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## Thursday, November 18, 2004

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## Chair

**Mr. Brent St. Denis**

# Standing Committee on Industry, Natural Resources, Science and Technology

**Thursday, November 18, 2004**

● (1530)

[*Translation*]

**The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)):** Good afternoon, everyone.

[*English*]

I'd like to call to order this November 18 meeting of the Standing Committee on Industry,Natural Resources, Science and Technology.

Just before we go to our witnesses—I will introduce them in a moment—I know Werner raised a question of estimates.

**Mr. Werner Schmidt (Kelowna—Lake Country, CPC):** Yes, I did, Mr. Chair. I would like to suggest that we get the industry minister and the science and technology minister before the committee before our November 30 reporting period.

**The Chair:** Do you want them together?

**Mr. Werner Schmidt:** No.

**The Chair:** Separate?

**Mr. Werner Schmidt:** Yes, I think they'd have to be separate.

**The Chair:** Do you want two meetings?

**Mr. Werner Schmidt:** Yes.

**The Chair:** If it's okay with you, I will talk to the clerk right after the meeting. It's the right of the committee, and the opposition certainly, to invite the ministers to come. If there's no disagreement, I'll work out the schedule with the clerk.

Paul, do you want to talk about witnesses, or

[*Translation*]

the same subject?

**Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ):** Yes.

For your information, I intend to put questions to the Minister, when he appears, regarding funding for the Social Sciences and Humanities Research Council. SSHRC has suffered major budget cuts. I would like the Minister to be informed that I will be asking questions on this, so that he'll be prepared with an answer. I know he is always prepared for any question, but…

[*English*]

**The Chair:** Is what Paul is asking clear to you, Jerry?

**Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.):** Not at all.

**The Chair:** Paul, would you talk to Jerry after the meeting? If there's some information you'd like before the minister comes....

**An hon. member:** We'll make sure you get it.

**The Chair:** Paul, is that okay? Will you talk to Jerry before we leave today?

**Mr. Paul Crête:** Okay.

**The Chair:** That's privately? Okay.

Subject to the minister's schedule, but certainly before the reporting deadline of November 30, we will invite the industry minister and the minister of state—is that it?—for science and technology to appear at two separate meetings.

Paul Crête has suggested some witnesses for Tuesday, which is our first study day on our industrial strategy question. The clerk has made a number of inquiries for this first bite at the elephant, so to speak. We haven't been able to line everybody up that we've asked for, but we have a couple of good names. We're probably going to have three or four really good witnesses, including two by videoconference on Tuesday. If you're interested in the names, see the clerk afterwards. She'll tell you who we've invited, who couldn't come, and the names Paul has suggested.

If you have suggestions for Tuesday, we need to have them today.

Werner.

**Mr. Werner Schmidt:** Did you get the list from our office?

**The Chair:** I'm going to assume Louise has tried to follow up with those names.

**Mr. Werner Schmidt:** I don't think she had time.

**The Chair:** Okay.

We've just received this moment, from Brian, Lawrence Aronovitch, director of government relations with the Association of Universities and Colleges of Canada. Werner has sent in a....

That's for the smart regs. This is not for the big picture session on Tuesday, is it?

● (1535)

**Mr. Werner Schmidt:** The first two are.

**The Chair:** Lynn Nicholson?

**Mr. Werner Schmidt:** No.

**The Chair:** Gwyn...?

**Mr. Werner Schmidt:** Gwyn Morgan.

**The Chair:** But we agreed that the first session was going to be mostly academics, and then we were going to get to this group at the second meeting.

**Mr. Werner Schmidt:** These are operators. These are good people.

**The Chair:** Yes, that's the second session. The first session was academics. The second session was the people in the businesses. The third was going to be departmental officials, subject to the estimates, of course, okay? So the clerk has that.

**Mr. Werner Schmidt:** So you're ready to go.

**The Chair:** Yes.

With that, I'd like to welcome to the table Ms. Sheridan Scott, who's Canada's competition commissioner.

This may be the first meeting since you were appointed, so congratulations, Ms. Scott, on your appointment.

She will make remarks on Bill C-19.

Also with us is Mr. David Fransen, the assistant deputy minister from the Department of Industry. I understand he won't have an opening statement, but he is here to, in effect, make his statements as a result of your questions.

So we have both the Competition Bureau and the department here to help us out.

Just so you know, again subject to estimates scheduling, Tuesday would be our study, and next Thursday would be Bill C-19. We have received requests to appear, so we're looking for suggestions from members for next Thursday's study of Bill C-19.

I will talk about the rest of this when we're done.

With that, Ms. Scott, we'd ask you to start on Bill C-19 for maybe ten minutes, give or take.

Thank you.

**Ms. Sheridan Scott (Commissioner of Competition, Competition Bureau):** Thank you very much, Mr. Chair and members of the committee.

As you indicated, Mr. St. Denis, I'm accompanied today by Mr. David Fransen, assistant deputy minister of policy with Industry Canada; and Richard Taylor, Suzanne Legault, and Dave McAllister of the Competition Bureau.

I'm very pleased that in my first appearance before you as Commissioner of Competition, I participate in the deliberations of Bill C-19, An Act to amend the Competition Act and to make consequential amendments to other acts.

The Competition Act is a vital piece of Canadian legislation affecting virtually all industry sectors. Its purpose is to ensure that all Canadians enjoy the benefits of a competitive economy. By this, I mean competitive prices, product choice, and quality services. This legislation will strengthen Canada's competition framework in a global economy, to benefit both consumers and businesses.

I'm particularly pleased to be here because many of the proposals before us today originated in discussions around this committee table. In particular, the committee's 2002 report, “A Plan to Modernize Canada’sCompetition Regime”, recommended significant changes to the Competition Act, including proposals to strengthen the civil provisions, repeal the criminal pricing provisions, and return the act to a law of general application by repealing the airline-specific provisions, provided that we add a general regime with sufficient deterrents to achieve compliance.

Bill C-19 responds directly to these recommendations, Mr. Chair. This legislation follows extensive consultations conducted by the Public Policy Forum on behalf of the government. A wide range of stakeholders, including large and small businesses, consumers, economists, legal experts, and others, took part by providing written submissions or participating in technical round tables held across Canada.

[*Translation*]

The input we received in the course of our consultations has helped to ensure that the package you have before you will contribute to a modern competition regime in Canada, and balance the interests of both consumers and businesses, consistent with the objectives of the Act.

The proposals include: providing authority for the Commissioner of Competition to seek restitution for consumer loss resulting from false or misleading representations; introducing a general administrative monetary penalty provision for abuse of dominance in any industry; removing the airline-specific provisions from the Act to return it to a law of general application; increasing the level of administrative monetary penalties for deceptive marketing practices; and decriminalizing the pricing provisions.

Let me speak to each of these proposals in turn. I will begin with restitution. Consumers require accurate information to make purchasing decisions. Otherwise, they will lose confidence in the market place. This proposal will encourage companies to be accurate in their claims. Bill C-19 will enable consumers to get up to the amount paid for a product if they have been duped by false claims.

In today's market place, many businesses aggressively promote their products to consumers. The purpose of this amendment is to help to ensure that consumers benefit from accurate information in terms of advertising, and that other businesses are not harmed by misleading claims made by their competitors. I would note that consumers could include businesses who may also suffer from misleading representations by their suppliers.

The OECD Guidelines for Protecting Consumers From Fraudulent and Deceptive Commercial Practises Across Borders, which were adopted in January 2004, recommend that member countries work to develop a framework for closer, faster and more efficient cooperation amongst their consumer protection enforcement agencies. This includes considering how to ensure effective redress for victimized consumers.

Mr. Chair, this proposal addresses this OECD recommendation and will bring our regime into line with those of other countries, such as the United States and Australia, which have a restitution remedy.

In order to preserve the rights of consumers to restitution, a complementary measure included in the bill is the power to freeze assets. This would be used in situations where there is a risk that the assets necessary to repay consumers will disappear.

● (1540)

[*English*]

I would like to turn now to administrative monetary penalties. As many of the committee members will know, the Competition Act includes provisions that are intended to prevent companies from abusing dominant market positions to reduce or prevent competition substantially. This is a cornerstone provision of competition policy, but at present, except for airlines, there are no financial penalties when companies abuse their dominant position. Currently the only consequence for such behaviour is an order from the Competition Tribunal requesting an end to the practice or requiring a structural change such as divestiture.

Bill C-19 would introduce an administrative monetary penalty, AMP, for companies that have abused their dominant market position. AMPs would be applicable to all sectors and industries without exception. I am convinced that the inclusion of AMPs will encourage businesses to comply with the act to preserve Canada's competitive marketplace. This remedy targets one of the most harmful anti-competitive practices for the Canadian economy. It is also important to note that with the introduction of AMPs we'll bring our competition framework in line with that of many other countries. At the moment, Canada is one of the few countries that does not provide for financial penalties for companies that abuse their dominant position.

Bill C-19 also proposes to remove the airline-specific provisions from the act. The Competition Act is a law of general application. Notwithstanding that fact, you will recall, Mr. Chair, that airline-specific provisions were introduced in 2000 and 2002 to address a very particular situation following the merger of Air Canada and Canadian Airlines. As a result of the merger, Air Canada accounted for 90% of domestic passenger revenues and in excess of 80% of domestic passengers carried. As such, the government concluded that the act should be strengthened in order to ensure that Air Canada did not abuse its dominant position.

Today the situation is very different. Several changes have arisen since the merger of Air Canada and Canadian Airlines. First, the domestic share of Air Canada has greatly declined and consequently competition in the Canadian airline industry has improved significantly. We have recently seen the entry and growth of low-cost carriers with their competing loyalty programs. The growing importance of the Internet as a means of distributing tickets and the changing role of travel agents are also significant changes to the airline industry. Given these changes and the introduction of AMPs applicable to all industries, I believe that specific airline provisions are no longer required in the act. This means the act will once again be a law of general application as recommended by the industry committee in its 2002 report.

[*Translation*]

Let me speak next about AMPs for deceptive marketing practices.

Currently, a court may impose an AMP if it finds that a company has engaged in deceptive marketing practices. But the maximum AMP is too low, when considering the potential magnitude of profits that can result from deceptive marketing practices and the negative impact that misleading information can have on consumers' confidence in the marketplace.

Increasing the maximum AMP for corporations to the same level as that proposed for the abuse of dominance provision, $10 million, would provide appropriate incentives to comply with the Act and deter deceptive marketing practices.

Finally, Mr. Chair, Bill C-19 would decriminalize the pricing provisions dealing with price discrimination, geographic price discrimination, predatory pricing and promotional allowances.

The introduction of AMPs paves the way to decriminalizing the Act's pricing provisions. Repealing the criminal pricing provisions will result in pursuing these matters under a civil regime, the abuse of dominance provision, which will now be reinforced with an AMP.

This amendment was also recommended by the Industry Committee in its 2002 report. As mentioned in the report, treating these criminal pricing practices under the civil abuse of dominance provisions will have these two advantages: the practice will receive a full hearing on its likely economic effects; and the case will be assessed by the Tribunal with a civil burden of proof, which has a lower threshold than the criminal burden of proof. The Industry Committee stated that pricing matters would be better dealt with under the abuse of dominance provisions.

● (1545)

[*English*]

Before concluding, let me say a few words about the ongoing work of the bureau on other issues that were raised by the industry committee in 2002.

The bureau is currently working on the conspiracy issue. More discussions and analyses are required on the reform of the conspiracy provisions due to the complexity of the issues and the fact that section 45 is a cornerstone of the act. As such, a systematic analysis of various legislative models is being undertaken by the bureau.

In relation to the treatment of efficiencies under the act, in September 2004 the Competition Bureau launched an extensive consultation process to elicit the views of a broad range of stakeholders. The need for consultation on this complex issue was a recurring theme during parliamentary consideration of Bill C-249, which attempted in the last session to amend the section of the act but which died on the order paper.

Mr. Chair, Bill C-19 provides a balanced package of amendments that will strengthen the Competition Act. These amendments constitute one step in this continuing evolution of Canada's competition regime.

Thank you, and I would be pleased to answer any of your questions.

**The Chair:** Thank you very much.

James Rajotte.

James gave a good speech in the House on this the other day, so we look for him to fill in the details.

**Mr. James Rajotte (Edmonton—Leduc, CPC):** Thank you very much, Mr. Chairman.

It's great to be back at this committee. I want to thank the witnesses for their appearance here today, and Ms. Scott, I want to congratulate you as well on your appointment.

I want to touch upon the administrative monetary penalties. I think that does need to be clarified and even simplified so that Canadians can know exactly what we're passing in this legislation.

First, I have a bit of a technical question. With respect to the abuse of dominance, the airline-specific measures, it's my understanding—and indicate whether I'm correct or not—that the abuse of dominant position with respect to airlines also affected the Canada Transportation Act. Was this true, and if so, has the Transportation Act been affected by this legislation or will it have to be amended at a later date to be consistent with Bill C-19 if it is passed?

**Ms. Sheridan Scott:** I'd like to ask my colleague David McAllister to add some of the detailed information here. There are some other pieces of legislation that related to Air Canada in particular. I'm not sure if you're talking about the AMP provision. In terms of the AMPs, that's in the Competition Act and not in another piece of legislation.

I'll have my colleague Dave McAllister give you some detail on the airline-specific provisions that exist in other pieces of legislation.

**Mr. David McAllister (Acting Assistant Deputy Commissioner of Competition, Mergers Branch, Competition Bureau):** Yes, you're correct. At the time that the amendments to the abuse of dominance provisions of the Competition Act were brought in, in 2000, there were also some changes to the Canada Transportation Act directly relating to the Air Canada acquisition of Canadian Airlines. One of those was the provision by which future airline mergers would be reviewed by the government, and that remains in place. The second thing, and possibly I suspect what you're thinking of, are the pricing review provisions by the Canadian Transportation Agency. Their role was in regard to certain powers to review whether fares that were being charged on a route where there was only one carrier, a monopoly route, were unreasonable. In that situation, the CTA was empowered to carry out a review and request a rollback of fares, essentially.

Those provisions are still in place. However, my understanding from talking to the agency recently is that there have only been two instances where the provisions were brought into place in the last four years since they were introduced. And secondly, the number of routes where Air Canada would be in a monopoly position has declined quite substantially as new carriers have entered the market.

But yes, it is correct that those provisions are still operative and are obviously the subject of legislation that's not administered by the commissioner.

● (1550)

**Mr. James Rajotte:** Thank you for that answer.

I want to then turn in general to abuse of dominance. With respect to abuse of dominance, I think what we need to hear at this committee is an outline of what constitutes abuse of dominance. The researchers at the Library of Parliament have prepared something: that abuse of dominance requires one or more persons to "substantially or completely control, throughout Canada or any area thereof, a class or species of business"; secondly, those people to have "engaged in a process of anti-competitive acts"; and thirdly, that the practice must have had the effect of "preventing or lessening competition substantially in the market".

I'd like you to provide, perhaps, some past examples of abuse of dominance so the committee has some reference points, but then also, when it says "substantially or completely control", is there a percentage that should guide us in that first qualification? Second, "engaged in a process of anti-competitive acts", could you outline for us whether that includes predatory pricing and the such? And third, in terms of "preventing or lessening competition", what is the standard or the method by which the tribunal would determine that?

**Ms. Sheridan Scott:** I hope I can remember all your questions.

What you're doing is running through the basic test, and the test that your researcher has put before you is the basic test that we apply when we look at whether there has been an abuse of dominance. I think it's important to remember also that in the legislation there is guidance with respect to examples of anti-competitive acts. Canadian legislation is in fact much more detailed and clearer than legislation in other parts of the world, that have only the general description of abuse of dominance. Our act actually gives some specific guidance on types of anti-competitive acts that we might be looking at in the context of an abuse of dominance case.

What we look at first is whether you have a company that has market power. One talks about, in the opening words of the legislation, substantial presence, and the court has interpreted this to mean market power. Market power has interpretation in jurisprudence and also in economic literature, where one talks about the ability to maintain price increases for a relatively long period of time. We normally look over a one-year period to see if someone has sufficient power in the marketplace so they can increase their prices by not an insignificant amount—we often look at around 5%, although that could vary according to the good or service—and maintain that type of price increase over a long period of time.

Then it's necessary to engage in a series of acts. Again, there is some jurisprudence in this area, not much jurisprudence, but some guidance from the courts. They have said that a series of acts is something more than a single isolated act. So it might be recurring acts, or it might be a practice, but something more than a single isolated act.

We then look at whether it will result in a substantial lessening of competition, and then we look at the prices in the marketplace and whether they're affected by the anti-competitive acts.

I don't know if you want to go into more detail. I could pass it over to Suzanne, from my legislative affairs group, who could tell you a bit more about the cases we've actually litigated in this area.

● (1555)

**Mr. James Rajotte:** I'll just follow up on one of your answers with a question.

In terms of maintaining price for one year, just as a ballpark figure, how many companies in Canada would be considered to be in a dominant position by the Competition Bureau?

**Ms. Sheridan Scott:** I don't think I'd have it just off the top of my head.

**Mr. James Rajotte:** Would it be a thousand, ten, a hundred...?

**Ms. Sheridan Scott:** Richard, do you have any thoughts on that?

**Mr. Richard Taylor (Deputy Commissioner of Competition, Civil Matters Branch, Competition Bureau):** In the test for dominance that the tribunal has established, five cases have resulted in a decision: NutraSweet, Neilson, what we call CANYPS, Laidlaw, and one currently before the tribunal, which we are awaiting the decision on. The four that have gone before have been quite clear on the market share threshold, that there needs to be an ability to influence prices in the market.

They've divided that into two criteria, basically. The first is market share. Generally, although I don't think it's exactly specified, certainly you get into a danger zone on anything above 50%. The second thing is that there is must be barriers to entry into the market so that the market isn't easy to enter. Once we have those two things, above 50% and barriers to entry, then I think it's fair to say that we start considering the firm as dominant.

We have no numbers on hand on the number of companies that would have more than 50% of the market. I can say it is quite rare. I don't think it is common. Many of our markets are international, many of our markets are national. As I say, 50% would be a rare number. When you get up to 80% and 90%, which is where some of the cases have been—Neilson was 100%, Laidlaw was near 100%—that is extremely rare, to have complete control of your market. But I don't have those stats available, and neither do I think they can be obtained easily.

**Ms. Suzanne Legault (Assistant Deputy Commissioner, Legislative Affairs Division, Competition Bureau):** I'd like to add, Mr. Rajotte, that one thing the bureau has done in terms of the abuse of dominance section is issue guidelines that indicate and give some guidance in terms of the various elements that have to be met in order for dominance to be found.

As well, from the recent set of amendments in 2002, there is now a provision in the act that allows for companies to seek binding advice on opinions of the commissioner if they have any concerns or doubts as to whether or not their practices would cause any concern under the various provisions of the act. As my colleagues have said, there is a case law that has interpreted this section.

**The Chair:** Thank you, James.

We're going to go to Paul.

[*Translation*]

**Mr. Paul Crête:** Thank you, Mr. Chairman.

Given this very complex legislation, I wish you a good mandate, Ms. Scott. When carrying out reforms, it is important to be thorough.

In 2002, this Committee of the House released a report entitled “A Plan to Modernize Canada's Competition Regime”, which recommended extensive reforms to Canada's competition policy. Now the government finds itself with legislation that only addresses a certain number of issues.

I would like to know whether, as Competition Commissioner, you have a written evaluation regarding the overall recommendations made by the Committee or as part of the consultations you carried out subsequently. Do you have a table of some sort setting out the recommendation you would make, as a representative of the Competition Bureau, regarding those areas not covered in that bill?

**Ms. Sheridan Scott:** The Committee report did address the matter of conspiracies, which is dealt with under Section 45 of the Competition Act. A number of recommendations addressed that aspect of the report. There was also discussion of the power to carry out broad market studies.

The Public Policy Forum, which conducted the consultations, released a report on those consultations. So, if you're interested in knowing the kind of feedback we received regarding the government's proposals, you can review that report on our Web site.

**Mr. Paul Crête:** Does it discuss your own position? That's what I'm interested in.

**Ms. Sheridan Scott:** I'm coming to that. In its report, the Forum stated that stakeholders had some reservations regarding the recommendations dealing with Section 45 and the whole matter of general studies. In reading the report, I was satisfied to see that the consultations dealing with the current content of Bill C-19 had been completed. I'm talking here about the decriminalization of pricing provisions.

I am utterly incapable of pronouncing that word, either in English or French.

● (1600)

**Mr. Paul Crête:** Don't worry: neither one of us is capable of pronouncing it. We'll just have to find something else to say instead.

**Ms. Sheridan Scott:** With respect to AMPs, or administrative monetary penalties, because there were still serious concerns about Section 45, we decided to go through another systematic exercise. We used about 12 factual examples—in other words, cases we were actually dealing with. We had defined 10 or 12 models, including the status quo as regards the current legislation, Professor Trebilcock's model, as well as the one about which we had consulted stakeholders. Using a list of tests, we compared the results we would have achieved had we applied a given model to a factual situation.

For example, we wondered whether we had really captured the most serious types of behaviour we wanted to prohibit under the law. We also wondered whether we might also have captured acceptable business dealings or agreements, whether what was being proposed was clear, and whether it would be easy to enforce the provisions. We also looked at where we stand in relation to other jurisdictions, and specifically if our situation could be compared to those of other countries in various parts of the world.

That exercise is ongoing. We expect to complete it late this year or early next year. People really had problems with certain aspects of the model proposed in our consultation paper. So, this exercise will help us to choose the model that works best. We believe we will be in a better position at that point to propose a regime that captures what we want to capture, rather than doing the opposite.

**Mr. Paul Crête:** On May 5, 2003, as part of a study of gasoline prices we were conducting, your predecessor made the following statement to the Industry Committee:

> while the Bureau's mandate includes the very important role of being an investigator and advocate for competition, the current legislation does not provide the Bureau with the authority to conduct an industry study.

At the time, the Committee was carrying out a comprehensive study which involved reviewing the legislation as a whole. So, I'm a little surprised that three years later, after quite properly carrying out extensive consultations, we end up with a bill that is completely silent on the most contentious issue affecting society today. The oil companies are a very good example, but that would also apply to a variety of industries.

Do you not think this aspect of the legislation should be updated as soon as possible?

**Ms. Sheridan Scott:** It's a question of consultations. Market studies were the second issue that some people had problems with. We had suggested that the Bureau be able to conduct its own studies. However, the problem revolves around the fact that we have the power to launch criminal proceedings. So, if we were able to carry out general studies, we might end up facing problems with the Charter of Rights and Freedoms, for example, if the testimony of individuals provided in a general context led us to carry out a criminal investigation.

We therefore suggested referring these matters to the Tribunal [*Inaudible—Editor*], but that option would also give rise to some procedural problems. So, we are now trying to find a model that would operate as effectively as possible without giving rise to this kind of procedural problem. We would certainly be prepared to use a model, but not one that doesn't work.

**Mr. Paul Crête:** As regards the oil industry, this Committee presented a proposal that had been passed by a majority of members. It related to the creation of a petroleum industry monitoring bureau. Indeed, that proposal had the support of the Canadian Petroleum Products Institute.

In the final analysis, are you recommending that these issues not come within the purview of the Competition Bureau, and that they be handled by another organization?

**Ms. Sheridan Scott:** That recommendation did not involve changing the Competition Act, and that is why it is not part of the proposal we presented. As I recall, the objective was to set up an agency that would be responsible for monitoring information provided to consumers.

**Mr. Paul Crête:** This agency was to be responsible for analyzing market behaviour, making recommendations, and reporting to the House of Commons, among other things. However, it was only a stop-gap measure, given that the matter of market studies had not yet been resolved. Your predecessor stated that he had neither the means nor the mandate to carry out such studies. And the fact is that at the present time, no one else is in a position to do that either.

**Ms. Sheridan Scott:** I remember the recommendations. They were in the Committee's 2003 report, were they not? We felt the idea of providing information to consumers to reassure them that there was no conspiracy and that only market forces were at play in terms of fluctuations in the price of gasoline was a very good one.

So, we were not opposed to the idea, but we knew that information published by Industry Canada and private groups was already available. So it was a question of getting good value for money. We wondered whether it was really worth investing additional funds in the creation of another agency that would be responsible for publishing information that is already more or less in the public domain.

We are not opposed to the idea, but it's a matter of determining how to spend money gathering information for consumers.

**Mr. Paul Crête:** Will your consultations on the points not addressed in this bill have progressed enough that if, say, the Committee completes its study of the bill in February or early March, one or two items could be added to further amend the legislation?

● (1605)

**Ms. Suzanne Legault:** Yes. What I can tell you with respect to our consultations on weaknesses and the legislation is that we intend to complete the process we are currently proceeding with in the spring of 2005. We're talking about extensive public consultations. As for analyzing the conspiracies issue, Section 45, we realized in the consultation process that there really was some interaction between these two fundamental provisions. As a result, it is highly unlikely that we can complete our analysis of one before the other is completed. That is why I am assuming, given the schedule for our round tables, that that will be completed in the spring of 2005.

As for market studies, that is certainly a much easier issue to analyze. We are now reviewing how this is handled in other jurisdictions around the world, because there are some where such a power exists. It's a matter of determining how such a model will apply in the Canadian context and, as Ms. Scott pointed out, in light of the Canadian Charter of Rights and Freedoms.

However, what emerged from the consultations carried out last year was the fact that the Canadian International Trade Tribunal Act does give the Governor in Council a fairly broad power to request that such studies be carried out. It's very broad. The Inquiries Act also includes a very broad power.

Those are some of the things we heard from stakeholders. They also mentioned the ability of parliamentary committees to conduct in-depth studies. So in terms of possible amendments, that is what we're looking at at this point.

**Ms. Sheridan Scott:** We will be in a position to make our own recommendations when this exercise has been completed.

**Mr. Paul Crête:** That is excellent information. Thank you.

[*English*]

**The Chair:** Lynn Myers, then Brian Masse.

**Mr. Lynn Myers (Kitchener—Wilmot—Wellesley—Woolwich, Lib.):** Thank you, Mr. Chairman.

Thanks to the witnesses for appearing today.

I want to get a better sense of how these amendments were developed. I want to go back to the industry committee's report of 2002 and simply ask you why the proposed amendments do not address all of the recommendations contained in that report. That's the first question, on process.

Second, why did you not follow up on the discussion paper proposal that the CITT, Canadian International Trade Tribunal, stated, which was to conduct general inquiries into sectors of the economy?

As soon as you answer those, I have two more specific questions.

**Ms. Sheridan Scott:** With respect to the first, it really is as we were describing to Mr. Crête, that as we finished the consultation process.... There was the committee report, followed by the government response, and then there were stakeholder consultations. After the Public Policy Forum went over the stakeholder consultations, they provided us with their assessment of what stakeholders had said, and it appeared to us that the consultations were complete. We felt we had a picture from stakeholders of the strengths and weaknesses of the various proposals.

On the pricing provisions, with the repeal of the pricing provisions and the introduction of administrative monetary penalties we felt we had a complete record of, and had heard from a variety of stakeholders on, what all the issues would be. We didn't feel the same way with respect to the remaining recommendations, or the ones that applied to us directly, such as section 45, and the various recommendations with respect to conspiracies. Parties continued to be quite troubled about whether we would be capturing, under the criminal provisions, totally acceptable business activities, and we might be letting go things that perhaps we should have included under the criminal provisions.

They felt that the draft law we put before them was both under-inclusive and over-inclusive at the same time. People had a number of other models that they felt were more worthwhile than the model we had consulted on. We decided to go back to first principles and to look at, in a more systematic fashion, whether certain models would capture fact patterns that we were familiar with in a way that produced the result that we felt the parliamentary committee was looking for. You wanted to have criminal sanctions attached to the most egregious forms of price fixing, but you wanted to make sure that perfectly acceptable business relationships would not be subject to criminal sanctions and would instead be handled under the civil provisions, where we would be looking at whether there was an impact on the economy of those agreements.

So we went back to quite an intensive exercise inside the bureau, where we outlined a number of fact patterns we took from our cases that we handle, and we compared those against a number of models—a status quo model, a model that's been proposed by Professor Trebilcock at the University of Toronto, the model that we had consulted on. We have 12 of those models. We compared the facts and the models to see if the right results were obtained, and we measured the results against four, five, or six criteria: Did we capture what we wanted to capture? Did we let go through what we wanted to let go through? Is it clear? Is the law easy to enforce? Is this approach comparable to that employed in other jurisdictions?

We're about half-way or two-thirds of the way through that exercise. We will then select the models that we believe produce the results that are closest to what this committee wanted to accomplish. Then we will do some drafting and conduct some technical round tables with people in the legal profession who follow this very closely. We expect that exercise to be completed in the first quarter of 2005.

**Mr. Lynn Myers:** When did it start?

**Ms. Sheridan Scott:** In June, I think. Once we got back the Public Policy Forum recommendations, we were able to go through them. So I guess it would have been maybe a little later than that, perhaps July.

We had some sessions with experts in this area. At Langdon Hall they had a number of comments, at the University of Toronto, at round tables, with people coming together with many suggestions. We felt we needed to go back to first principles to satisfy ourselves that we were capturing the most egregious cases under the criminal sanctions and then looking at business arrangements under a different test. That's why we haven't moved ahead with section 45 recommendations, and we don't think we'll be in a position to formulate recommendations until, say, mid-2005, or something like that.

We are also carrying out a fairly extensive consultation on efficiencies. This was mentioned in part in the 2002 report, but it was also a matter that was contained in a private member's bill that went through the House and before the Senate banking committee earlier this year, on efficiencies. We heard from people, through this process, that there hadn't been as much consultation on those efficiencies issues as there had been in the other provisions, and also that efficiencies were tied up, bound up, with some of the issues we were dealing with under section 45. So we see those two as being related.

● (1610)

We decided to launch an extensive consultation on efficiencies that would be more broad-brush than what we had done before. We commissioned a very good paper that sets efficiencies in their historical context, when they were introduced into the legislation and what not. It proposes three models to look at.

We have sought public comment, which is due by December 21. We've done an international round table to which we invited five of our counterparts from other countries to talk about efficiency treatment in their jurisdictions and what they would recommend for Canada. We are also going to be consulting with a panel of expert economists to find out whether they believe the economic circumstances that were present when the efficiencies provisions were introduced into the legislation would still be pertinent and relevant and whether we should maintain the current framework or not. Those consultations, we believe, will be complete in the first quarter of 2005, which would put us in a position to make recommendations at the same time as those for the section 45 provisions, say, in mid-year 2005.

The other area where we didn't feel comfortable was in terms of bringing forward recommendations to deal with the market studies, the ability to study a market quite separate and apart from enforcement of the Competition Act. In this area, the stakeholders raised a number of issues. If the Competition Bureau were responsible for these studies, there was a concern that we would possibly be in a position to receive facts from parties that might expose them to criminal action under the legislation, and therefore it would be problematic under our charter. But even if we followed another suggestion that was in the proposals—to allow for a referral to the CITT—there were major concerns about procedural safeguards.

What we have done in response to those concerns is conduct a fairly extensive review of what other jurisdictions have done in this area, because it is an area under development. The U.K. has recently introduced new legislation in this area, so they're looking at a slightly different model. We've been talking to some of our counterparts south of the border to see how they go about doing these market studies, to see if we can get something from them, because they're confronting the same difficulties our stakeholders have raised.

That is on a probably shorter time fuse, because it's significantly less complex than section 45 and the efficiencies. Those are very complex issues with fairly significant drafting challenges.

● (1615)

**Mr. Lynn Myers:** You're going to argue that these amendments assist consumers. Can you tell me how?

**Ms. Sheridan Scott:** There are a number of changes that would benefit consumers. When we talk about consumers, we should remember that consumers are both individuals and their businesses. When we look at how consumers are protected under our legislation, we don't draw a distinction, generally speaking, between businesses that might need protection from false and misleading advertising and individuals who might need protection.

One of the changes we propose in the legislation is to introduce restitution for consumers who are misled by representations. If we take a misleading representation case to the Competition Tribunal, we will be able to ask the tribunal to order restitution as one of the remedies. This would bring us into line with the Americans. The FTC is able to ask for a restitutory remedy, as are the Australians. In Canada, of course, if you think about it, many of the representations that we might see on television here could be North American representations, and south of the border the FTC would have the ability to ask for restitution for people who relied on those misleading representations, whereas we would not be able to ask the tribunal to do that.

Furthermore, the introduction of administrative monetary penalties for section 79, the abuse of dominance provisions, can also provide some assistance to consumers in the sense that we believe this will deter some of that behaviour. Consumers can be touched by that type of behaviour as well, because it's always good for consumers to have more competition in the marketplace. The Competition Act is based on the idea that competition market forces kick out the best for consumers and businesses, so to the extent there is more competition, we believe that is a good thing for consumers, and the AMPs will deter behaviour that could result in a substantial lessening of competition.

**Mr. Lynn Myers:** Thank you very much.

**The Chair:** Brian, Werner, then Denis.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair. I'd like to thank the witnesses for appearing today.

With the notation of restitution AMPs, are there any studies or has any research been done in terms of what types of resources will be brought in, such as in terms of fines? Are there any expectations as to how that will actually affect specific cases in the past or in the future? Is there any kind of crystal-balling as to what the result will be?

**Ms. Sheridan Scott:** In terms of volume and what we're anticipating by way of our volume?

● (1620)

**Mr. Brian Masse:** Yes.

**Ms. Sheridan Scott:** We did do more of a back-of-the-envelope calculation, because this is difficult to predict. We did look at how many we have had in the past, at how many abuse provisions have come through the door, and what not. Our calculation suggested to us that it would have something like a $2-million impact on us. We would require resources of something in the order of $2 million.

We've had discussions with the department, because these are challenging times for everybody. What the department has said is that it will try to address this through some sort of reallocation; it will look through its priorities and it will look at how we do our work.

We think we can handle this increased workload in the short term. The more pressing issue for us, of course, is the larger funding of the bureau, and I know that again was one of the recommendations in the 2002 report.

The difficult time for us comes in 2006. Right now, we're benefiting from an interim infusion of money from the department, from $3 million that Industry Canada has already given to us and an $8-million submission that's before Treasury Board. We're quite hopeful, although we have to meet some conditions before a final stamp of approval is given. We're in the process of continuing to negotiate and we're quite hopeful that will go through, but the $8-million additional infusion of funds was only for three years and will expire in 2006.

So I would say that is quite a critical issue, looking at 2006. We're trying to do everything we can, and everyone is looking to see what we're going to do to address 2006.

Looking at this additional workload, with the department thinking reallocations may be possible, and looking at how we'll handle our workload, we think we'll do the best we can and that we'll be able to handle this additional load.

**Mr. Brian Masse:** If you didn't have to do a reallocation, what would be the difference for your department? Where would you be able to advance quickly on a file or in a particular area if the resources were there?

**Ms. Sheridan Scott:** We don't have enough resources to do all the files that are before us right now. It's just basically where you draw the line across.

**Mr. Brian Masse:** What's the percentage of those files? Do you have any idea in terms of how much the waiting time is?

**Ms. Sheridan Scott:** We did try to do this exercise, and it's quite a difficult exercise to do. Sometimes they are big files that absorb huge amounts of money. I think that was our experience on the criminal side. We found they were the really big files, so it's hard to know how you could adjust those. And those are the ones that bring in all the fines, of course. In the criminal cartel area, we've brought in $180 million in fines to the consolidated revenue of Canada since 1998, so this is a good place for us to put our emphasis in terms of a cost-benefit. It's not that we should get paid on a percentage basis for any of this, but we get a lot of bang for our buck when we focus on these sorts of cartel investigations.

It's very difficult for me to say. Every year changes. When I look at the workloads from year to year, I see they can vary by as much as a couple hundred cases. We just have to look at them on a case-by-case basis in terms of which ones we will proceed with and which ones we will say we just can't go ahead with because we don't have the resources.

**Mr. Brian Masse:** Thank you for that, because that was my next question, precisely in terms of that.

All that revenue goes back into the general coffers, I assume.

**Ms. Sheridan Scott:** When we levy fines? With these amendments, the AMPs that we're talking about, for example, will go into the consolidated revenue. The criminal fines that flow from criminal cartel work would also go in the consolidated revenue.

**Mr. Brian Masse:** I know it's hard to crystal-ball, but I would like your professional opinion. If there were the appropriate resources so that you didn't have to work from the short term and advance this, do you suspect the criminal cartel work would pay enough dividends to cover the increases in the short term?

**Ms. Sheridan Scott:** I would say that's been our experience. For example, we are at $11 million or $12 million in fines this year.

**Mr. Brian Masse:** Already.

**Ms. Sheridan Scott:** That's not our entire budget. Our budget's around $43 million, but if I look just at the criminal work....

We do get resources for our merger activities, because people pay a fee when they come in to get a merger reviewed. That doesn't offset, but it contributes significantly to the merger work. Right now, we're forecasting somewhere in the $10 million to $12 million range for a merger review, but there's no doubt that when we look at these very large cartels, where the fines are based on a percentage of the volume of commerce—and these are worldwide activities, but we focus in on the Canadian part of the business—they can be quite substantial.

Richard used to be in the criminal branch. He may have some idea of how much more we think we'll get in the balance of this year. It's $12 million to date, and I think we're expecting more later on in the year.

**Mr. Richard Taylor:** I'd be happy to give you my thoughts.

We can't predict the progress of cases. It's up to the courts in many instances. I can tell you that currently in criminal branch we have 101 complaints open alleging cartel or criminal behaviour and we have 33 investigations, which means there is something serious there, we believe. If we look at the fines that we have, $1 million or $2 million is in the ballpark, and it can go up to $50 million in some of these cases. There's no hard and fast rule. Suffice it to say there are a number of cases there that, if we could move them along faster, would be subject likely to large fines if the parties were ultimately found guilty.

● (1625)

**Mr. Brian Masse:** On the same slant, the end result of the fines, are any of those fines tax deductible to businesses? For environmental fines 50% can be written off as a business-related expense. Is the same thing happening with the fines that you're levelling?

**Ms. Sheridan Scott:** I did try to find out about this, because I think you raised this question in the House.

**Mr. Brian Masse:** Yes, thank you.

**Ms. Sheridan Scott:** I'm not a tax lawyer. I was told that the test is that the taxpayer has to show the penalty was incurred for the purpose of gaining or producing income. That's the law as it now stands, and there are some specific exceptions where they indicate in the law that if it's corruption or bribery of public officials and the fine is for that, then in law it's indicated that is not deductible. My argument is that this is an arguable casebook for the tax enforcement officials. I don't know which way it would go and how one would argue these and whether there are any precedents. I'm not familiar with any precedents in our area.

**Mr. Brian Masse:** Each case might be different. Maybe I can pose that to our researchers to find out. I'd appreciate that.

Thank you, Mr. Chair, and thank you for the answers.

**Ms. Sheridan Scott:** Could I just add two quick comments in terms of the fines and the money and what not?

It is important to draw a distinction with the restitutionary remedy, because in that case this would be something similar to an AMP. But it's money in the hands of consumers and this would not go into the consolidated revenue; it would be handed back to consumers. The legislation provides guidance to the tribunal to say that there shouldn't be a double whammy, though, so to the extent there is restitution, the AMP should be looked at understanding that there has been restitution, because a dollar is a dollar is a dollar, whether it's given to the consumer or to the consolidated revenue fund.

I should just perhaps add as a bit of a caveat, although it's again early days for some of our research, that if we were given a power to conduct the types of market inquiries that the FTC does, for example, these are hugely costly propositions. These are hearings that go on for days and days. They may have several hundred witnesses who come. They have reports that will be several hundred pages long. So the $2 million certainly doesn't include any assessment at all of what the financial impact would be for that type of work, which is quite onerous if you're going to make a contribution and research appropriately. It would be quite expensive.

**The Chair:** Thank you very much, Brian.

Werner, then Denis. Then it is Paul again after that.

**Mr. Werner Schmidt:** Thank you very much, Mr. Chair.

This is the first time I've have had the opportunity to meet some of the people and it's very nice to see you. You're very competent and I'm very happy with the way you are approaching this.

I have a couple of very general questions and also a very technical question.

The technical question is to ask you to clarify for me, if you would, where the AMPs do apply and where they do not apply.

**Ms. Sheridan Scott:** In looking at AMPs, maybe I should group these, because there are AMPs with respect to misleading representations and there are AMPs with respect to what we call the civilly reviewable provisions. The civilly reviewable provisions are those parts of the law that deal really with how businesses relate to each other, and they turn often on circumstances where you have a dominant corporation that is engaging in acts that will substantially lessen competition or will have some impact on a competitor, another member in the marketplace. Sections 75 and 77 have not been included in this proposal to have AMPs attached to them. Those are provisions that relate to activities like tied selling, exclusive dealing, refusal to deal. The AMP attaches to section 79 only in this proposal. That section deals with abuse of dominance resulting in a substantial lessening of competition.

**Mr. Werner Schmidt:** But that's exactly the point. Do they apply only to abuse of dominance?

**Ms. Sheridan Scott:** Only to section 79.

**Mr. Werner Schmidt:** Does that mean they do not apply to where it is not a dominant position?

**Ms. Sheridan Scott:** It does not apply to sections 75 and 77, which treat different types of activities in the marketplace.

● (1630)

**Mr. Werner Schmidt:** But those could be a dominant position as well.

**Ms. Sheridan Scott:** They could involve people in dominant positions, but we felt in those sections that they are activities engaged in by business people that can be very pro-competitive. Tied selling, for example, can be a good thing for consumers. They may want to purchase articles on a tied basis.

**Mr. Werner Schmidt:** That's fine, but by the same token, if a dominant supplier refuses to supply, that's not anti-competitive, that's denial of business. That's not competitive at all, and yet it's not covered.

**Ms. Suzanne Legault:** To answer your question, Mr. Schmidt, if it were anti-competitive practices that were engaged in by a dominant player in the market, that could be addressed under section 79. In fact if you have a look at some of the case law under section 79, in many instances it did include the types of practices that are included or defined in the other provisions that Madam Scott was speaking about. And the reason is that section 79 has a non-exclusive list of anti-competitive acts. So if it were the case that a dominant player did engage in these types of anti-competitive activities and it led to a substantial lessening of competition in the market, yes, they could be dealt with under section 79.

The other sections that are now open to private access have been left untouched at this time and they do deal in more instances with more local matters. They tend to have less of an impact in the market generally so they are open to private access, and that's been developing since 2002.

**Mr. Werner Schmidt:** To clarify, to make sure I understand this, then, if it is not a dominant position under sections 75, 76, or 77, then it's dealt with under private access. If it is, it is subsumed under section 79. Does the legislation clearly indicate that? I clearly was somewhat confused about that. And I wonder if the legislation could be clarified so that indeed it would make that clear.

**Ms. Sheridan Scott:** It is clear that if you are—

**Mr. Werner Schmidt:** It is to you, yes.

**Ms. Sheridan Scott:** —a dominant company engaged.... What was the test that Mr. Rajotte set out before? All of those elements have to be present.

**Mr. Werner Schmidt:** No, I understand.

I'll leave that for now but go to another question that is far more general. That is the question of some of the things you've alluded to, the conspiracy of business.

I'd like to ask you what's coming next, because if we're going to deal with this now, subsequent amendments to come may or may not affect what's being done now. So what are we going to be dealing with? If this other stuff comes out, let's say, in the spring of 2005, will we find ourselves in conflict then with some of the things we're looking at here today?

**Ms. Sheridan Scott:** When we looked through the areas where the amendments had been suggested, it seemed to us that we were in a position to hive these off the pricing provisions, that they could be looked at on their own.

I think it's important to remember as well there were really two reasons for bringing forward this legislation. There was the response to the committee report. But there was also the removal of the airline-specific provisions in the legislation, and that had a faster timeline on it than the other provisions of the legislation. We felt it would not be responsible to bring forward the airline-specific provisions and propose their repeal if we did not have an AMP introduced at the same time. Because there is an AMP that's associated with the abuse of dominance activities by airline carriers, if we had simply removed the airline-specific provisions, you would no longer have an AMP that would be attached to that behaviour. And although the airline industry has changed significantly since these provisions were put in place, I'd still not consider it a mature industry and I think we're going to see it continue to evolve over the next several years.

So by introducing the AMP, we really felt we had to do that to pave the way for the repeal of the airline-specific provisions and also to move on the decriminalization provisions. Because if one did not have an AMP introduced at the same time, to remove the criminal sanctions, we felt, would be inappropriate.

**Mr. Werner Schmidt:** I quite agree, and I think you ought to be commended for some of the work you've done. Some good work has been done, for sure. What we want to make sure is that we don't create something now that's going to cause us some problems later on.

**Ms. Sheridan Scott:** No, I understand that.

**Mr. Werner Schmidt:** The final question has to do with the $10 million for a corporation and the $15 million on the second. Is that hard and fast? It could be less than that, right?

**Ms. Sheridan Scott:** It's a maximum or a cap.

**Mr. Werner Schmidt:** It's a maximum.

I'm just wondering whether in some cases, especially for those in a dominant position, that is actually sufficient, because in some cases that might be a cost of doing business. If I were to take advantage of a dominant position and make a $50-million profit, it would cost me $10 million and I would put $40 million in my pocket. That's not a bad deal. So are you really achieving what the AMP was supposed to do?

● (1635)

**Ms. Sheridan Scott:** We did have a number of debates as we were thinking through this issue. There are a number of different models used in different jurisdictions. One can use a percentage of a volume of commerce, for example, or you can use these caps. Both of these exist. Australia, for example, has a cap of approximately the same value—US$6 million, I think, is the cap in Australia.

We looked at a couple of things. First of all, it was a $15-million AMP for Air Canada, and so we thought that was an appropriate starting point since it was already in legislation. That was our starting point, and we said, well, maybe that would be an appropriate ballpark. And then we also paid quite a bit of attention to some of the comments we had received from the business community when we were consulting on this. There are a number of members of the business community who are concerned about the possible imposition of any fine, but one of their real concerns, if one does decide to pursue a fine, is certainty. They believe that as much predictability or certainty as possible is a good thing, and this provides some level of certainty in that you know what the level is.

As for whether or not we've got it right, because you want it to be not punitive but a deterrent, we thought this was reasonable, in looking at other jurisdictions and looking at the starting point of Air Canada and in trying to give as much certainty as one can provide. We felt this was an appropriate balance in the legislation.

Are there other models? Yes, there are other models. And they have their advantages and disadvantages as well. So this was the best we could do, trying to balance the various interests we've been hearing about.

**Mr. Werner Schmidt:** That's all for now, Mr. Chair.

**The Chair:** Thank you, Werner.

Denis and then Paul. I don't have anybody on the list after that, so it's then open.

[*Translation*]

**Hon. Denis Coderre (Bourassa, Lib.):** I also want to commend you. We really feel like neophytes here, because we're learning a great deal today. That only proves that your appointment was more than appropriate.

I want to talk about some of the technical aspects of this bill, to be sure I understand. Earlier you talked about Sections 75 to 77, in relation to Section 79. I would also include Section 45.

Despite the amendments, is it your sense that you have enough binding powers? We're not talking only about conducting studies. You do have a certain penalty level, but you also need legislation with teeth that will allow you to catch wrongdoers and protect consumers.

Given that we are waiting for Section 45, first of all, and the fact, as mentioned by Ms. Legault, that Section 79 has a non-exclusive list, do you think that it's fair to say that if these things had been important, they would have been included? In other words, maybe we're dealing with a grey area that could yield the opposite effect. Is it your opinion that the proposed amendments may not be adequate and that ultimately, it's not just a question de resources, since you may need additional hooks to exercise broader executive power in enforcing your own legislation?

**Ms. Sheridan Scott:** As far as the legislative regime is concerned, we believe the change proposed to Section 79 would be appropriate. It would allow us to operate at the same level as many other jurisdictions across the world.

As I was explaining a little earlier, Canada's legislation is clearer than the laws of other countries. There are examples we can rely on to identify anticompetitive players. We believe that adding AMPs is an excellent step but that will act as a disincentive to companies. It's not just a matter of enforcing the legislation, we also need to discourage companies from behaving in certain ways. There won't be any violations, because people will have decided not to behave inappropriately. Consequently, as regards enforcement, we believe that the power to ask the Tribunal to impose AMPs will assist us.

Suzanne may have other comments to make in that regard. However, I just wanted to make the point that we have studied other jurisdictions across the world.

● (1640)

**Hon. Denis Coderre:** In Section 79 is non-exclusive, and therefore adequate, I don't really see the relevance of all this. I would have looked favourably on the idea that Sections 75 to 77 be tied in with Section 79. It is not necessarily there for no reason. Although we're talking about a non-exhaustive list, perhaps the legislation could be interpreted as meaning that if these things were really that important, they would have been spelled out in the Act. That would have resulted in an accumulation of applicable facts. However, you're saying that since the list is not exhaustive, it can be applied in a comprehensive manner.

Are you not concerned that, in strictly legal terms, this could be considered a loophole that protects corporations? I'm talking about the actual interpretation of the legislation.

I'm not a lawyer.

**Ms. Suzanne Legault:** I'll try and repeat the explanation I gave earlier to Mr. Schmidt. Historically, Section 79 is certainly one of the pillars of the Competition Act in terms of the civil provisions, and Sections 75 to 77 have really been designed based on Section 79, as the legislation has evolved.

The administrative monetary penalties under Section 79 were proposed subsequent to consultations with stakeholders conducted by the Public Policy Forum.

There is no doubt that the addition of administrative monetary penalties is causing some anxiety, particularly in large corporations. However, when we looked at other viable options in terms of incorporating this type of penalty into these provisions for the first time, we discovered there was a bit of an opening in Section 79. Indeed, under this section, there has to be a reason why people engaged in anticompetitive practices. In English, it says “for the purposes of” and that is the wording we find in the definition. So there was something a little different about this provision, in that we look at the rationale given by companies for engaging in such practices.

The other fundamental point was that these provisions dealing with abuse of dominant position potentially have the greatest negative impact on the economy. The reason why administrative monetary penalties are being introduced is for the deterrent effect. We want there to be a deterrent in the section dealing with acts that potentially can have the most negative consequences on the economy in general.

**Hon. Denis Coderre:** Yesterday, I was upset as I was filling my gas tank. So I should think about you, about Section 79. Is that what you're saying?

**Ms. Suzanne Legault:** Yes.

**Hon. Denis Coderre:** Okay. We'll see.

**Ms. Suzanne Legault:** If you pass the amendments, of course.

**Hon. Denis Coderre:** We'll see. I note a lot of people filled their gas tank yesterday.

I'm going to play the devil's advocate for a moment. I want to come back to what Werner was saying earlier about the cap of $10 million and $50 million. We're not only talking about large corporations or businesses that have a monopoly. Didn't some stakeholders or organizations tell you that this may be somewhat of an anticlimax?

Let's do a comparison with other jurisdictions or with the common law as regards penalty regimes. You were saying earlier, Ms. Scott, that there are a number of other models we could look at, but that the one we have chosen is still quite justified and appropriate. However, there may be some risks associated with it.

Do you not think the fact that the amounts exceed a certain threshold could have the opposite effect on competition, productivity, or on business or industry per se?

**Ms. Sheridan Scott:** Are you asking whether this will discourage people? I didn't understand your question.

**Hon. Denis Coderre:** I'm talking about the risk that the penalties are too high. There is some sense that where fines are concerned, too much is in fact not enough.

**Ms. Sheridan Scott:** We have heard people on both sides of the issue. Some people told us…

● (1645)

**Hon. Denis Coderre:** What were the arguments?

**Ms. Sheridan Scott:** The people saying they are too high represent the corporations that are concerned. They are concerned that this will discourage them from engaging in certain activities which they believe should be acceptable and they will have to be more conservative in their actions.

**Hon. Denis Coderre:** Being too conservative is not a good thing. Use a different term.

Be it bloc or conservative—neither one is a good way of working.

**Ms. Sheridan Scott:** So, they will be more reluctant to engage in the kind of activities described in the legislation. That is why the proposal includes guidelines for the Tribunal as to how to set the appropriate amount.

The Tribunal is supposed to consider all kinds of things, that I can identify for you here—for example, the company's revenues, the size of the company. This is in proposed Section 79(3.2). They are supposed to consider factors ranging from the "gross revenue from sales affected by the practice", to "any actual or anticipated profits generated by the practice", to the "financial position of the person against whom the order is made", etc. In these cases, companies attempting to take reasonable measures should not be discouraged.

**Hon. Denis Coderre:** Given that 85 per cent of all jobs are created by small- and medium-sized enterprises, there is no doubt that…

**Ms. Sheridan Scott:** But they won't be dominant companies, in any case. So they won't be affected by Section 79.

**Hon. Denis Coderre:** So, you really think that these amendments will…?

**Ms. Sheridan Scott:** We felt the amount of $10 million was reasonable. As I stated in answer to Mr. Schmidt's question, some people think it's not high enough. But as I said earlier, in Australia, fines are about $6 million US, or $8 million CDN.

**Hon. Denis Coderre:** I have one final question.

**The Chair:** Be brief.

**Hon. Denis Coderre:** Yes, I'll be very brief.

Are you sure the airline industry is really ready to be messed around in this way? There are obviously changes occurring, particularly with WestJet, but don't you think this could have some repercussions for the airline industry? Basically, by changing certain things, would you not be giving Air Canada an additional argument to say there will be an impact, as regards bilingualism, for instance? Might this not also have an impact on the way the industry decides to reorganize itself?

**Ms. Sheridan Scott:** No, I don't believe so. That's why it's very important to introduce AMPs at the same time as we remove parts of the Act that apply only to that industry. We can continue to rely on Section 79 with respect to predatory pricing, for example, because it is in that part of the Act that will be amended, but it will be possible to prosecute companies for predatory pricing if, at a later date, we feel there are problems in markets covered by those parts that only relate to the airline industry now.

[*English*]

**The Chair:** Merci.

Paul, Brian, then Lynn. We may have one of the Conservatives in there too.

Paul.

[*Translation*]

**Mr. Paul Crête:** Thank you, Mr. Chairman.

Ms. Legault, I may have misinterpreted your comments earlier, but I understood you to say that those cases where AMPs will not apply to Sections 75, 76, 77 and 81 are due to the fact that large corporations expressed major concerns with them. Did I get that right?

**Ms. Suzanne Legault:** I will try to give you a more nuanced answer, which will also give me an opportunity to come back to the point Mr. Coderre raised. We do consider the impact on small- and medium-sized businesses, for example, of an administrative monetary penalty of $10 million for abuse of dominant position. One thing is for sure: in our consultations with them, SMEs—and I hope you will have an opportunity to hear their views on this bill—definitely expressed their support for administrative monetary penalties. The fact is that small- and medium-sized businesses are generally the ones directly affected by these kinds of activities.

The Industry Committee report proposed administrative monetary penalties for all the civil provisions, but in the consultations, we saw that opinion was sharply divided. There were large corporations, small- and medium-sized enterprises, and consumer groups. What the government has proposed in this bill is truly a balanced position that reconciles the interests of these different groups.

● (1650)

**Mr. Paul Crête:** You say that small- and medium-sized businesses will rally behind this compromise.

**Ms. Suzanne Legault:** Well, I cannot speak for them. And I assume you will be hearing from them yourselves. I am simply explaining that when the government proposes amendments to the Competition Act, as with any framework legislation, there are always major differences in opinion between the different stakeholder groups. The proposal you have before you is a balanced one that reflects the feedback we received in the various consultations conducted all across the country.

**Mr. Paul Crête:** The Committee believed that penalties should apply under all these sections. Your consultations have led you to a different conclusion, but my sense is that the views of the large corporations were what prompted you to remove AMPs from the other sections. Did I get that wrong?

**Ms. Sheridan Scott:** Let me try and explain how we saw this. The approach set out in the legislation has always been a measured approach. We move forward in stages, looking at what the differences are, what the impact is on enforcement of the legislation, interpretation of the legislation, and so. It is what you'd call an incremental approach. It's interesting for me to discuss things with my colleagues from the US, because they applaud such an approach. They think it's much better to do that than to make major changes without knowing which direction you're moving in. Because this legislation is so important, it is better to do things in a measured fashion.

We listen to what people have to say and look at the advantages and disadvantages of certain approaches. Because Section 79 is the most important of those that deal with civil matters, we wondered whether we wouldn't start with Section 79, where the behaviour in question has a purpose, as Suzanne was explaining earlier. For example, people engage in this kind of behaviour in order to diminish competition.

Most of the major cases we take forward to the Tribunal relate to Section 79—not Section 75 or Section 77. For now, we can tell people affected by Sections 75 and 77 that they can go before the Tribunal themselves, since such a right now exists. We felt it would be better to take a measured, incremental approach to amending Section 79 and see what kind of results that yields.

**Mr. Paul Crête:** Can we expect that those parts of the legislation will not be reviewed for 10 or 15 years? What that means is that the impact of the choices we make now will not just be felt over one, two or three years. A legislative measure must have some continuity so that people have the sense that it is solid.

**Ms. Sheridan Scott:** Yes, I understand. But if, at the end of all of this, we only keep Section 79, that is still the really important key section of the legislation. In terms of our own work, we will probably come before the Tribunal with cases based on Section 79. Even if we move under Sections 75 or 77, our case will be based on Sections 75 and 79.

There is no doubt that there are all kinds of behaviours that we will not decide to act on even if we think there is a case, simply because we don't have the resources to do that. We are focussing on the kind of activities that would be captured under Section 79.

**Ms. Suzanne Legault:** In fact, historically, if you look at the cases that have been brought before the Competition Tribunal, you will see that these were cases brought under Section 79 of the Act. I believe only one was brought under Section 75, and it involved a corporation with a very large market share. It was the Chrysler case. I believe there was only one of them. It had to do with an extremely dominant company.

**Mr. Richard Taylor:** I just want to correct my colleague. We have brought two cases forward under Section 75, that involved Chrysler and Xerox.

[*English*]

**The Chair:** Merci, Paul.

Brian, Brad, and Lynn.

Brian, please.

● (1655)

**Mr. Brian Masse:** Thank you, Mr. Chair.

If I can follow up, Mr. Taylor, on a few of the comments we were making earlier on the cases—I believe there were 32—that you couldn't quite get at because of resources—

**Mr. Richard Taylor:** Just to say, we have 30, and we have 33 that I would classify as major investigations with a significant issue we need to get to the bottom of.

**Mr. Brian Masse:** Okay, and with that can you give some kind of characterization of them, because I'm really concerned about the resource issue here. You're receiving a lot of compliments here about the work that's being done and how that affects not only consumers but also other businesses. Can you give a description of a particular case that might fall between the cracks or may not make it there, and how that affects either individuals or another company by not being addressed.

**Mr. Richard Taylor:** Because of the volume of work in criminal matters branch, and to some extent in civil matters branch, and certainly in fair business practices branch as well—and we also have mergers branch—I would say the three branches are under a lot of pressure right now because of the caseload.

Each branch has a case weighting system. We have to be fairly mercenary about the cases we take. We do try to look at the public's concern and the degree to which they're being affected. We take a dollars-and-cents approach. We look at whether there are repeat offenders. That would be another factor. We try to triage the cases based on discernable factors, such as bothering with commerce, impact on consumers, repeat offence, or whether they were warned. If we warned them—which is something we do in a smaller case—and they continued to do it, we would have no choice regardless of the size of the case. So those are the factors we use.

We do triage the cases, but it's true that in each of those branches we're only getting to the most egregious, most significant cases. The magnitude would vary from branch to branch. I think that with what we can effectively work on—and this is just an estimate from my experience with the bureau in criminal matters branch, having been there two years as a manager—potentially we're only probably doing justice to half of those cases. For the other ones, I know staff are frustrated that they can't work on their cases, because I see their frustration.

In civil matters branch, if I can just give you a comparative because it is important—because that's the branch I'm currently running and it handles the abuse of dominance provision that we're discussing today—right now, we have opened 42 complaints. We have 19 interventions, because we do interventions before regulatory boards. We have 24 investigations that have significant issues that we need to get to the bottom of.

So it's a similar story there in terms of more work than we can really handle. Again, we triage those, and we probably do justice to about half of those as well. The rest we have to put on the back burner and get to as we can.

**Mr. Brian Masse:** I'm not criticizing, but the concept “to triage” is amazing. This is the terminology of use. It shows the management system that's put in place to be able to evaluate the risk and also the rewards system necessary.

If there were improvements to the act and there were improvements in terms of the budgetary process for that, would we be able to clear those off? Is it long term? Is it short term?

Last, my question is, what do you say to people who have legitimate cases when you don't have the resources to deal with them? What are they saying out there? Where are they going? Whether they are businesses, seniors, or other consumers out there, do they just disappear? What's happening to those individuals?

**Ms. Sheridan Scott:** In terms of Richard's statistics, I'll add that we've received something like 17,000 complaints issues in the fair business practices part of the activities. There's a lot of duplication, but we have a very high volume.

What you say about consumers is interesting. When I first took up my duties, I did a fair number of stakeholder consultations across the country. I visited all ten provinces and all three territories, and I met with representatives from the business community, consumers, law enforcement, provincial ministries, and professionals who work in this area.

I found it interesting that a number of consumer groups were actually quite understanding about the demands on our resources. In fact, what they said to me in some cases was that they would just like it if they got a letter back from us explaining why it is that we can't. That's a courtesy. They won't complain. They understand that we're busy. They hope we focus on the big cases because they hope we're going to have a deterrent effect so that these things just won't happen.

We do a lot of consumer awareness work with respect to fraudulent telemarketing, for example. This has an impact. I heard about this in spades across the country. People everywhere across this country have been affected by fraudulent telemarketing, but we can't take all of the cases on.

We do spend quite a few resources in this area. We have partnerships across the country so that we can make better use of our resources. We share our resources with the RCMP, local police officers, police departments, and consumer ministries. Also, the Federal Trade Commission and the U.S. Postal Service join us in those partnerships, and they put in resources because it affects their citizens as well.

What we have started to do now is much more consumer awareness. We're going to be launching a major campaign next February. We're going to have a fraud prevention month, and we have some private sector partners who are going to allow us to use their channels to consumers to get our message out, to tell people about fraud, to try to stop people from being defrauded before it even happens. It's a campaign we call “Recognize it. Report it. Stop it.”

We're sharing with people the indicia you should look for to recognize a scam. There are things you can look for that will tell you it's a scam. One of the basic ones is, if it's too good to be true, it's too good to be true. For example, we tell people—and many don't know this—that if you're told you have won a prize, you should not have to pay any money to receive it. If you're told you have to pay to get a prize, it is not a prize. And that's very helpful to people. They actually don't know that.

So we try to get those messages out so that we can stop things before they actually happen, because that's the cheapest way of carrying out law enforcement.

● (1700)

**Mr. Brian Masse:** What's your budget for that?

**Ms. Sheridan Scott:** It's minuscule. That's why we have all these private sector partners. We have one partner. Visa has agreed to do bill stuffers, and we're going to reach 80% of Canadians, apparently. We will put our promotional.... I probably shouldn't say this because you'll get an early sign of this. We're putting together a whole big campaign that I hope will have lots more elements. I think it's going to be exciting when we do this.

We're going to be doing it around the world. Some of our counterparts in Australia, the U.S., and the U.K. are going to join us in this initiative, because people who are operating out of Canada are actually scamming people in other jurisdictions. So they're going to be looking to their jurisdictions while we look to ours.

We will be able, we hope, to reach out through a number of these partners using their channels. We don't have a budget to advertise. You'd need to have massive advertising. We're going to try to do it other ways that I think will be every bit as effective.

**The Chair:** Thank you.

Brad Trost is next, and then Lynn and Jerry.

**Mr. Bradley Trost (Saskatoon—Humboldt, CPC):** You were talking about eliminating fraudulent marketing practices, and I'm just wondering if it will ever be applied to political campaigns. If so, it might cause a little trouble for some of us—not so much trouble for some of us.

**Ms. Sheridan Scott:** Hopefully that's not fraudulent.

**Mr. Bradley Trost:** I've been reading through some of the excellent work that the Library of Parliament has done. One of the things they brought forward was that when the previous committee did work on this, they recommended that paragraph 79(1)(a) be eliminated. Evidently it's not in Bill C-19 here. I'll read it so everyone can follow where I am. The alleged violator must "substantially or completely control, throughout Canada or any area thereof, a class or species of business" for a successful conviction. The recommendation, according to the notes I have here, was that it be eliminated for ease of conviction, because this could provide such a high threshold level as to make it extraordinarily difficult to get convictions.

I'm wondering if you would respond to that question. Would that be valid? Is it potentially able to convict from there?

**Ms. Sheridan Scott:** As I mentioned earlier, the approach we've taken to the Competition Act has been one of incremental change. Since we're coming forward with the suggestions that AMPs be added, that the remedies be changed, we felt that a change to the substantive provision would not be wise at this particular stage. We don't want people to think that the law has actually changed. We want the abuse of dominance provisions to be subject to an administrative monetary penalty, so people will be able to draw upon their knowledge of how this section has been interpreted in the past. It's important for businesses to know whether they're engaging in behaviour that would now be subject to these administrative monetary penalties.

We are going to rely on our enforcement guidelines to interpret the current wording of section 79. We just feel it is more prudent to retain the language that is there now while we're shifting the remedy. We feel comfortable doing that because there is some jurisprudence that interprets those words to say it would have to be a company with market power. That is, in fact, the test that applies throughout the legislation. Generally speaking, when one is looking at whether a company is dominant or not, or meets those words, the court will look at the traditional tests of market power. That is fairly well understood in the competition community.

● (1705)

**Mr. Bradley Trost:** Okay. I have a bit of a follow-up question, which I think in many ways you've already answered—but for more clarification. They previously had price discrimination, geographic discrimination, predatory pricing, and something else here in my notes. They've all been grouped now under the one label of abuse of dominance. You're saying there is case law that will cover all those areas.

I guess as a non-lawyer—very much a non-lawyer—the objective specifics strike me as something that would be more clearly laid out, and this would be more subjective and flexible. Again, explain the thinking. I think I've got some of that to the common law explanations.

**Ms. Sheridan Scott:** With respect to the provisions you read out, those are the criminal provisions existing right now. Companies that engage in those acts would be subject to criminal sanctions, acts such as price discrimination, geographic discrimination, and price fixing. We're proposing that those be decriminalized and no longer be subject to criminal sanctions, and that the behaviour be looked at instead under the legislative framework existing in section 79.

There will be some behaviour that might have been captured before that will no longer be captured, because there aren't necessarily dominance tests applied in those sections. The fact is that in terms of how we enforce the act and how we choose to move forward with cases, and in terms of some of the criteria Richard was describing earlier, the triage cases, we move forward with the cases that would have a substantial impact on the economy. So we would likely not choose to put our resources towards a price discrimination case that wouldn't be one that could be handled under the framework of section 79. There's less worry about decriminalizing these now because the addition of AMPs, we believe, will provide a sufficient deterrent—which criminal sanctions used to provide for companies that would not want to engage in activities they felt would expose them to criminal sanctions. We think the reasoning will be similar with companies that don't want to expose themselves to these financial sanctions.

**Mr. Bradley Trost:** I just have one very different question, and maybe in some ways it's more of a comment. Having worked north of 60, an economic area that really is so small as to be insignificant to the rest of the country, I can say that at a village-based level you can have extreme market dominance. It's something that I don't know is addressed, and I don't know how often it comes before you. It doesn't affect my riding now. But again, having lived in villages that no one has heard of and no one will, unless they're the member for the region, I wonder if you might comment on anything that might affect them.

**Ms. Sheridan Scott:** I found it very interesting when I visited some of those communities in the three territories. They're probably not the size of the community you're referring to, but they were Iqaluit, Whitehorse, and Yellowknife—

**Mr. Bradley Trost:** Those are large communities compared with some of the ones I've—

**Ms. Sheridan Scott:** Yes, I was going to say they're probably not the ones, because certainly people have heard of the communities I mentioned. But they have some of the same issues, which they described to us. They were very interested in the Competition Act and in learning more about it because they thought there might be some possibility for them to frame claims under the legislation as well, and to apply to us to see if we could take action to address those issues.

As Richard mentioned, sometimes we take small issues because our first step might be to warn someone in these situations. When we're not going to spend the resources to go before a tribunal, we might warn a company and say, “Are you familiar with the provisions of the legislation and what you should and shouldn't be doing? Here are some of our guidelines”. We try to put out guidelines in plain language, for example. But if they then choose to disregard the guidelines, then we are very likely to take action, even if it's a small community.

So that is taken into account when one is assessing whether we want to do something about activities in smaller centres.

**Mr. Bradley Trost:** Again, it's not my riding, but I think people up there would really appreciate whenever...because of the potential. It does happen; it's brutally hard to prove, though.

● (1710)

**Ms. Sheridan Scott:** In fact, one area they were very interested in was the whole area of fraudulent telemarketing, because the communications world knows no bounds now. They were worried less about telemarketing than they were about fraudulent spam, because they wanted to be connected to the Internet like all parts of the country. In fact, it's wonderful for people in those remote areas to be connected and to have all the advantages you might have in a larger urban centre with respect to access to the Internet. They were getting concerned that they might be more subject to fraudulent-type claims via the Internet; so we said we would share with them our “Recognize It. Report It. Stop It.” campaign to help them understand which of those sorts of claims on the Internet might be fraudulent.

**The Chair:** Thank you for that.

Lynn, then Jerry.

**Mr. Lynn Myers:** Thank you, Mr. Chairman.

I'll be very brief. In an earlier round, I asked how these proposed amendments help consumers. I want to ask the same question with respect to the SMEs and how the amendments assist or help them. I would be interested in your answer.

**Ms. Sheridan Scott:** In terms of the SME community, we heard during our consultation that the members felt section 79 did not have sufficient teeth to deal with some of the issues they're facing.

In terms of administering these monetary penalties now, we feel these will act as a deterrent for some of the activities that might be harmful to small and medium businesses, so they would see an advantage in that.

The decriminalization of predatory pricing and price discrimination and what not, and the handling of those issues under section 79, where there is a civil burden of proof, where we can take our issues before an expert tribunal that will be able to understand and interpret the cases being brought forward—sometimes there's quite complex economic information that has to be brought forward, because we want to encourage aggressive price cutting, but we don't want to allow for predatory pricing. We want to be able to bring these cases in an effective way, and we think the moving of criminal provisions to the civil provisions will allow for a much more effective enforcement of those parts of the legislation and we believe that could be helpful to the small and medium business community as well.

Finally, again, it's important to remember that small businesses are consumers as well and small businesses are often the subject of these scams. I heard a lot about this in my cross-country consultations as well, that they were harmed by the toner scam. I don't know if you've heard about that one, a very common scam. Well, to the extent businesses are actually being misled and they are purchasing products, they too could benefit from the amendments introducing restitution as a remedy.

**The Chair:** Thank you.

Jerry Pickard.

**Hon. Jerry Pickard:** Thank you, Mr. Chairman.

Thank you for coming.

The reason I asked the question is that there's been a lot of discussion regarding resources, and it's critical that we make sure there are adequate resources and there's also an adequate business plan in order to make sure we're moving forward properly.

It seems to me that when we puts AMPs in place, we are allowing a lot of the criminal cases that you would deal with, which require an inordinate amount of time, energy, and research.... In order to prove a criminal case, I would guess that it takes 10 times the work it is in doing a civil case.

Now, with AMPs in place, is it anticipated that it may be a better way of handling a lot of complaints that come forward? Leave the onus of proof there, and yet have adequate penalties on a civil side with AMPs, therefore reducing some of these horrendous caseloads that you're going to have in criminal cases and therefore providing a smoother, better operation in a lot of the complaints that you have coming forward.

**Ms. Sheridan Scott:** I asked exactly this question when we were doing the financial workup to look at the financial impact. I asked exactly that question. I said, surely there are some cost savings here as well as some additional costs. I guess the short answer is, with respect to those activities that are being decriminalized, we don't take those criminal cases. We don't take them because we don't win them.

If you look back over our history of predatory pricing, for example, our success in bringing those forward to the tribunal, it's too difficult a case to make out. It's not that we have those on the criminal side now and we can move them over to the civil side, we just think there is going to be an additional workload. We think the addition of AMPs may lead more people to be bringing matters before us because they see that we might be taking them to the tribunal and there might be a remedy there at the end of the process.

The criminal cases we handle right now, the ones Richard was referring to earlier, tend to be in the price fixing area. These are international cartels. We also have some domestic cartels we're pursuing as well. This is where the vast majority of our work lies. Also, with respect to bid rigging, we might have some, and those aren't being decriminalized at all.

In fact, I meant to mention, in terms of your question about remote communities, we do a number of presentations on bid rigging to let people in communities of all sizes know what's going on. Municipalities' procurement organizations sometimes don't know how to watch for bid rigging, and this is very helpful to people to stop the law from being broken. But there are examples of bid rigging that actually do come forward, and that would be in the criminal section.

● (1715)

**Hon. Jerry Pickard:** My quick read between the lines is that this will more adequately cover a lot of the problems you have coming forward that you may not be able to handle at this point in time.

**Ms. Sheridan Scott:** It will allow us to cover the additional workload. Additional resources would allow us to cover the additional workload we believe will be generated by section 79, but they would also allow us, to the extent that we look at that longer-term problem—the one I mentioned, the $8-million problem—to continue to work down the list and get rid of our backlog and handle cases more effectively.

**Hon. Jerry Pickard:** Thank you very much. I appreciate it.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Pickard.

I see no more questions. Thank you very much, Ms. Scott, along with the officials from the department. You have all been very helpful today.

Colleagues, we have just about two minutes' worth of discussion on our future business. We're not going to go in camera.

We'll thank very much our witnesses—and feel free to leave. I just want to let you know that we've had discussions with the minister's office and Minister Emerson will be here a week today, November 25. The Conservatives have asked him to be accompanied by the head of the Research Council, the national science adviser, Dr. Carty, and the NSERC head, Tom Brzustowski. I've also conveyed to the Bloc, or will do so, that if they had officials specific to their concerns under Mr. Emerson's responsibility, they should let me know. But the Conservatives have done that and we appreciate it.

On Tuesday, November 23, we'll continue with the round table with academics, assuming we can get together a good group.

I'll assume we're going to have a meeting on November 30. The House is not sitting on November 30, apparently, because that's the day Mr. Bush arrives, but I'm assuming we could proceed with.... I'm not sure. There'll be security concerns on the Hill that day. I have to find that out. It may be hard for witnesses to get on the Hill.

If you leave it with me, if we can get witnesses on the Hill for the stage two of our study, we'll do so. If we can't, we may have to wipe out that day.

**Mr. Werner Schmidt:** You won't have to reschedule anything, then, if the minister comes on November 25.

**The Chair:** That's correct.

**Mr. Werner Schmidt:** That's good. Well, that's wonderful. I'm glad it's working out this way.

**The Chair:** What is the sense here about not meeting on November 30 if the House is not sitting?

**Hon. Jerry Pickard:** I think it's going to be very difficult to meet if the President is here, and I think everybody wants to hear—

**Mr. Werner Schmidt:** Why create a problem if we don't have to?

**The Chair:** I worry that witnesses coming in from afar may have a hard time. The security around here is going to be like a penitentiary.

**Mr. Werner Schmidt:** And we're going to have all kinds of witnesses coming.

**The Chair:** Unless I hear complaints, I'm going to have the clerk issue a notice to the members that unless there is some strong imperative—and I've been advised by the whip's office that the House is not sitting on November 30—we won't have a committee on November 30, either. Who knows what's going to be going on around here, helicopters flying all over the place, snipers and—

**Mr. Werner Schmidt:** Maybe we ought to have a meeting on December 18, then.

**The Chair:** Yes, the next one would—

**Hon. Jerry Pickard:** This visiting of a U.S. president takes on a life of its own around here and I think—

**Mr. Werner Schmidt:** And you've now taken care of Carolyn Parrish, so that's okay.

**The Chair:** Jerry was here when we had Clinton and Reagan. For half a day you couldn't get to the airport.

**Hon. Jerry Pickard:** Oh, I know.

**The Chair:** Our witnesses could end up circling over the Ottawa airport for two hours.

**Mr. Werner Schmidt:** There's no point in creating problems if we don't need to.

**The Chair:** Okay, so we're going to double confirm that the House is not sitting, because I just have it secondhand, and if it's not sitting we'll inform members we're not going to meet, unless somebody really wants to raise an objection.

● (1720)

**Mr. Werner Schmidt:** Okay, the House won't sit. That means the President will not be addressing the House on that day.

**The Chair:** It'll be probably the next day—the Wednesday is my guess. I'm guessing.

Okay, with that we are...

**Mr. Werner Schmidt:** Well, Mr. Chairman, thank you, again.

**The Chair:** We're adjourned.

Thank you, colleagues. They were good questions, by the way.

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