

*Combines Investigation Act*

knowledge of trade in this country that the independent retailer is really independent. He buys from whom he pleases. He establishes his own price policy at all times. He runs his own business. Under resale price maintenance, on the contrary, what is his position?

I do not think we could get a fairer or more accurate statement of the position of the independent retailer under resale price maintenance than that which is stated in the *Fair Trade Manual* which is put out by a body which should know all about this matter, if any body does, namely the American Fair Trade Council Incorporated. This is the official body which supports, lobbies for and produces the philosophy and the thinking for the so-called fair trade laws in the United States. These fair trade laws, which are now in force in 45 out of the 48 states, make it legal at least in state commerce for the manufacturer to force the retailer to charge the consumer the retail prices which the manufacturer places upon his branded products. I am quoting now from the *Fair Trade Manual* of 1950, which states clearly, accurately and knowledgeably—for if they do not know about this subject, I do not know any body that will know better—that under resale price maintenance—

In the business sense, the retailer is but an agent for the manufacturer, a conduit to the purchaser.

The resale price maintenance concept is that the only real competition is that which takes place at the manufacturers' level. Under such an arrangement the independent retailer loses his independence and becomes, as this manual states, merely the agent of the manufacturer, a conduit to the consumer. His function in society becomes, under resale price maintenance, not dissimilar in principle to that of the automats which can be found in the large American cities. He is a vending machine who places goods on the shelves, takes them off, puts them on the counter and in respect of them takes a mark-up, fixed in all cases, with which he need not concern himself at all and which is fixed by the manufacturer.

We who believe in a free economy and who believe in genuine free enterprise do not accept these views. We believe that the independent retailer is one of the most important economic and social factors in our society. We believe that the genuine independence of the independent retailer is to be treasured and preserved. It cannot be preserved through resale price maintenance which, even in the terms of its own proponents, makes him a mere agent of the manufacturer and a conduit through which goods pass from the manufacturer to the consumer.

[Mr. Garson.]

The main and obvious purpose of resale price maintenance is to eliminate price competition among retailers. Yet while this purpose is being served the supporters of resale price maintenance continue to affirm that it does not seriously eliminate price competition. They say it is to eliminate retail competition but it does not eliminate competition. They explain this paradox by saying that after resale price maintenance has eliminated competition at the wholesale and retail level, the competition nevertheless still exists, not of course amongst retailers or wholesalers but amongst manufacturers. They cannot deny, of course, that where the consumer, before resale price maintenance appeared upon the scene, had the benefit of price competition amongst manufacturers, wholesalers and retailers, he has it at only the one manufacturing level after resale price maintenance is in effect. But they argue that the consumer still has the benefit of competition between manufacturers of different branded goods and between manufacturers of branded and price-maintained goods on the one hand and the manufacturers of branded or non-price-maintained lines on the other. Then, undertaking as manufacturers to speak for the consumer, they say that is all the price competition the consumer needs. My purpose today will be to try to prove that is not so.

The supporters of resale price maintenance also say that even among the wholesalers and retailers competition still remains; and I quote again from the *Fair Trade Manual*: competition "in service, sales promotion, salesmanship, display advertising."

There are two separate considerations involved here, and I should like to take them separately. First, and most important, there is no doubt, and indeed it is not denied, that price competition among retailers is eliminated by resale price maintenance. What does this mean from the standpoint of the retailer? It means, to begin with, that the price he charges cannot reflect his own individual cost of doing business. His price is set for him by the manufacturer. If he wishes to compete with his fellow retailers to bring more business into his store, the only way he can do it is by offering his prospective customers a fancier store front or a carpet on the floor, by giving credit or any other form of service of that sort. If he is a volume buyer who, because he does a big business, gets more than the ordinary discount from the manufacturer, he must charge his customers exactly the same price as any other retailer. If he wants to pass anything back to the customer it would be by way of even