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Chair

Mr. Brent St. Denis

Standing Committee on Industry, Natural Resources, Science and Technology

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● (1535)

[*English*]

The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)): I call to order the second meeting of the Standing Committee on Industry, Natural Resources, Science and Technology.

I welcome our witnesses today, from three very important organizations. I'll introduce you in a few minutes.

We have received a notice of motion—just under the wire, if I might say—from Brian Masse of the NDP. I'll ask him to speak to it in a moment, but I just want to say to members that we did reduce the notice for motions from 48 hours to 24 hours. I might ask the clerk to prepare a motion for future consideration, that motions submitted within 24 hours' notice be in both languages, because the clerk is required to get translations before the motions can be circulated to other colleagues.

I'll let it go, but I did make that comment before, that with the new rule that we agreed to, it would be very helpful to have those in both languages so that we can get them out to colleagues right away. But we are going to go ahead with it.

I'll read the motion into the record first and then ask Brian to move it, but before doing so I'll just say that I consider that the spirit of the motion is in order, although in regard to the part that ties it to the second reading, that ties it to the Government of Canada introducing a bill, I have doubt about that being in order. In other words, you can call for the suspension of the hearings on Bill C-19 and your explanation in your commentary can say why, but on the motion itself, we're really in a grey area to include the second part.

Would you object if I read it in, up to the end of "suspend hearings on Bill C-19"?

Mr. Brian Masse (Windsor West, NDP): That's fair, Mr. Chair.

The Chair: I'll call the rest out of order, but you can explain the rest of that in your commentary and that you don't mean it to intend to start as of today.

I'll read it. The motion is that this committee suspend hearings on Bill C-19, period.

Now I'll ask Brian to explain his motion and why.

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

The Chair: To our witnesses, just be patient with us for a few minutes. Thank you.

Mr. Brian Masse: Thank you, Mr. Chair. I'll be brief so that we don't delay our witnesses any further, and also to express that this is not for today—we do want to hear witnesses today. But the reason I propose this motion is because of an ongoing commitment this government has made to address the finance act, to stop the deductibility of fines under the Income Tax Act. That is something that was delivered in the minister's budget about a year ago, something that was promised and talked about before and has yet to happen.

From our research branch here, and I appreciate the work they did, it came back that there is draft legislation, but it has yet to be tabled. I find it very frustrating, especially doing research, in terms of the fines that have been imposed upon corporations for some of the predatory practices that affect consumers and other businesses, which eventually then can become tax deductible at the end of the year.

I find that's not transparent government. It sends mixed messages, and I find it frustrating in terms of us addressing the issue of fines and then still having a tax deduction at the end of the day available to corporations for predatory behaviour and unfair practices that once again affect consumers and also other businesses.

So my intent today is to signal that we can move on to other business at this committee level and to press the government to fulfil its promise made in the budget. I think it's a fair way to do things, because we have a lot of work to do in this committee, and I'd like to see that rectified and then get on with the spirit of Bill C-19 once we've finished that.

The Chair: Are there any comments on Brian's motion?

James.

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you, Mr. Chair. I apologize for being late, but I just want to clarify. We can actually vote for this motion as amended, because the period is after "Bill C-19".

I just want to put on record that the Conservative Party does not necessarily agree with the rationale just used by my honourable colleague here, but we are in favour of the motion if it is amended to end after "Bill C-19".

The Chair: So it's simply that this committee suspend hearings on Bill C-19.

Mr. James Rajotte: That's the motion in its entirety right now, right?

The Chair: Yes.

Until I get some kind of ruling from the Clerk of the House on what that means, I would interpret that to mean yes, that....

It might mean today, unless you—

Mr. Werner Schmidt (Kelowna—Lake Country, CPC): I don't want to do that.

The Chair: Do you want to add an amendment, Werner, to suspend hearings on Bill C-19 as of 5:30 p.m. today?

Mr. Werner Schmidt: Yes.

The Chair: Okay, so it's amended such that this committee is suspending hearings on Bill C-19 as of 5:30 p.m. today, December 2, 2004.

Mr. Werner Schmidt: Right. That's good.

The Chair: Are there any other comments?

Jerry.

Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.): Mr. Chair, as we look at the motion that's before us, in my mind, does this motion affect the spirit of what we are doing within the amendments we're proposing to Bill C-19? I have to say no.

This is an existing situation. I guess it would be quite easy to pick a small piece in any legislation and say, "I disagree with it and I move that the committee suspend discussions." Quite frankly, if the opposition really, clearly, does not want to see the amendments of Bill C-19 or see Bill C-19 go forward, they can vote for the motion on the table, but don't use an excuse and hide behind a small excuse to prevent federal government legislation from going forward. Deal with the legislation as it is.

I think, quite frankly, any kind of motion could be put on the floor. The question is, are the amendments in the Competition Act those that most people in this country want to see? Is it a reasonable, balanced approach to legislation?

If a party wishes to hide behind a small item to try to floor or stop the government's agenda, that is up to them and they have to look at that. But to me, are we a parliamentary committee ready to move forward and deal with legislation, or are we trying to stop the process of what we're doing in this Parliament?

● (1540)

The Chair: Thank you, Jerry.

Are there any other comments before I call the vote on the motion as it stands, that this committee suspend hearings on Bill C-19 as of 5:30 p.m. December 2?

Hon. Denis Coderre (Bourassa, Lib.): I would like a recorded vote.

(Motion agreed to: yeas 7; nays 3)

The Chair: Seeing no other business except that we have these excellent witnesses before us—I hope you take nothing personal from that very important discussion—we have with us today representatives from....

On a point of order, Denis.

[*Translation*]

Hon. Denis Coderre: Mr. Chair, I take note of the decision of my colleagues. I want it to be clearly stated that I find that decision to be completely irresponsible and that I doubt the capacity of the committee to do this work. I don't see the point of continuing our discussions today.

[*English*]

The Chair: That's not a point of order.

[*Translation*]

Hon. Denis Coderre: I ask for the immediate suspension of our hearing.

[*English*]

The Chair: Anyway, thank you for that intervention, but that's not a point of order.

I'm going to call upon our witnesses today, from the Canadian Bar Association, the Canadian Council of Chief Executives, and the Canadian Chamber of Commerce.

We'll start with the Canadian Bar Association. I believe, Ms. Thomson, you are going to speak first.

I'm going to ask witnesses to try to stick to about 8 to 12 minutes, or an average of around 10 minutes for each of the three groups, and then we'll have time for questions. Thank you very much.

I'd invite you to start, Ms. Thomson.

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): Thank you, Mr. Chair and members of the committee. We're very pleased to appear before your committee today on behalf of the national competition law section of the Canadian Bar Association.

The Canadian Bar Association is a national association that represents over 38,000 jurists across Canada. The competition law section is comprised of lawyers whose area of practice and expertise is competition law, so it's a very apt subject for them to address before you today.

Amongst the association's primary objectives are improvement in the law and improvement in the administration of justice, and it is in that rubric that we make the comments for you today.

I will ask Mr. Affleck, who is chair of the competition law section, to address our specific issues in the bill.

You have before you a copy of our written submission.

Mr. Donald Affleck (Chair, National Competition Law Section, Canadian Bar Association): Mr. Chair, I feel grandfathered in light of the motion that's just passed. It's a pleasure, of course, to be here.

The Chair: Your testimony might be of historic consequences—

Mr. Donald Affleck: It might be.

The Chair: —and among the last testimony of Bill C-19. I don't know.

Mr. Donald Affleck: I appreciate the committee taking that testimony.

We've prepared a brief for the committee. It supports the repeal of sections 50 and 51 of the Competition Act, which are the current criminal provisions pertaining to price discrimination, predatory pricing, and geographic price discrimination of promotional allowances.

The brief also supports those portions of Bill C-19 that are designed to repeal the airline-specific provisions and to make consequential amendments. The competition section's support for the proposed amendments does not, however, extend to the provisions dealing with administrative monetary penalties and the related provisions as found in the bill that amend the marketing practice provisions and the abuse of dominance provisions as they are found in today's legislation.

The marketing practice provisions come first in the bill, first in the act, and I'll deal with them first. I think the best way to make my point is to give you an example. Let us suppose we have a small drugstore chain of two or three stores in Saskatoon, Lindsay, Ontario, or Trois-Rivières. It places an advertisement in a local newspaper, in a flyer, and I've taken this from actual case law, although I've emasculated the names of the parties involved, Mr. Chair. The advertisement reads, “The best possible dollar value and saving on every item, every day, whether drugs, vitamins, prescriptions, or toiletries”.

Suppose three specific items in the store could be purchased more cheaply at a competitive drugstore, that competitor complains and the Competition Bureau investigates and finds out that the owner/operator of the chain did some comparative shopping before he put the ad in but did not do a very thorough job and the advertisement is not totally correct.

If this had occurred last month—November 2004—what could the Competition Bureau have done? First, it could have charged the owner criminally under section 52, or at least threatened to do so. Second, it could also have charged the owner's assistant, who put the advertisement together and placed it in the newspaper, and the owner/operator would learn what penalty he was facing—a maximum fine of $200,000 if he was prosecuted or if the company was prosecuted by summary conviction, or a fine at the discretion of the court if by indictment and a court order perhaps prohibiting that owner from breaching the statute, which would be outstanding for ten years.

Alternatively, in November 2004 the Competition Bureau could say to the owner, we will deal with this matter under section 74.01, the civil provision area, where the result would be a prohibition order —the requirement to publish a notice in the newspapers or in another flyer that the ads were false or misleading in some respect and why, and pay an administrative monetary penalty capped at $50,000 to $100,000 if an individual, or $100,000 to $500,000 if a corporation.

There is one fact I didn't tell you about, Mr. Chair and members of the committee. Our owner/proprietor way back in 1989 ran afoul of what was then the Combines Investigation Act. He had placed an ad that indicated if you bought one roll of film for the regular price of $11.99, you could purchase another for $5.99. The trouble was that the regular price was $10.79, not $11.99. He didn't fight that. There was a plea of guilty in 1989 where he was fined $1,000.

Let us move now to 2005 with the same factual situation, except for the fact that the amendments in Bill C-19 have passed and have become law.

● (1545)

The owner/operator would still be faced with the threat of criminal proceedings and the fines and the prohibition order, but under the so-called civil provisions, the landscape would be dramatically altered.

First, the fine, or AMP in the case of an individual, would be capped at a million dollars and up to $15 million if the owner carried on business in the name of a corporation. That, members of the committee, is because he is a recidivist, a second-time offender—back in 1989 he had a conviction. If we look at the statute, it's quite clear that under subsection 74.1(6) that would be considered a second order against him.

We talked about tax deductability, I think. It looks like the fines would not be tax deductible. There was a budget in 2004. The Canada Revenue Agency has issued a revised bulletin indicating those fines will not be deductible. They cite the Competition Act. Of course, they have to wait the passage of the particular part of the budget. I think somebody asked that question when the Competition Bureau was here, and there wasn't a very clear answer, but it's clear that the government is proposing that.

But that's not all. Under these amendments the court could issue an order, what I term a class action order, requiring our owner/operator to set up a fund made up of the revenue the stores took in for the three specific items that were misrepresented for the period of time that those advertisements were outstanding.

I have read of members saying that this is restitution. This is giving the consumer back something. That isn't what the statute says. It does not speak to restitution. It says that this money is “to be distributed among the persons to whom the products were sold”. It doesn't say people who lost money, people who were adversely affected, which it could easily have said.

In my example, the customers in Saskatoon, Trois-Rivières, or Lindsay may feel that this owner/operator, whom they know, as these are relatively small communities—it could be Moose Jaw—has suffered enough. He had to hire the most expensive lawyer in town, for example, and they don't claim all of the fund, all of that money he put in there.

Does it go back to him? This legislation says no. What is left after paying for the notices, alerting people to the fact there's a fund there, and paying for an accountant or an accounting firm to administer that fund—he will have to pay those expenses—goes to a non-profit organization. There's nothing to require that this non-profit organization have any connection with the community in which he's carrying on business.

Surely, I say to members of Parliament, this amendment amounts to a proposed tax without any parliamentary oversight.

If all of that is not horrendous enough, let's take the same owner. He had been considering retiring and getting out of the business, and that was well-known. He would have to be concerned if the bureau found out about it. They could get a type of injunction, a freezing order on his inventory. That amendment is set out in clause 6 of your bill.

After all of that, could you blame that store owner for saying, "I would have been better off if I'd gone down the street and talked to my competitor and convinced him to fix prices." The worst that could have happened under the statute was a fine of $10 million, and nobody has ever paid a fine of that amount.

And for sure he's not going to do that type of advertising again.

From a legal perspective, members of the committee, it's difficult to avoid concluding that these amendments are anything other than an attempt to avoid the due process rules enshrined in our legal system.

I raise a question with you as to the constitutional validity of these provisions, and it's raised in the brief, as well as the quasi-class action provision, the fund provision.

● (1550)

It may affect property and civil rights in a province, and regarding the punishment, which you can only say that these fines evoke, the section contains no protection that you usually find when somebody is subject to a penal sanction. I call upon the committee to ask the Competition Bureau or the proponents of this piece of legislation to come forth with the constitutional opinion indicating that those particular provisions are intra vires and don't offend the Charter of Rights and Freedoms.

In summary then, there's no evidence that the AMPs, the administrative monetary penalties, as they are at present, are negatively affecting the administration of the sections. In fact the commissioner has been able to reach settlements well in excess of the administrative monetary penalties that exist there. The commissioner has collected from one company out west $1.7 million and from another company $1 million. Cease and desist orders and corrective ads are generally incentive enough. These are civil provisions. There are criminal provisions to deal with egregious conduct and there's no reason to amend them. I suggest that these amendments are inordinate, unnecessary, inappropriate, unconstitutional, and not, Mr. Chair, in accordance with the committee's 2002 report.

Thank you.

● (1555)

The Chair: Thank you very much, Mr. Affleck and Ms. Thomson.

We're going to move to the Canadian Council of Chief Executives, John Dillon.

Mr. John Dillon (Vice-President, Regulatory Affairs and General Counsel, Canadian Council of Chief Executives): Thank you, Mr. Chairman. Merci, monsieur le président.

I want to thank you, first of all, for this opportunity to appear before this newly formed committee. We happen to believe your committee has a broad and very important mandate that will be very critical. We look forward to working with you in building policies and programs that can enhance Canadian economic advantage, particularly in the manufacturing resource industries and in science and technology.

I don't have to remind members of this committee that the pace of change in the marketplace is constantly evolving, and of course our competition law and other economic framework policies have to keep pace with the change. It's important that Canada continue to be an attractive location for investment and offer a sound foundation from which businesses can compete internationally. Indeed, to enable companies to succeed in this dynamic international arena, such policies must support their ability to maintain and increase their pace of innovation.

In particular, changes to the Competition Act should facilitate rather than inhibit the kind of strategic alliances and new business arrangements companies are increasingly using to compete effectively in the global marketplace. Needless to say, dynamic firms operating from a Canadian base are the best way to ensure jobs and other social benefits for Canadians and to provide Canadian consumers with useful and competitively priced products.

As members of the committee will undoubtedly be aware, my organization has worked actively over many years with respect to various amendments to this piece of legislation, and we have tended to support the bureau's and government's approach to incremental improvements to the act.

However, there is a downside to this incremental approach. We are growing concerned, quite frankly, that it may miss the larger realities of global trade and commerce and the trends that, although largely happening outside our borders, are certainly very much having an influence on the competitiveness and growth of Canadian firms.

It's therefore probably apt for this committee to ask whether the current Competition Act and the amendments that are being proposed here are likely to assist or hinder Canadian firms in their quest to become more dynamic enterprises. The reality is that the size of the Canadian market and the nature of the competition in today's global marketplace mean a fair degree of concentration in some sectors is not only inevitable but desirable. Canadian firms must have the size, the skills, the efficiencies, and the capacity to compete effectively against larger multinational competitors.

Most of Canada's largest firms, but indeed many small and medium-sized enterprises, no longer compete solely against other domestic businesses or even those based in the United States; rather, they must go head to head with companies from Europe, Japan, Mexico, Korea, as well as such emerging market players as China, India, and Brazil. Obviously, many sectors important to the Canadian economy are now dominated by a few large global players, some of which happen to be Canadian-based, but certainly others need that size and scale to compete effectively.

How is Canada's competition policy able to deal with this challenge? I know this committee, among others, has been rather interested recently in particular with a couple of transactions that may be going on with respect to investments by foreign companies and even foreign governments in some of our largest companies. While that may have caused some political concern in this country, I guess the issue is this: if there were another large Canadian firms that were interested in taking over one of those companies, rather than a company from abroad, what would Canada's competition authorities have to say about it?

I'm afraid that in many cases those mergers may not be approved, even though a merger would likely create an even stronger Canadian-located competitor, with a head office and all the benefits that brings to Canada, able to compete against those foreign players. That is largely because of the limited definition of competition they tend to use with respect to the Canadian marketplace.

I hope the committee will think long and hard about these issues as you, I assume, come back to consider this bill at the appropriate time.

Turning to the specific provisions of Bill C-19, we certainly, as was mentioned by our colleagues from the Canadian Bar Association, support a couple of the changes that we believe will meet the government's goal of modernizing the act—in particular, the repeal of the criminal pricing provisions and the removal of the airline-specific provisions. The latter, of course, is important to make clear this is a law of general application and that all players in the marketplace are to be judged on an equal footing.

● (1600)

However, like our colleagues from the bar, our organization has considerable concerns with respect to the proposals related to administrative and monetary penalties, both with respect to section 79 review and with respect to the civil regime of reviewable practices, and also with respect to AMPs as they are applied to the misleading advertising provisions.

I don't think I could or need to add anything to what Mr. Affleck has already said with respect to the latter, but certainly with respect to section 79 I want to reiterate that the whole scheme of civil reviewable practices of which section 79 is a part was founded on the premise that much of that conduct and many of those activities by business are indeed legal and may in fact be pro-competitive. But that's a judgment to be made by the tribunal, having looked at all of the evidence and all of the conduct. It's not clear to me and to our organization that in fact an administrative monetary penalty of the size that's being proposed, determined *ex post facto* by the tribunal, is either fair or is going to serve the purpose of deterrence, since it is an *ex post facto* judgment.

We also have some problems with the provision in Bill C-19 providing the authority for the commissioner to seek restitution with respect to false or misleading representations. I understand, and clearly we would support the bureau in its ability to deal with what is ultimately consumer fraud; however, as I think my colleague has aptly demonstrated, the difference between misleading advertising and consumer fraud can be significant. In cases of clear fraud, where there has been an identifiable group of consumers who have been essentially sold a worthless product, restitution may be a suitable remedy, but we don't think it's something that should be so broadly applied as this bill would suggest.

Lastly, I just want to deal briefly with a couple of other items that are not in Bill C-19 but that I feel compelled to say something about, because of course we know of ongoing consultations, and the commissioner, when she was here last week, spoke to these at some length with respect to two items that are still under consideration by the bureau.

The first concerns section 45, the review of the criminal conspiracy provisions. As you'll no doubt be aware from the discussions that took place around the government's discussion paper last year and the report of the Public Policy Forum, this subject was canvassed quite thoroughly. I think it's quite clear that both the competition law experts and the stakeholders involved have a wide variety of views. Indeed, there is no consensus at this point on the merits of reforming section 45—to deal specifically, of course, with strategic alliances.

No one would argue that we don't need a strong criminal provision to deal with hard-core cartel conduct; however, to suggest that a whole range of agreements among competitors or potential competitors—which may actually be pro-competitive in nature and may be serving to do new research on new products to enter new markets, and on the kinds of arrangements all businesses, large and small, are using to a considerable extent today to try to improve their innovation and to enter new markets—should all, or that a substantial number of them should, be subject to some sort of civil review is, I think, a very tricky road to go down, and it may prove very unfortunate for those companies who need those kinds of arrangements. It could, in fact, have a significant chilling effect. The bureau tells me that's not its intent, but after many discussions with many colleagues and many businesses who operate that way, I think it's very likely that would be the impact of that kind of regime.

The second point is with respect to the issue of how to treat efficiencies in the act. I know members will be familiar with various discussions and reforms, including a private member's bill in the last Parliament, to try to deal with this. We happen to believe the efficiency consideration is extremely important, especially in the case of mergers, and that to start tinkering with it could be potentially a very retrograde step.

The bureau is undertaking a consultation at the moment. We have been invited to submit our comments by December 21. The discussion paper they put out almost seems to presume we're already going down the road of having a review of strategic alliances, and the only question is what role the review agency should give to the issue of efficiency.

● (1605)

As I said earlier, that's a very problematic step, and I think this committee should take all of those factors into consideration.

I dare say, we'll be back here in relatively short order to deal with that.

Mr. Donald Affleck: Not after 5:30.

Mr. John Dillon: Not after 5:30, and perhaps not this year, Mr. Chair, but whenever the committee deems it's time to look at this bill again. But I think in this Parliament, or the next Parliament, undoubtedly, the bureau may come forward with other ideas for reform, and you should be looking at the whole package of what's gone before and what might come ahead.

Thank you, Mr. Chairman.

I look forward to your questions and comments.

The Chair: Thank you. That was perfect, at 10 minutes and some seconds. Great.

I'll move to the Canadian Chamber of Commerce.

Mr. Murphy.

Mr. Michael Murphy (Senior Vice-President, Policy, Canadian Chamber of Commerce): Thank you, Mr. Chair.

It's my pleasure to be here, and indeed it's even more of a pleasure to be joined by Mr. Tim Kennish, who is the chair of the chamber's competition policy and law committee. I'm delighted he's here with us today.

[*Translation*]

I will present you today the perspective of the Canadian Chamber of Commerce, the broadest and the most representative group of businesses in Canada. The chamber speaks for some 170 000 members through its more than 350 chambers and offices of commerce across Canada. We represent big and small businesses from every sector of the economy and from all regions of Canada.

[*English*]

The chamber believes that the Competition Act is clearly important framework legislation governing a wide range of business activity—how firms advertise, how they set pricing policies, and how they merge. Hence, the proper goal of any reforms, in the view of the Canadian chamber, is to ensure that the act provides an effective and predictable framework for a competitive marketplace for both Canadian business and consumers.

[*Translation*]

The chamber also believes that a number of the reforms to the Competition Act proposed by Bill C-19 represent positive steps forward and will ensure that the Act is both balanced in its approach and up-to-date in its operation. On the other hand, other amendments proposed by the Bill are not desirable, as they do not achieve an appropriate balance between the need for effective enforcement of the legislation and the provision of predictable and fair rules of business conduct which promote healthy competitive rivalry.

[*English*]

I'd like to underline the fact that in several areas, assessing the full impact of amendments proposed by the bill is more difficult due to the possibility that other legislative proposals will be introduced, and whether they include some of the things we've just heard mentioned by the previous speaker or the expansion of other private rights of access, the possibility of private damage recoveries, and expanding the use of administrative monetary penalties in regard to other provisions of the act, the chamber believes these amendments, if introduced later, would effectively confer upon the bureau and the tribunal excessive enforcement authority, thereby inhibiting otherwise legitimate competitive behaviour.

The act is crucial to maintaining the competitiveness of our economy in Canada. As such, it is important that its enforcement powers be balanced and flexible to encourage firms to compete vigorously and aggressively in the market, and that any changes to it not only protect consumers but also facilitate the act's role in promoting aggressive competition in the marketplace.

Thank you, Mr. Chair.

I'd now like to turn to Mr. Kennish to speak to some of the specific comments we have on the proposal.

The Chair: Mr. Kennish.

Mr. Tim Kennish (Chair, Canadian Chamber Competition Law and Policy Task Force (Co-Chairman, Osler, Hoskin and Harcourt LLP), Canadian Chamber of Commerce): Thank you, Mr. Chair and honourable members.

The chamber does very much appreciate this special opportunity to present its views on Bill C-19. I also appreciate having the last formal word on this subject for this group.

I'll just first summarize for you the chamber's position on the amendments proposed, and then I'll get into some of the reasons for that position.

First, we consider the present maximum levels for administrative monetary penalties for civil deceptive marketing practices to be sufficient and appropriate, and we do not support their increase. Secondly, we think that AMPs in respect of abuse should only be imposed in respect of second or subsequent orders made against the same party under section 79, the abuse provision, and should not exceed $3 million. The chamber supports the proposed repeal of the airline-specific provisions of the act and its provisions respecting regional price discrimination, promotional allowances, and predatory pricing. We also recommend that the price maintenance provision, which is another pricing practice provision, be repealed.

First I'll deal with the civil deceptive marketing practices proposals. Don Affleck very elegantly eliminated some of the issues we have concerns about. I'll tell you why it is we oppose increasing the amounts of the administrative monetary penalties. First, the maximum AMPs are at a level that raises basic constitutional issues under the Bill of Rights in that respondents facing these kinds of penalties will not have the benefit of the customary criminal law protections and yet will have to face potentially very major penalties. A similar point applies with regard to the same kinds of penalties for abuse of dominance.

Also, as Mr. Affleck mentioned, the government has already been successful in achieving or attaining some significant penalties under the present law without any increases, in the Suzie Shier case $1 million and in the Forzani case, according to my notes, $2 million—though I'm guessing Mr. Affleck is more correct with his $1.7 million, but that's still a significant number for this kind of thing.

In the case of corporations, what's proposed in terms of a first order is an astounding hundredfold increase in the maximum limit. It's clearly punitive if it applies at that level. It is not solely for the purposes of encouraging compliance with the law and runs in the face of and contrary to the explicit direction contained in subsection 74.1(4) in that regard, which specifically says it shouldn't be for punishment purposes. It's also interesting to contrast the potential $10 million fine—call it that—here under the civil provision with a maximum $200,000 fine that would be applied in the case of a criminal proceeding under the same rules but on a criminal basis using the summary conviction process.

The $10 million number is the same limit as is applicable to criminal price-fixing and other hard-core cartel behaviour, which are simply just more serious in terms of their harmful competitive effects. As mentioned, it appears there actually has never been a single count imposed of price-fixing that has been as much as $10 million. More typical cartel fines for cartel participants who aren't ringleaders would be more in the range of $500,000 to $1,500,000. Also, these proposed maximums are quite a way out of line with other maximum penalties prescribed for similar criminal offences under other provisions.

Deceptive telemarketing under the Competition Act has a maximum fine of $200,000 on a summary conviction. There are similar limits for false advertising under the Food and Drugs Act. These provisions were adopted only five years ago, and there isn't, it seems to me, any real evidence that they have been effective in deterring wrongful behaviour, or it's been an ineffective enforcement tool.

● (1610)

Your committee did not recommend an increase in the maximum limit for AMPs in this area. Contrary to what may be thought to be the case, enforcement activity in the U.S. in regard to similar practice is actually less than it is in Canada. There has not been a fictitious price case brought in the U.S. since 1979. In our submission we mention some of the reasons for that, but there is a downside to being overly aggressive in prosecuting these kinds of advertising claims.

The downside is, among other things, that it may undesirably chill aggressive advertising, which is one of the most critically important dimensions of competition. It has been mentioned that the restitution and freeze order provisions are unusual and extreme, and I don't think they should be available in the case of civil deceptive marketing practices. As Mr. Dillon mentioned, it's fair game to apply more substantial remedies in the case of real fraud, but those real fraud cases should be brought under the criminal provisions and not civil provisions.

In regard to abuse of dominant position, as I said before, we advocate limiting the availability of AMPs in the case of dominance to second and subsequent orders, and the reason for this was alluded to by Mr. Dillon. The fact is that it was a fundamental premise of the civil law when it was initially established that these practices are not like the criminal law issues. More directly anti-competitive in most cases...they're not necessarily anti-competitive but can in certain circumstances have that effect.

The approach was taken that the tribunal should examine those on a case-by-case basis, and then, having determined whether or not it had those adverse effects, make an order preventing the continuance for the future. That's why we think, consistent with that approach, the imposition of monetary penalties on past conduct should be limited to cases where you have someone who has previously committed a similar offence and been found to be offside.

Also, the current abuse provisions do have some significant deterrence. It is not simply a matter that the tribunal's remedial power was limited to prohibiting a repetition of this kind of conduct for the future. The sections include authority to take such actions, including divesture, as are necessary to overcome anti-competitive effects of the practice. In virtually every abuse case—and there have been several of them—these alternative remedial powers have been resorted to extensively, including dismantling restrictive arrangements entered into with customers.

It's interesting to note that it's claimed Canada is out of step with its principal trading partners in this regard. There actually is not authority in the U.S. law for the imposition of monetary penalties for the counterpart monopolization issues under the Sherman Anti-trust Act. As was mentioned in the CBA brief, and I think ours as well, they weren't sought in the case against Microsoft.

● (1615)

The Chair: Please finish up, Mr. Kennish, in the next minute or so, if you could.

Mr. Tim Kennish: Yes.

Just to conclude, we do support the repeal of the airline-specific provisions of the act, and we support similarly the repeal of the pricing provisions. I know you're likely to hear from people who would like to preserve those, and I'd just like to elaborate for a moment on why I think it's a good idea that these be repealed. Two of these provisions don't provide for any competitive effects test, so it's a situation where if you are engaged in this kind of activity, you are immediately in violation of the criminal law. Price discrimination and promotional allowances just aren't of that character; they don't always have that kind of situation.

We do support decriminalization of those provisions and the two others as well, and we suggest to you that you consider having the price maintenance provisions as very similar, similar in a sense that they are not invariably anti-competitive. It should be examined in a circumstance where you can look at competitive effects and make a decision.

I appreciate your time, and if there are any questions, I'd be happy to respond to them.

● (1620)

The Chair: Thank you, Mr. Kennish. Thank you all.

We're going to start with Werner Schmidt, please.

Mr. Werner Schmidt: Thank you very much, Mr. Chair, and thank you very much, Madam and gentlemen, for appearing before us. I think you've made very lucid and, I would say, consistent presentations. It's been very refreshing to see such common positions.

I see there are three things that have come up that are pretty powerful: number one, you like some of the things in the act; number two, you hate some of the things in the act; and number three, you haven't made any suggestions as to what would be a better position to take.

I think, Mr. Chair, it would be very desirable, especially with the insight that these three organizations have, if they would present to the committee some specific recommendations as to the kinds of things that would indeed satisfy them.

I think the cases that have been made were very powerful, and I like what I hear up to a point. I think you have just made understood, at least a little bit, as to why a further study is necessary on this bill to a considerable degree before it is passed in its present form. In fact, I don't think it should be passed in its present form. That's the point that you're making very well also.

I would like to ask you in particular to get into the particular difficulties with regard to the AMPs. You raise the issue with regard to the excessive level to which the amount of money that can be applied may rise. While I can understand why you would consider that to be excessive, my question is as to the principle.

I think Mr. Kennish alluded to the fact that due process was not really there in terms of the tribunal exercising its levying of certain fines against an offender. Is that because there is a due process that you're objecting to the level, or is it because of the fact that the tribunal doesn't have the kind of protection that would exist under the Criminal Code?

It seems to me there's a fundamental conflict here. If the tribunal does have authority to issue certain fines up to a certain level and you don't need due process, why do you need due process at another level? Is the principle different?

Mr. Tim Kennish: To respond to that, the point I was trying to make was that with potential fines in the range of $10 million or $15 million, it is tantamount to a major criminal fine, and yet the parties who are facing a civil process don't have the disclosure you have in a criminal case and they don't have the other protections the criminal law provides for, for people facing a fine.

I think those are the principal issues that are thought to raise constitutional grounds now.

Just to deal with another point you raised, we've suggested reducing that maximum fine level to $3 million. I suspect some of the issues go away with the reduced amount, and I'm not a constitutional scholar, but I do know that colleagues who practise in the field have raised questions about the constitutionality of a process that would provide for a civil recovery of fines in this range.

Mr. Werner Schmidt: Mr. Chairman, dealing with a little broader issue, the question is, is the principle of justice different, or—I'll turn it the other way around—is the principle of justice determined on the basis of the amount of the fine, or is the principle of justice determined on what is right?

Mr. Tim Kennish: I'm just saying that the escalation of fines to this level makes it tantamount to a criminal proceeding, and I'm—

Mr. Donald Affleck: It makes it penal. It's a penalty. What corporations do you know that could afford a $10 million fine or a $15 million fine? That's the problem, and as soon as you get to that, you're going to put somebody out of business if you levy a fine plus all the other things I talked to you about, Mr. Schmidt.

You're penalizing somebody, and when you do that they are protected by the Charter of Rights and Freedoms. Right now we're talking about $50,000 to $200,000. Indigo bookstores could afford this, but they couldn't afford the $5 million fine, because according to their—

● (1625)

The Chair: Are you finished, Mr. Kennish?

Mr. Tim Kennish: Yes, I am.

Mr. Donald Affleck: I was just trying to help on the same question. We're all trying to help.

The Chair: Mr. Affleck, I'll let you wind up then.

Mr. Donald Affleck: No, that's all right. I wound up. I think the member got my message.

The Chair: It's still your time.

Mr. Werner Schmidt: Thank you, Mr. Chairman.

I wound him up too, and that's okay. I think that's good. I think we need some exciting discussion here because I think the principle is very important. Justice is the issue, and to do what is right is the issue, and I quite agree that you don't want to put people out of business. That's not the issue here at all; at least it isn't in my mind. What we want to do is make sure that where there is anti-competitive behaviour, where there's abuse of a dominant position, there ought to be a consequence that's meaningful. That's really the principle we're looking at.

I think other provisions in the amendments indicate clearly that the tribunal is to take into account what the monetary effect would be in terms of the individual who is asked to pay a particular fine. I believe they state very clearly that if it would put them out of business, or that's the implication, that fine, if you want to call it that, would be reduced. Unless I read the act incorrectly, and maybe our research people can tell us whether I'm right about that, it seems to me there is a provision like that within the amendment.

I wonder, does that make a difference to you, Mr. Affleck?

Mr. Donald Affleck: It makes some slight difference, but when you put a fine of $10 million to $15 million out there, why are you doing that? You're doing it to guide the adjudicative body. You're telling them, this is very important; these are the fines. Otherwise you would just say a fine is at the discretion of the court, which is what you'll find throughout the act in other places. Why wouldn't you say that and let the court say, this is a small implement dealer in Moose Jaw and he can't afford to pay $5 million or $10 million.

Mr. Werner Schmidt: The $10 million is a maximum.

Mr. Donald Affleck: Yes, for a second offence.

Mr. Werner Schmidt: No, $15 million for a second. That's the maximum, but it could be less than that.

Mr. Donald Affleck: All right.

Mr. Werner Schmidt: I understand where you're trying to go with this. I have no doubt about that. I'm wondering why we would change principles. Maybe that's how law works. When it's a major fine, different rules of evidence and so on apply from when it is just a tiny little bit. A little error is okay, but if it's a big error, then it's bad.

Mr. Donald Affleck: We have two tracks going on here.

We have the criminal law, because there's a misleading advertising provision over there. If you knowingly or recklessly make a false or misleading statement, you're guilty of an offence.

We have the civil provisions over here, which are supposed to be more benign. If you made a mistake, if you said, my cleanser cleans better than anybody else's cleanser, and it turns out you did the wrong test and you're wrong, but it does clean, you didn't knowingly or recklessly do it. But if you're talking about the fly-by-night operator who's selling grandfather clocks in the mall on Saturday and isn't there on Monday when you come back to tell him it isn't working, then you can go after him under the criminal provisions.

That's why you have the dual track. What we're starting to do is mix the two. I think Mr. Kennish was trying to explain that to you. These civil provisions were set up on the understanding that some of this conduct was of lesser evil, if I can put it that way, and that's why section 52 was left in the Competition Act. If these fines are too low, how do you explain the Competition Bureau collecting $1.7 million and $1 million from parties out there, when they could have walked into the tribunal and said, mea culpa, and the highest fine they could have received was $100,000? It was because the Competition Bureau said to them, if you don't make a deal with us, we're going to go under the criminal provision and we're going to go after you, Mr. President, and you, Mr. Vice-President. That's what happened.

● (1630)

Mr. Werner Schmidt: Mr. Chair, I don't know what you want to do. Do you want me to keep going?

The Chair: I think that's nine minutes now.

Mr. Werner Schmidt: I think actually we've gone far enough on this particular issue. I'd like to pursue it further, but—

The Chair: We don't have time, guaranteed.

Serge.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, ladies and gentlemen.

Of course, as far as competition is involved, it is rather delicate because of those fines, those administrative monetary penalties. I am not an expert but I think I understand that you would like fines and penalties more commensurate with the seriousness of the conduct or the fault. In the end, you wish the legislation were applied more sensibly.

[*English*]

Mr. Donald Affleck: Exactly.

Mr. Tim Kennish: If I may I add to that—

Mr. Donald Affleck: There are the criminal provisions, as I say, and the civil provisions, and the more serious matters can be dealt with under the criminal provisions. There's no evidence before us that these provisions dealing with the fines have not been adequate, and I see no reason to change it. To change it is going to cause a concern, not only among the big business community, but, as I was trying to illustrate in my example, among the smaller business community. Who is going to take the chance? Why would you take a chance? Is that what you want to do with advertising? Advertising is communication with the consumer. We want to support the consumer; we want the consumer to have as much information as possible.

Sorry, Tim.

The Chair: Mr. Kennish.

Mr. Tim Kennish: I wanted to add, and this is in response to the earlier point as well, that by flagging a fine amount of $10 million, both for the civil advertising or deceptive practices and for abuse of dominance, you're equating it, in effect, to hard-core cartel offences such as price-fixing, because that is the maximum fine that is established for that. That is recognized as the worst thing you can do in the competition area, it has the most harmful effects, and everyone here, I think, would agree it is a much more serious matter. They're now on the same level, and that's the message that I think is going out when the legislation is amended in this way.

The Chair: Serge.

[*Translation*]

Mr. Serge Cardin: Competition may involve businesses of all sizes, small and big. You therefore have to be careful.

However, with globalization, Mr. Dillon was saying a while ago that we should promote mergers and help companies grow, which goes against some principles of the competition Act. Thus, the small breach a small business may commit could, if we transposed it to a multinational company, bring profits. I imagine it is the reason why penalties vary according to the profits a company may have made from a conduct in breach of the Competition Act.

Mr. John Dillon: Thank you. For efficiency sake, I will answer you in English.

[*English*]

I think one of the points I was trying to make, which you reflected, was the fact that in many sectors of the economy our firms are facing competition from large multinational players from many other countries, and there may be reasons why we need larger companies in Canada in order to compete. The reality is that if you're in the steel business you're not just selling your products in Canada or the United States, you're competing against steel firms from Korea, from Taiwan, from China, from Russia. That's the reality of the marketplace you face.

Having said that, it does not, of course, mean that large firms that have a dominant place within the Canadian market should be given carte blanche. Far from it. However, it is an important factor that has to be considered more and more in terms of how we look at the state of competition in Canada. That was the point I was trying to make.

Yes, it's true, when we talk about the size of fines, the members of my organization are all of the largest companies in Canada and are better able to afford large fines, no doubt about it. I think the point my colleagues have been making is that the reality is the guidance is in there, not just for the judges, of course, but for the bureau. I'm certainly not an expert in the practices of the bureau, but in talking to colleagues who are, I think it's quite clear the bureau has a policy on many of these misleading advertising cases, once they have a complaint, of settling with the people. If this act goes through, the reality is that you've given them a huge hammer with which to hit those people and threaten them if they don't settle.

So have a small company that may run afoul of the law. The bureau could easily say to them it can go under the civil provisions. It doesn't have a particularly strong burden of proof in order to deal with that. It's only a balance of probabilities; it's not the criminal proof beyond a reasonable doubt. It could say, “By the way, if we're successful before the tribunal, we can hit you with a fine of many millions of dollars.” It could threaten a large company with that; it could threaten a small company with it. That's the reality we're dealing with.

● (1635)

The Chair: Mr. Kennish.

Mr. Tim Kennish: I would like to add in response that I agree there should be deterrents in the penalties and remedies that are available to deal with anti-competitive behaviour, but there's a real concern about over-deterrence, where you have overwhelming penalty consequences possibly visited on people who transgress the law that may chill competitive behaviour, which is, of course, very counterproductive. You can see this in the advertising area because advertising is extremely important to competition. But if you think that by having aggressive advertising you could be called into court, you're less likely to engage in it and there would be less effectiveness in terms of differentiating products and so on.

I'm not advocating misrepresentation, but we all understand that there are areas—Mr. Affleck used an illustration at the beginning—where it is in a grey zone. If people start to withdraw from competing in that area, I think we have a problem.

Mr. Donald Affleck: Perhaps I could add. The act now with respect to large corporations.... There is nothing wrong with being large, as long as you don't have an anti-competitive act going on where you're trying to hurt a competitor or a potential competitor. The tribunal now, in addition to the other powers it has, can order the divestiture of assets, or shares of that company, as part of its order. What would be more devastating to a large corporation than to be told it's going to have to sell off a division or it's going to have to sell shares? That's an enormous penalty that the tribunal already has, without talking about dollars and cents.

I don't think any case has been made anywhere that the abuse of dominant position section is not working effectively. I've heard no case made to that effect, that there are large corporations out there that are gobbling up everybody and harming the consumer. I haven't heard that case. I think there is enough threat and chill in the section as it exists without throwing these enormous dollar figures into what is supposed to be a weighing of the pros and cons as to a corporation's activities.

Thank you.

The Chair: D'accord, Serge? Merci.

Jerry, please.

Hon. Jerry Pickard: Thank you, Mr. Chairman, and thank you, witnesses, for coming forward. Hopefully, this won't be the last time you talk to Bill C-19.

However, I found, as Mr. Schmidt did, that your testimony is very astonishingly similar, almost to the word. That raises a couple of questions in my mind, I guess.

In your brief you suggested the Chamber of Commerce represents 170,000 businesses. That's quite a broad spectrum. Was your brief prepared by your executive committee, or did you do broad consultations with your members in order to come up with the positions you're placing in front of the committee?

● (1640)

Mr. Michael Murphy: Let me start, Mr. Chairman.

This particular brief, of course, turns out to be, in effect, a summary of views that we have had for quite some time now. This process has been a fairly lengthy one in terms of involvement for the chamber. The issues that are raised here are obviously critical to all the members of the chamber.

We've carried out a great many consultations with respect to this over the years, going back to not only the original document that came out in terms of the committee's recommendations, some of which have found their way into the bill, but also some things that were not recommended have found their way into the bill.

For the most part, we've been at these similar themes for quite some time now and have had an opportunity to get out directly to our members and ask them. We use many communications vehicles. We also have the benefit, as I mentioned off the top, of a competition committee that is staffed by volunteer members of the chamber. We have many of these committees, and we are fortunate to have folks like Mr. Kennish volunteer their time to us to help us work our way through the issues.

So from our standpoint we've been at this for quite some time and have had many opportunities to communicate directly drafts of various submissions that have dealt with exactly these issues.

Hon. Jerry Pickard: We've had the base consultations, and what you're presenting is really a representation from big business, small business, and medium-sized business. That's what you're telling me.

Mr. Michael Murphy: Absolutely.

Hon. Jerry Pickard: To the Canadian Bar Association, I guess the position you're taking is very much the same. Do most of the people in your organization across the country support the position Mr. Affleck has presented?

Ms. Tamra Thomson: I can speak to the processes the Canadian Bar Association goes through. First of all, the comments made by Mr. Affleck and me today, and the written brief, are on behalf of the national competition law section, which is one of thirty-odd sections of the Canadian Bar Association, each of which has as its members the people who practice in that area of law and have that expertise to bring to bear on the issues. The competition law section has a broad base of competition lawyers from all areas of Canada. They have an elected executive and—

Hon. Jerry Pickard: Do they represent mainly large business, or do they represent...?

Mr. Donald Affleck: Let's disabuse you of that. First of all, my executive prepared this brief. The bill was introduced in the House on November 2 and the committee commenced hearings very shortly thereafter. It had to be prepared quickly. The executive is composed of a lawyer in Edmonton, a lawyer in Montreal, and three lawyers in Toronto, one of whom is me.

I come from a firm, sir, of 10 lawyers, not 500. We don't represent any of the Fortune 500 companies. I act for people who want to bring civil actions under the Competition Act. I acted for this committee, in a different form, back in 1979 when it was called the finance, trade, and economic affairs committee of the House of Commons, dealing with Bill C-42. I've just finished dealing with the softwood lumber dispute in the United States as a result of my competition expertise, but I have nothing to do with the large corporations. This represents our thinking of how to improve this legislation.

Hon. Jerry Pickard: The reason I ask the question is that it has been reported by the Competition Bureau that broad-based consultation has been done by them, and quite frankly, they had good support from small and medium-sized businesses and firms. I guess there's a bit of conflict between what I see in the testimony here and the testimony I've heard earlier. However, I guess we need not go too far into that; there is a difference of opinion in some cases.

Looking at AMPs, we've been talking about, and really, you've focused hardline on, $15 million as an inappropriate penalty to put forward. I have a lot of faith in the court system, and maybe I look at what comes before the courts as arguments and cases that lawyers and judges make some kind of decision on. When you put a penalty in place, the maximum amount of penalty may be used, that's correct, but the minimum amount of penalty, which could almost be zero, could be applied as well. I would think judges and people in responsible positions in the courts would apply penalties appropriately, in accordance with what they have latitude to do and the situation of each case as it comes. I guess that's why we have courts.

I'm not really certain in my own mind that whether the penalty is $50 million or $5 million should make a difference, as Mr. Schmidt pointed out, in what the judge would appropriately decide in accordance with the information. In a very huge, difficult setting, where certain people were misguided totally and huge profits were made, maybe we do need larger fines, but those are not the ones that are going to apply to the examples you've put forth, Mr. Affleck, and you and I both know that.

Yet should we not have a limit that is at least large enough to deter very inappropriate action by certain groups? I think in dominance the final decision of what that fine is, is not the amount that's written in this legislation. The final amount is the amount decided by the court system and the judge.

● (1645)

Mr. Donald Affleck: And you, sir, have said you have every faith in the court system and the judiciary.

Hon. Jerry Pickard: That's correct.

Mr. Donald Affleck: Well, why do you have to give them guidance then? Why don't you say it's in your discretion, Mr. Judge, as to what the fine should be? Why do you say $15 million or $10 million? The judge looks at it and says, Mr. Affleck, you're saying this poor proprietor shouldn't pay that large fine, but Parliament has spoken here and it said this could be a more serious situation than a naked price-fixing cartel.

Hon. Jerry Pickard: Taking your argument, would you suggest, then, that it would be better legislation if there were no limits?

Mr. Donald Affleck: Yes.

Hon. Jerry Pickard: You would like to see this legislation as it is, with no limits?

Mr. Donald Affleck: It would be left to the discretion of the court.

Hon. Jerry Pickard: Totally?

Mr. Donald Affleck: Well, I'm not saying I'd like to see that—

Hon. Jerry Pickard: Totally?

Mr. Donald Affleck: —but I would accept it. I think there's nothing wrong with it as it is now.

Hon. Jerry Pickard: I asked you and you said yes.

Mr. Donald Affleck: I said there's nothing wrong with it as it is now. I said that before. I'm saying now—

Hon. Jerry Pickard: So unlimited penalties, a penalty of a billion dollars, could be applied—

Mr. Donald Affleck: —as a second—

The Chair: Order.

Mr. Donald Affleck: As a second position, I would say a fine at the discretion of the court, and if the court said a billion dollars—the court could say a billion dollars—somebody would then appeal, and we'd get that straightened out.

But yes, sir, I would.

Hon. Jerry Pickard: Would the chamber agree with Mr. Affleck's position?

Mr. Tim Kennish: We would hope that, yes, the judges will do the right thing and will come out with an appropriate amount.

But what's concerning us is that there's a message embedded in this amendment that is directionally suggestive, that these are very serious things and you should be thinking well above what has been the currency of the past, and we should get more serious about this and impose very severe consequences. To me that is wrong, when you have, in the misleading advertising area, a criminal path for fraud, where you have egregious conduct. There are criminal penalties for that, and it has the opprobriums and so on associated with the criminal law.

It goes back to this issue of over-deterrence. I think people looking at the landscape, seeing that they may be subject to a $10 million penalty consequence, don't play the game as hard. I think that's what's a worrisome thing .

● (1650)

The Chair: Mr. Dillon

Mr. John Dillon: Thank you. I just wanted to respond to one of your earlier comments. I know you didn't ask me about our consultation, and I think you know who our members are.

Hon. Jerry Pickard: It's big business, so I didn't have to go there.

Mr. John Dillon: Yes. But I did want to respond to one point, and that is the suggestion—and I know the bureau makes this case from time to time with respect to some of these proposals—that basically small business is in favour and big business is against it. I think that's far too simplistic and I don't think it's accurate.

I attended a session organized by the Public Policy Forum in Ottawa, where a number of the representatives there of different association—there were credit unions there, there was the real estate association, there were a number of very broad-based organizations that represented mostly small and medium-sized enterprises—had some concerns with some of the proposals that were being put forward.

Yes, it's true that some small business organizations have spoken in favour of some of these proposals, but I suggest that you should put the question to them—specifically, as has been described by Mr. Affleck, the situation of a small company engaging in advertising that arguably may be somewhat misleading.

I'm not sure most of the organizations the bureau sometimes likes to refer to have actually had a chance to read this bill, to talk to their own lawyers—and probably they don't have lawyers, although I'm sure Mr. Affleck makes himself available to them—about what this bill really means.

But I suggest you put that question to organizations like the CFIB. Ask them in particular about the rather heavy fines that are being proposed here—and they are fines, at the end of the day; it's nice to call them administrative monetary penalties, but they are fines—and explain to them that a small business that supposedly engages in deceptive marketing could be hit with a very significant fine and all the other things. It's not, of course, just the fine, as Mr. Kennish pointed out.

I'm not sure many of them are aware that's what's possibly staring them in the face, and they might feel differently if they did know that.

The Chair: Thank you, Mr. Dillon.

Jerry, I guarantee you will have more time.

We're going to go to Brian and then James, and then we're going to give Jerry another shot. Mike is going to be right after.

Mr. Brian Masse: Thank you to the delegation for being here today. We'll be returning to the subject matter soon if there are amenities made.

With regard to the types of penalties that are put forward—and I think, Mr. Dillon, you commented about the difference between small business and large business and the effective fines earlier in your discussions—do you have any opinions in terms of whether the penalties should be increased for certain types of practices or behaviours that were either affecting more people or fewer people, or affecting businesses in particular really harmfully? Do you have any thoughts in terms of any of that? You also mentioned too about the guidelines being set for judges and also the bureau, by setting the fine levels. What about the types of things out there? Are there any guides you can provide on those?

Mr. John Dillon: I don't believe I was the one who made that point. I'm not sure exactly what you're referring to, but if you're asking whether there are other provisions in here, or in other sections of the act, where there are problems, I know this has been an issue in terms of the enforcement powers, the ability of the bureau.

I'm certainly not an expert in what the bureau has dealt with and what its ability is to deal with. I know from what I read that telemarketing fraud and other kinds of consumer fraud of that kind are a real concern. Like everyone else, I get these things in the mail and through my e-mail—things that sound too good to be true and probably are. I have a sense personally that there are a lot of those kinds of problems out there.

I can sympathize that the bureau may not think it has sufficient resources to deal with those. Other than that, I guess a lot of us have been listening to the bureau for some time trying to make the case that it needs all these increased powers to deal with abuse of dominance. Like my colleagues, I'd like to see more evidence that in fact there is a problem here that they're not adequately dealing with.

● (1655)

Mr. Brian Masse: I apologize, I should have been more specific. Telemarketing is a good example of some of the things. I think I was getting you mixed up earlier. Specifically you mentioned about setting standards for judges in terms of the fines and the levels. That's what I was getting at. I apologize for referencing you there.

Maybe I'll ask the other panel members as well whether there are any types of particular practices—the fines—we should give direction to in terms of fines being stronger or stricter than others, or being less than others, depending upon the number of people or businesses they affect.

Mr. Donald Affleck: Sir, under the criminal provision for false or misleading advertising, which is very broad, everyone who makes a material representation to the public that's false and misleading is guilty of an offence. That would be a place to put limits or directions to whatever institution—the court in that case—that would be dealing with it, and perhaps restitution.

Perhaps the freezing order is the right place, because this is dealing with the fellow with the grandfather clocks in the mall, who is there today and he's moved it from Toronto to Edmonton tomorrow. But we find him in Edmonton—we have a national competition bureau—and we get him. We get a freeze order on his bank account. We can get restitution for the consumers who have bought this product that never worked. We can fine him on ill-gotten gains, but not in the area where somebody says, "sale $1.99, regular price $2.19", and it turns out that the regular price was $2.29 or $2.09. The consumer still made a value purchase. Unless that person, the owner, has intentionally misrepresented that and continues to do so, I don't think that's the most heinous crime we can think of.

Mr. Brian Masse: Those are all my questions. Thank you.

The Chair: Thank you, Brian.

James, and then Serge if he'd like, and then Michael.

Mr. James Rajotte: Thank you very much, Mr. Chairman.

Thank you for your presentations here today. I do want to say that I certainly agree with much of what you said. I agree certainly with the general thrust that the airline-specific provision should be removed, because the law should be one of general application. I commend you all for taking that position.

I do want to talk about the increases in the level of AMPs, because to me legislation should respond to problems. There should be a problem or something in society that needs to be remedied. Therefore you introduce legislation. I think there's been a perception that perhaps this is in response to wide-ranging consultations.

I was involved on the committee that did the report in 2002. I don't recall us recommending increasing the level of AMPs in terms of maximum amounts. I don't recall that. Perhaps our research can exactly specify that for us.

Mr. Tim Kennish: I don't believe the committee did.

Mr. James Rajotte: Secondly, with respect to the cases that are mentioned, there doesn't seem to be a large body of casework, as is pointed out by the Canadian Bar Association, that is problematic, that sees a need to remedy the situation in this way. I believe it's the chamber that identifies the Suzy Shier, the Forzani, and the Sears cases in which the level of AMPs is quite substantive already.

The member on the other side hinted that it was big business that was opposed to this. I think, as Mr. Affleck pointed out, it's SMEs that should be most worried, because AMPs at the level that is suggested in this bill could drive an SME out of business, whereas a much larger corporation may be able to sustain that.

Perhaps, Mr. Affleck and Mr. Kennish, as the two lawyers in front of the committee, you want to comment. Are there cases besides this that are problematic as to why the government should be introducing AMPs at this sort of level?

Mr. Donald Affleck: Let me respond, sir, by quoting you your recommendation in 2002:

> That the Government of Canada empower the Competition Tribunal with the right to impose administrative penalties on anyone found in breach of sections 75, 76, 77, 79 and 81. Such a penalty would be set at the discretion of the Competition Tribunal.

That is my second position to the member who was sitting opposite.

I know of no other cases other than a case called PVI, which was a gas-saving device, that went to a hearing. Two individuals appeared on their own in that case. I can't remember whether they were fined. If so, it was certainly $25,000 or $50,000 at most. I don't know of any other case other than the ones that Mr. Kennish mentioned in his brief—Suzy Shier and whatnot.

What we have here that I should point out, and you're going to hear more if the committee comes back to deal with Bill C-19, is we have these comparison price provisions under section 74.01 saying you should make a comparison price if you haven't "sold a substantial volume of the products at that price or a higher price within a reasonable period of time before or after the making of the representation," and you "have not offered the product at that price or a higher price in good faith for a substantial period of time".

When I was answering Mr. Schmidt before I talked about penal, you have to know, if you're going to be charged with something that's penal, where the bright line is. What's "a substantial period of time" if you're selling summerwear? What's "a substantial period of time" if you're selling fur coats? Is it the whole year? What does "in good faith" mean?

A person reading this who wants to advertise a dollar value to a consumer and who has all these AMPs sitting there looking at them and all the other restitution and freezing orders is going to back off and may say "compare at" or "our regular price" or something very mealy-mouthed. That isn't what advertising is for.

To answer your question, I think the AMPs are sufficient . They've only been there for three or four years. We've had three or four cases, and they've done very well.

● (1700)

The Chair: Do you want to jump in?

Mr. Tim Kennish: In regard to the use of AMPs in the context of abuse, it is sometimes suggested that because some of the provisions that this bill also proposes to decriminalize—and would actually now be controlled only under the abuse provision—have penalty consequences associated with their breach as criminal provisions, there has to be some deterrence over and above what presently exists in regard to it.

If you look at the pricing practices, though, those are provisions that were not extensively enforced. In fact I think most people would recognize that there was a reluctance to enforce them because of their ambiguity. They weren't always anti-competitive, and people were uncomfortable prosecuting those hard.

Another one I guess is the airline-specific abuse provision, which carried a $15 million AMP. It's now going to be controlled under the civil provision. It may be that people contend, well, we have to keep those airlines in place, so we have to have a big number there now in terms of the monetary fine.

We say in our brief that we never agreed that this was an appropriate penalty consequence for the airlines in the specific provision that was there. I appreciate it was in the legislation, but I don't accept that it was an appropriate level of fine.

Mr. James Rajotte: Mr. Chairman, I asked the competition commissioner about abuse of dominance and about deceptive marketing practices, because one of the witnesses—I forget who—pointed out that obviously we want to go after those people like the famous Nigerian case of marketing, which was pure deception, where they're trying to actually hook, especially seniors, into giving some of their money away. But there are marketing practices that are in fact competitive. We don't want to start going after Tide because they say they're going to get your clothes the whitest of them all. That's not a deceptive marketing practice.

I don't know if the witnesses want to address this now, but if you could even identify—the commissioner did it in a general way—abuse of dominance.... For abuse of dominance and deceptive marketing practices, has the tribunal to date done a good job of distinguishing between marketing practices that may exaggerate a product's claims as to what they do, but is actually competitive versus something that is much more pernicious?

● (1705)

Mr. Tim Kennish: I would just mention that it's a fairly recent history. The tribunal has only been a court that could deal with this matter for four or five years. There are the few cases that have been alluded to, so we don't have a long record of civil prosecution. There are lots and lots of cases involving misleading advertising under the old criminal provisions, but we just have what we have at this point. Our point is there's nothing in that record that says it's inadequate to deal with the kinds of problems they have had to confront or that I can anticipate they would.

Mr. Donald Affleck: Most of those cases have not been argued before the tribunal. They have been settlements. There's one case that has been argued. It involves Sears Canada, and judgment on that is pending. It has been fully argued and we're waiting for the decision. We expect it—I say “we”, as being members of the bar, but I had nothing to do with the case—to deal with some of the legal issues involved.

As for abuse, it has been there longer. There have been three or four cases where the tribunal has dealt with it. While there's always criticism of decisions, especially from the losing side, I think generally speaking people feel the tribunal has done a good job with those cases.

The Chair: Go ahead, James.

Mr. James Rajotte: Thank you, Mr. Chairman.

Just one more question. I want to perhaps broaden the discussion a little bit in response. I think Mr. Dillon mentioned larger companies in Canada competing with multinational firms.

One of the items with the Competition Act that I think this committee should deal with—and with such experts here today I'd like to get their input—is the recent issue of Noranda possibly being bought out 100% by China Minmetals. One of the facts brought up to me was that the Competition Act, as it's currently written in Canada, may prohibit a firm like Inco from actually doing the same thing. Our own domestic Competition Act would prevent that from occurring, but the act or any other legislation would in no way prohibit a foreign company purchasing Noranda, although the Investment Canada Act would cause a review.

Is that something—I realize I'm going a little bit off Bill C-19, but I would like your response on that—this committee and Parliament should be looking at, amending the Competition Act so that we can allow perhaps greater concentration in Canadian markets in order to actually compete globally?

Mr. Donald Affleck: This is indirectly dealing with efficiencies. If Inco wanted to buy Falconbridge, the Competition Bureau would ask, is that a substantial lessening of competition in Canada? It might be saved if Inco could prove how efficient that merger would be. But it's one of the interesting parts of the act that a foreign firm that has no presence in Canada can walk in and purchase a Canadian operation. There's not going to be any substantial lessening of competition. We're just changing the guard.

The Chair: Mr. Kennish.

Mr. Tim Kennish: I have two observations. First, in some of these situations you have not just a Canadian market, you have an international market, so you may in fact be looking at a larger playground. The shares could be more manageable, even by our standards, and you could have acceptable combinations occurring if you have an international marketplace. That's the situation Mr. Dillon is talking about.

The other point is, yes, I think the situation with regard to efficiencies is something that's worth looking at. In fact, the Competition Bureau has invited consultation on the topic.

You've had a couple of bills now proposing a modification in the merger efficiency defence. The merger efficiency defence would be very relevant in a situation such as the combination of Inco and Falconbridge that have mining operations cheek by jowl in Sudbury, where there are undoubtedly substantial efficiencies to be had. That's the situation that I think most practitioners would say is kind of a mess. Nobody really can predict how the law applies today in that situation and it needs to be sorted out.

● (1710)

The Chair: Thank you.

Did you want to comment, Mr. Dillon?

Mr. John Dillon: Just briefly, Mr. Chairman, thank you.

I did indeed raise that, or the council did raise that, in our brief, and I think it is something the committee needs to take a very good look at. As Mr. Kennish suggested, obviously in some instances the international market is important to look at. That would certainly be true in the mining industry. However, my understanding is that the bureau tends to apply some fairly hard and fast rules if a merged firm would suddenly have a significant proportion of the Canadian market. That automatically triggers a lot of issues almost irrespective of what may be the situation in the marketplace internationally, irrespective of firms from other countries that may be able to import into Canada.

The Chair: Thank you, very much.

Serge, did you want to...? And then Michael.

[*Translation*]

Mr. Serge Cardin: I would like to stay with the issues of competition, globalization and big foreign companies. After I heard your comments, I asked myself something. As far as competition in our markets goes, here in Canada and in Quebec, we must ensure that everything is done according to the rules, and generally, to protect the consumers as much as we can. However, the international aspect is becoming more and more important.

Somebody said a while ago that price fixing was one of the most damaging behavior for competition. We all know we often have questioned the price of gas for gas prices are the same everywhere, whatever the company. These are major players. I have a feeling that those players keep getting bigger and are active the world over; it will be easier for them to fix prices on the domestic market, whether it is in Canada or the US. If we have problems enforcing the competition legislation, even with deterrent penalties, how will we do it abroad?

This question is not limited to foreign countries because these companies can come to Canada. Let's take the example of Costco in Canada. Everybody said that Canadian Tire would go down. But we saw that with added competition, the prices of Canadian Tire have gone down and the shares of that company have never been so high. This competition has had a very positive effect on Canadian Tire.

However, I think that the bigger the players, the bigger the risk of collusion. We have already asked the Competition Bureau if there was collusion in the gas sector. We were told that there was none. On the other hand, it is rather curious that prices are always identical. They sometime vary in some regions but it is rather rare. That's where price fixing plays an important role in competition, given the globalization of the markets.

Do you have comments on this?

[*English*]

The Chair: Are there any comments on Mr. Cardin's comment?

Mr. Dillon.

Mr. John Dillon: I'll make an attempt, Mr. Chairman.

Obviously, some of the examples we're talking about are industries where the prices of the commodities are set internationally in the marketplace. A Canadian company, whether an existing Canadian company or a merger of two Canadian companies, would not be able to influence the price of that product internationally. The fact is it's set in the international market scheme, and a larger merged Canadian firm wouldn't have the weight in that international marketplace to have any influence on the price. That is something that happens internationally. If they don't match those prices, then that product is imported from Korea, from Russia, from China, from Thailand, or from wherever else it's manufactured.

I'm not an expert in the oil and gas industry. What I do know is that there have been multiple examinations of that industry. The fact that prices often reflect each other is probably the best signal there is that competition is taking place. That's what a number of studies have shown time and time again in that industry.

Having said that, Mr. Kennish made the point, and he's absolutely correct, that when there is a determined conspiracy to fix prices and the players within the market have the ability to do so, that is clearly a criminal offence. But that's not what we're talking about here.

● (1715)

The Chair: Mr. Kennish, on the same comment.

Mr. Tim Kennish: I hesitate to venture into this because it's a very complex subject, but one of the things to observe about a situation like gasoline retailing is that you're dealing with—I don't want to offend the sensitivities of the major oil companies—the fact that the products are all identical. Although some customers may think there's a significant difference, the fact of the matter is if one gas station is charging 10¢ more a litre for the same thing, why would you think of going there? So pretty soon all the business is elsewhere.

We have a practice in this country that I think goes back to the early 1980s when the Restricted Trade Practices Commission looked into the sale of petroleum products in this country and the posting of the base price for gasoline externally so everyone can see. So it's really amplified, because you don't have to go around and look at the pumps; you just go and read the sign. They show what the base price is. And they're similar, and there's a reason for it, because if your price is significantly higher than someone else's, you're going to lose a tremendous amount of business. So they tend to congregate at a similar level. Now it could be that the price is identical because it's been fixed. But it could be the operation of this principle that you are threatened to lose significant business by virtue of having a non-competitive price.

This is a complicated situation, but I think one of the interesting things is that almost annually the Competition Bureau seriously investigates whether or not there's been price fixing in the retail gasoline business. As far as I can recall, they've never been able to determine that there is. One of the reasons why people think it is being fixed is because it's similar, but there are other explanations for it.

[*Translation*]

The Chair: Allright?

Mr. Serge Cardin: Mr. Chair, if I have some time left, I would like to go on. Mr. Kennish went back to the issue of gas. Of course, with a 10 cents difference, the gas station that asks 10 cents more would not have many customers.

I take the example of Quebec where the Department of Natural Resources sets a minimum price per litre. The major gas companies used to lower their prices to get the independent retailers out of business. A minimum price was set for everybody. The big gas companies never ask the minimum price, they always keep a healthy profit margin. This is the reason you came back to this issue, saying they adjusted the prices. On the other hand, if somebody decided to sell gas at the minimum price suggested by the Department of Natural Resources, which would reflect normal costs and profit, this would indirectly create collusion. The only difference is that they don't do it in an office in the morning. Within an hour the prices are realigned.

[*English*]

The Chair: Thank you, sir.

Mr. Donald Affleck: You have to remember too, Mr. Cardin—I'm getting old—that the vending of gasoline has changed. We used to think about the corner gas station with the mechanic and whatnot. Gasoline stations are now competing on the donuts and coffee they sell, not on gasoline. That's where you'll find the competition going on—the Pepsi-Cola and the Coca-Cola that they have stacked up, and other products.

Mr. Kennish is quite correct, the bureau has been studying the matter for many years. In fact, they have an investigation on right now, and I understand they should be reporting to the House through the minister very shortly.

The Chair: Thank you.

It's Michael Chong's turn.

Mr. Michael Chong (Wellington—Halton Hills, CPC): I've two very distinct and separate questions, Mr. Chair.

I want to thank the witnesses for speaking to this committee.

My first question is a continuation of James Rajotte's question on comments made by John Dillon regarding Canadian firms' ability to compete globally—that it's desirable to have a fair degree of concentration in some sectors in order for these firms to compete globally and that the Competition Act, in a broad context, should be looked at with an eye to encouraging that.

My question is not only for Mr. Dillon but also for the Canadian Bar Association and the Canadian Chamber of Commerce. Could you elaborate on how you see us balancing acceptance of potential anti-competitive behaviour with the need for Canadian firms to potentially get bigger domestically in order to compete globally? In other words, how do we balance the two, and where do you see the new line being drawn if we were to ever enter into that area with an eye to revising the act?

● (1720)

The Chair: Who would like to start?

Mr. Dillon.

Mr. John Dillon: Let me make it clear that I'm not suggesting that because firms need to compete internationally, they should be able to more freely engage in anti-competitive conduct here at home. That's not at all what I'm suggesting.

What I did say was that if the bureau is using fixed ratios to determine when a merger raises competition issues, I know they look to some degree to the international marketplace. But I think that's a question you should ask them and try to get some determination, because the reality is, as I said earlier, when those firms compete internationally, they are not able to set the price. It's set in the international marketplace, and if they try to sell for more than that in Canada, they will be underbid by competitors from other countries.

As we know, competitors in China, India, Brazil, and Korea are becoming much more nimble, much more efficient, and using the latest technology to produce their products at lower and lower prices. It may be that Canadian firms in some sectors need the combined effects of a merger in order to compete effectively against that. It's not about engaging in anti-competitive acts. It's about increasing their size and scale, and the efficiencies that come from that, in order to compete more effectively against those firms from countries that in many cases, of course, have lower costs of production for a whole variety of reasons.

The Chair: Mr. Kennish.

Mr. Tim Kennish: I think it's a fair comment to say that the competition law does not have the flex of creating exemption for the national champion you'd like to see be able more effectively to compete internationally if the consequence is that this is going to be a 700-pound gorilla at home and we'll have higher prices prevailing than we would have in a competitive market. That is a cost trade-off that I don't think the competition law is prepared to make at this point.

Parliament could change that with a specific law regulating the industry in some way where they felt the values of allowing that to happen outweighed the disadvantages, but it's a trade-off that you have to look at carefully. If that was the situation, the competition law would not effectively protect a domestic merger that had as its purpose creating a larger, more cost-competitive operation that could compete internationally if the consequence at home is that they dominate the local market.

The Chair: Did you want to go to your second question, Michael?

Mr. Michael Chong: My second question has to do with something all of you alluded to earlier, and that has to do with hard-core cartel behaviour. This proposed bill doesn't really address or speak to changing the provisions of the act with regard to HCCs.

Do you think this portion of the act needs to be substantially strengthened to deter that kind of behaviour, and if it does, would decriminalizing that kind of behaviour be a more effective way of deterring it? And regardless of whether or not you think it should be decriminalized, should the fines in that portion of the act be raised beyond the current $10 million to something in the range of $100 million, which I think was proposed in the U.S.? In other countries they've also substantially strengthened the fines that are levied.

Those are my questions.

● (1725)

Mr. Donald Affleck: This is where Mr. Kennish and I may depart, and certainly the Canadian Bar Association's members are not unanimous on what should be done with section 45. That is the section you are talking about. Should it have been strengthened? What's wrong with it now? I'll personally ask that question. What's wrong with it now?

I've had clients who've been accused of breaching section 45. I look at the facts. I get Stinchcombe discovery from the Crown, and I say, you'd better get in there and plead guilty because you're going to spend $1 million fighting this case and you're going to end up, in my view, being found guilty. They go in and plead and they're fined whatever—$1.5 million. It's one of these chemical companies from abroad that may not even have any operations in Canada other than selling pills or something to a distributor. The bureau says, oh, we don't count that because that wasn't a contested case. I say that's a lot of nonsense. The lawyers who deal with these clients consider the facts. Those are contested cases in the sense that you've given the best advice you can to your client.

I think $128 million has been collected for the consolidated revenue fund in the last three years in these cases. That's a lot of money, and it is working effectively. What the bureau is doing is piggybacking, to a great extent, on U.S. prosecutions, and there are a number of them out there right now.

Decriminalize it? You go to the Commissioner of Competition and say, dear Madam Commissioner, I want to have an agreement whereby I can develop the oil sands out west. Here it is. Please look at it. She will say, oh, Mr. Affleck, there are a couple of provisions in here we don't like. If you could change that and do this.... What we have then is regulation by the Commissioner of Competition. It's a bit like the mergers now. You can have this merger as long as you sell off those stores and whatnot. I'm concerned about decriminalization as to just where that ends up, but the bureau, as you know, is re-examining the options under section 45.

On fines being raised, I would again leave it to the discretion of the court. Those fines have been going up.

Mr. Michael Chong: They're currently capped.

Mr. Donald Affleck: Yes, they're currently capped. That's why I would open these things. The member opposite had reliance on the courts. I do too.

Thank you.

The Chair: There is just time for very brief final comments, Mr. Kennish and Mr. Dillon, and then we're going to adjourn.

Mr. Tim Kennish: I would like to address Mr. Chong's point.

First, most people would recognize that it's necessary to outlaw, in the most straightforward way we could, price-fixing market allocation arrangements, customer allocation arrangements, and output restrictions. They are naked cartel activities. There is no circumstance under which they have any benefit to the economy or for society, and there's no point in wasting any time examining their impact on the marketplace. It should be prohibited and there should be substantial penalties associated with it.

By the same token, most of the other arrangements between competitors that are outside of that probably do warrant examination in a more detailed way to see what their impact is as to whether or not they're bad, because you have strategic alliances that can have benefits. Those are currently judged under criminal law.

What is proposed is a per se offence for hard-core cartel practices and a civil review of the other horizontal arrangements. I don't want to get too complicated here. I don't think a lot of people would disagree with that ideal. A lot of people say it's hard to enshrine that in legislation.

In the EU they are decriminalized in this area. They don't have criminal fines for cartel activity, and actually they had pretty low fines for quite a while, which perhaps explains some of the culture of collaboration that seemed to exist there. Now it's increased.

The U.S. is totally different. It's almost a religion—anti-price-fixing and anti-cartel activity. I talked to a senior practitioner in this field about mandatory jail sentences, which they have there. I asked if that was a good idea, and he said, absolutely, it is the most effective weapon other than the immunity program against this kind of activity.

● (1730)

The Chair: Last words to you, Mr. Dillon.

Mr. John Dillon: Thank you, Mr. Chairman.

These may be the last words on this subject for a while perhaps. I just want to reiterate my point earlier. Obviously we need a strong criminal provision to deal with cartel behaviour. The problem we have with some of the proposals that have been put in the past, such as this idea that this should be a civil regime to review all kinds of arrangements among competitors and potential competitors, goes back to the point Mr. Affleck made. The reality is that many of our large development projects, whether it's the Athabasca tar sands, the pipelines to the north, etc., involve collaboration on various aspects among competitors. But it's not just the large businesses.

I heard a lot of these small businesses say they have those kinds of cooperative arrangements in terms of developing new products, entering new markets where individually they don't have the depth or the experience to do it, but jointly they might be able to. There are all kinds of those strategic alliances taking place. If there's a way to deal with that effectively, fine, but what I've seen from the bureau so far doesn't convince me and our members that it can be dealt with effectively. What you may get instead is a real chill on those kinds of innovative arrangements that are really helpful to business.

Mr. Donald Affleck: Mr. Chairman, may I just wish you and the members of the committee and the clerk best wishes for the holiday season.

The Chair: Thank you, and let me reciprocate and wish you that. And thank you very much for being here today.

I'll just advise colleagues that given that we have witnesses for next Thursday, we're going to have to inform them that they shouldn't come next Thursday. I propose, unless there are major objections, that we get started on Bill C-21 until we sort out Bill C-19.

On Tuesday we have our strategy work. We have the Canadian Manufacturers and Exporters, the Canadian Labour Congress, and the Canadian Federation of Independent Business on Tuesday.

Again, next Thursday it will be Bill C-21 until we sort out Bill C-19.

With that, thanks everybody. We're adjourned.

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