

**The Chairman:** How would you suggest the definition of "a product" should be worded?

**Mr. Hemens:** We believe it should be broad and include functional competitive products.

**The Chairman:** Would that provide for a situation in which, for instance, a complaint were made to the director by a person, not because he could not buy an engine, but because he could not buy a particular make of engine to distribute?

**Mr. Hemens:** Exactly.

**The Chairman:** Do you consider that the insertion of the word "functional" would provide for such a situation?

**Mr. Hemens:** It would help, senator, but to provide a definition of "product" we will have to spend some time endeavouring to develop it appropriately. We admit it is not an easy term to define.

**Senator Flynn:** Your last example, "writing instruments," would include lead pencils and typewriters.

**Mr. Hemens:** But more people today write with typewriters than with lead pencils, senator.

**Senator Flynn:** I agree with you, but if someone wished to have a typewriter you would say, "Here is a lead pencil," which I do not believe would be appreciated.

**Senator Buckwold:** In my opinion, if we took the original interpretation of "a product" as meaningful in this context, it would almost mean that the act is inoperative. Generally speaking, somewhere in "a product" a person may find a suitable article. It may be a product tremendously inferior to that which the public would be prepared to accept. This is true of many very good products which are in popular demand and of which there is an imitation which is low in popular appeal because of its performance. That is why I say that the definition of "a product," if it is in the broadest terms of a product, would make the act meaningless. There is no way, unless it is a complete monopoly, that we need the act in that case.

**Mr. Snelgrove:** Except if the commission, in its wisdom, makes an order against a particular supplier to supply a person.

**Senator Buckwold:** I agree, but I am trying to bring the product into a more meaningful definition.

**Senator Molson:** What would you do about explosives, Mr. Hemens? That is a fairly wide field of product range. It is also in your field.

**Mr. Hemens:** It is also a very difficult problem situation. Let me try to deal with it this way: In Canada, at the moment, there are essentially four manufacturers of explosives, two of which are not a particularly great force in the market.

One of the things which in our view is required in respect of a distributor of explosives is fairly high technological competence. If

someone comes into the field—let us say, someone entirely new—demands that we constitute him a distributor of our explosives, goes to the commission, and is able to satisfy these very simple thresholds, we could be faced with a very serious problem.

Firstly, there is the federal Explosives Act. There is no requirement in the bill that he bind himself to comply with it. It is required by other legislation.

We would require that he be technologically capable, and yet we cannot establish that here. He can put up his money, he is prepared to buy on unusual terms, the product is in ample supply, and clearly it can be argued that there is an inadequate degree of competition. There is no responsibility for technological ability.

**The Chairman:** At this point, it is perhaps a good time to refer to an article which appeared in the *Financial Times of Canada*, arising out of the minister's appearance before the Commons committee, the discussion that went on and the questions answered. The article says:

Observers learned these points from answers from Mr. Gray:

Brand names do not necessarily mean products. So a television manufacturer would not be prosecuted for refusing to supply a dealer who could buy TV sets of another make.

Where is that in the bill?

**Mr. Hemens:** It is not in the bill.

**The Chairman:** The article goes on to say:

Usual trade terms can include inventories and provision of skilled service. For example, a new entrant could not claim he had been denied supplies if he had not satisfied the supplier's standards for servicing.

Where is that in the bill?

**Senator Flynn:** I suggest, Mr. Chairman, that the minister may be thinking that he will establish a policy of enforcement of the bill.

**The Chairman:** But you know, senator, how much reliance we place on pious utterances of that kind. That is the way I look at it.

**Senator Flynn:** It would be very bad, in any event, because another government could . . .

**The Chairman:** They are going to make their own interpretation, and with the director of the Combines Investigation presenting the evidence, you can feel certain that it will be presented in the light of what the statute says and not the policy of the administration. The article continues:

Practices of real estate agents could be examined by the trade practices commission if they are not regulated by provincial legislation. In all cases, provincial legislation takes precedence over Bill C-7. This also applies to fee-setting by doctors or lawyers. Most provinces, under health schemes, have the final say over medical fees. Such control is not held over lawyers' fees.