws and directives are a serious attempt by the government to overcome the extraterritorial application of foreign laws in Canada. We support moves in this direction.

Our submission deals with the many subjects outlined in its table of contents. You will observe that most of our submission deals with the proposed power of the Restrictive Trade Practices Commission to deal with trade practices known as refusal to deal, exclusive dealing, market restriction and tied selling. We have a lengthy appendix on this subject, and our views are given in outline on pages 3, 4 and 5.

I would refer you to sections 31.2 and 31.4 as they would be amended by Bill C-7. These are the sections that give the Restrictive Trade Practices Commission power to deal with refusals to deal and exclusive dealing, market restriction and tied selling.

Let me turn first to refusals to deal. Before the commission can make an order it must find four facts. The first fact is that a person, whom I will call the complainant, was adversely affected in his business or is precluded from carrying on his business because of his inability to obtain supplies of the product. The second fact is that the complainant must be willing and able to meet the supplier's usual trade terms in respect of payment and units of purchase. The third fact is that the product must be in ample supply. The fourth fact is that the reason the complainant cannot obtain supplies is inadequate competition in the market.

It is our contention that these four facts to be found by the commission are not safeguards for industry, but rather thresholds which are very easy to get through. In other words, it will not be hard for the commission to make these findings, and hence obtain jurisdiction.

Let me show you why we reach this conclusion. As to the first fact which must be found, we think that if a complainant can show he would make a profit if he could obtain and sell supplies of the product, then he would have shown he was adversely affected by his inability to obtain supplies. As to the second fact to be found, we think the complainant has only to show he has a good line of credit and would purchase in normal quantities. This would not be difficult in most cases. The third point we think is axiomatic. In any event, except for occasional periods of scarcity, products are usually in reasonably ample supply.