

on terms and conditions under which the product may be sold, as to display, for instance, and the nature of the display.

Senator Molson: And the protection of the quality. I think it should be a form of defence if it could be shown that one retailer actually was affecting the reputation, for the sake of argument, by letting the quality go down, whereas another was not. To me, that would be a valid reason for not wishing to supply any particular retailer.

The Chairman: It is obvious from our discussions so far that the words "usual trade terms" and what they are said to mean do not go far enough.

Senator Connolly: Could I put one more question, Mr. Chairman? I apologize for taking so much time, but we are discussing generally the refusal to deal. Originally, when Mr. Snelgrove referred to pricing and other aspects, they really did not enter into the question of refusing to deal. As a result of his comments, however, I have changed my mind completely in that respect. It may be that the witnesses are saying generally that with regard to refusal to deal, the act seems to imply that almost anyone who wishes to enter the business of distributing a given product—whether Chanel No. 5, a motor car, or what-have-you—would be entitled to appear before the commission and advise them that he can obtain such products for resale, but not on the terms which the dealers extend to their chosen customers, and he wishes equal treatment. The submissions made by the witnesses today seem to indicate that that right should not be granted automatically simply on the basis of price, but other factors should be taken into consideration. For example, the refusal to supply does not unduly restrain the trade, and there is no unlawful combination to which complaint might be directed. And these other defences, plus the one to which Senator Molson and Senator Cook made reference, should be available to the person against whom the complaint is made.

The Chairman: Yes, but you see, senator, the bill in the form in which it appears in paragraph (b) does not go far enough in its definition really of "usual trade terms" to permit such instances as those raised by Mr. Snelgrove, Senator Cook and Senator Molson.

Senator Connolly: Am I wrong in my interpretation of the discussion so far?

The Chairman: I do not believe so.

Senator Buckwold: I am interested in the problem of the definition of the word "product", as was ably pointed out in the presentation. In my opinion, this is very important. Just what is meant by "product"? Does it mean a wide spectrum of such a product as a tractor, or is it a specific type of tractor? I only raise this because of our friends from Massey-Ferguson and Westinghouse. Is it a specific type of tractor or a specific name-brand product? This, in my opinion, is a very grey area, when it is said "the product is in ample supply". It is quite possible to buy all the tractors needed, but a specific type of tractor may only be manufactured by Massey-Ferguson, or a specific model of television by Westinghouse.

It seems to me, Mr. Chairman, that we have there a very difficult area with regard to refusing to sell. How can a distributor be

prevented from approaching a manufacturer and asking for a certain product? I do not know just how we could get around this, but it seems to me that we are leaving the way open for tremendous—

The Chairman: But, Senator Buckwold, according to the illustration you have given you are able to establish in evidence before a hearing that there is adequate distribution in relation to a certain type of product. Should a person not wish to buy any other type manufactured by any other concern, but that product manufactured by Massey-Ferguson and he is ready to meet the usual trading terms, why should the law not provide that he is entitled to buy it and sell it to the public?

Senator Buckwold: It does not work out quite that simply in the market-place. Customers will very often require just that particular specific product in spite of the fact that there may be adequate supplies through the distributor. I just go on to say that I feel that the definition of "product" should be specific as to the broad product, an automobile or a specific type of product or brand-name. For example, General Motors may have a Chevrolet distributor in a given area, and it could be said that there is adequate distribution, but eventually the time arrives when there should be a second distributor. In due course, General Motors make up their minds that there is room for a second distributor of their product, Chevrolet. Before that time, however, someone says it is true that there is adequate distribution and supply, but there should be another distributor in this particular area. How will the commission be able to determine that?

The point I raise, Mr. Chairman, is that a person may wish to buy a Chevrolet car, or whatever other article it may be, rather than just the "product".

The Chairman: Yes, but the wording of the clause is "a product". There could not be anything broader than that.

Senator Buckwold: Do you interpret that to mean that so long as there is a car available a specific product would not be provided for?

Mr. Hemens: Our contention is that "a product" can be very broadly or extremely narrowly interpreted, which is one of the major problems of the proposed legislation.

Allow me to cite an example with which I am familiar. We manufacture a product which is generally known as cellophane and because "Cellophane" is a trademark, we are the only manufacturers of it. It is essentially a packaging material, however, and competes with such products as kraft paper, various types of film, such as polyester and nylon film, corrugated boxes, et cetera. Should the commission—as, in our belief, this bill would permit them,—rule that cellophane is the product, we might be required to make it available to all who wish to distribute it. If, on the other hand, the product is not cellophane, but a packaging material, the problem would not arise.

The Restrictive Trade Practices Commission have a report, for example, in connection with lead pencils. Is a lead pencil a product or a writing instrument? If it is a writing instrument, it competes with pens, typewriters, chalk and various other products. However, if the definition were restricted to "lead pencils," there would be an entirely different problem.