

Mr. McCaul: I appear on behalf of the Associated Chambers of Commerce of New Zealand to give evidence and also on behalf of the following who have requested me to appear for them: There were many represented at the last week's meeting, but they had to return to their homes and they have been unable to come down to Wellington again:—

The New Zealand Wholesale Merchants' Association.
 Auckland Master Bakers and Pastrycooks' Association.
 Otago Master Grocers' Industrial Union of Employers.
 Christchurch Hardware Merchants' Association.
 South Canterbury Coal-merchants' Association.
 Manawatu Traders' Welfare Association.
 Manawatu and Southern Hawkes' Bay Master Bakers' Association.
 Manawatu Employers' Association.
 Dunedin and Suburban Coal-merchants' Association.
 Ashburton Coal-merchants' Association.
 Distributors Ltd., Christchurch.
 Royds Bros. and Kirk, Christchurch.
 North Canterbury Coal-merchants' Association.

Mr. McCaul read the following statement:—

ASSOCIATED CHAMBERS OF COMMERCE OF NEW ZEALAND.

Evidence to Industries and Commerce Committee of House of Representatives on Commercial Trusts Amendment Bill.

The Associated Chambers of Commerce has for years been endeavouring to have the Commercial Trusts Act, 1910, repealed or amended. The recent amending Bill now before this Committee goes some distance toward meeting the representations made, and is heartily supported by the commercial community.

The Committee will be familiar with the nature and purpose of the Commercial Trusts Act, 1910. This measure was introduced with the object of protecting New Zealand and vital New Zealand industries from dictation by powerful overseas commercial interests in respect of different commodities. It was never intended by the Act to deprive small traders from making a moderate rate of profit sufficient to ensure a reasonable standard of living. When a measure is drafted, its full consequences are not always realized by either those who prepare its clauses or by the Parliament that passes it, and I am sure that no one visualized at the time a future state of affairs when the Commercial Trusts Act would definitely aid certain large-scale organizations to crush out small, independent storekeepers. Yet this is precisely what has happened under the Act.

Owing to the provisions of sections 3 and 4 of the Commercial Trusts Act the small trader can obtain no protection from powerful trading organizations which, with their large capital, can afford for a while to sell at a loss with the object of putting an opponent out of business. During the last few years various sections of retail traders have suffered severely from this class of competition. If this is allowed to continue, then the effect must be that these large concerns will become monopolies—a development the Commercial Trusts Act set out deliberately to prevent, so that the Act is having the directly reverse effect intended of it. There are, then, other retail concerns, not necessarily large-scale organizations, which sell proprietary articles at cost as decoy lines.

Although the consuming public gains a transient advantage from the uneconomic cutting of the prices of proprietary articles, the best interests of the public are not served by this unfair competition, which is making a losing fight of it for the whole system of individual retail stores, causing business failures, adding to the unemployed, and increasing the burdens of the public accordingly. It is surely in the best interests of New Zealand that an efficient system of individual stores should be given a fair chance to compete with the big organizations.

The Bill before the Committee seeks to give some amelioration to the situation of the individual storekeeper in respect of the practice of cutting the prices of proprietary articles. It gives, however, no advantage or concession to independent traders beyond the right to take measures of self-protection against unfair competition—a right which they are at present denied under the Act.

I would stress the fact that the Bill leaves untouched all the provisions of the Act relating to the control of monopolies, and of operations resulting in the charging of prices which may be deemed to be unreasonably high. The powers of Government in this connection remain intact. Of the fifteen sections of the Act, the amending Bill affects only two—namely, those relating to the giving of concessions in consideration of exclusive dealing, and to refusals to deal with price-cutters. The provisions and penalties governing these matters are still retained, the Bill merely making a modification which provides that, in any proceedings taken, a defence may be raised. Whereas, under the present Act, no defence is permitted in respect of acts which are admitted under clauses 3 and 4 of the existing Act, the amending Bill provides that, in respect of actions coming within the scope of these clauses—and these clauses only—it shall be sufficient defence if the defendant proves to the satisfaction of the Court that those actions by him are not prejudicial to the public welfare, to any industry in New Zealand, or to the persons immediately affected. If he fails to establish that, then the present penalties under the Act apply.

By the proposed amendment there would be no less measure of Government control of trade practices than exists to-day under the Commercial Trusts Act. Indeed, it would appear that Government control is strengthened by the amending Bill, because whereas, under the existing Act, the onus is on Government to establish a case against a person charged with giving concessions in respect of exclusive dealing, and/or withholding supplies, under the amending Bill the onus of establishing a sufficient defence is removed on to the shoulders of the person charged. If price-cutting interests have any confidence in the fairness of their practices, then it is impossible to conceive any reason for any valid objection by them to having a Court of law determine, in this matter, what is or what is not in the public interest and welfare. Therefore, it is no paradox to say that any fundamental objections to this Bill would appear to constitute a good reason why the Bill should be proceeded with.

So much for the effect of the amending Bill, which is merely endeavouring to infuse a measure of British justice into the Commercial Trusts Act. With regard to the law on the subject elsewhere, I would respectfully draw attention to the report of the Restraint of Trade Committee, which was set up in England in 1930 by the Lord Chancellor and the President of the Board of Trade “to consider present trade practices which result in withholding from particular retail traders supplies of goods in which they wish to deal, or which prevent the sale of such supplies except upon conditions imposed by the suppliers, and to report whether in their opinion all or any of such practices are detrimental to the public interest . . .”

The Committee, after a full investigation, presented, *inter alia*, the following finding: “We have been impressed by the volume and force of the testimony as to the harmful effects of price-cutting upon the manufacturers and distributors of advertised branded goods, and ultimately, as was contended, upon the public . . . Shopkeepers in the neighbourhood of price-cutters cease to stock the goods affected, or at any rate cease to push them, with the result that the manufacturer finds his sales falling off. In the end the price-cutters themselves may cease to stock the goods, finding that they are no longer effective as a decoy. It is natural that the manufacturer who owns the brand and bears the expense of national advertising should claim in these circumstances to protect the final conditions of sale of the goods, since the prosperity of his trade is at stake . . . Our general conclusion regarding the broad principle of maintained re-sale prices for branded goods is that no sufficient case has been made out for