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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.)): Good afternoon, everyone.

I'm pleased to call to order this March 9 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology. We are continuing our study of Bill C-19, An Act to amend the Competition Act.

We have with us today some excellent witnesses. Their reputations have preceded them. You all know the way it works. The console operator will take care of the microphones for you. We'll have three presentations, and I'll ask you to try to keep your remarks to five or seven minutes, please. That will give ample time for questions. If you failed to make a point in your presentation, please feel free to include it in one of your responses later on. We'll go in the order printed on the agenda.

We'll start with the Association of Canadian Advertisers, and I believe, Mr. Reaume, you're going to speak on behalf of the group. I invite you to commence. Thank you.

Mr. Robert Reaume (Vice-President, Policy and Research, Association of Canadian Advertisers): Thank you.

Good afternoon. Bonjour.

Mr. Chair and members of the committee, we are very pleased to have this opportunity to participate today with our comments in your committee's review of Bill C-19. Our organization has been advocating for advertisers in Canada since 1914 and represents a very broad cross-section of over 200 major companies and divisions that advertise their products and services in Canada and account for over $350 billion in annual sales. They are the top advertisers in Canada and come from many industry sectors, including manufacturing, retail, packaged goods, financial services, communications, and many more.

Along with our organization today is Mr. Rupert Brendon, the president of the Institute of Communications and Advertising. The ICA is the professional association representing and promoting the best interests of Canada's advertising agencies since 1905. The ICA now includes over 90 corporate member agencies from coast to coast, encompassing several hundred subsidiaries, and accounting for over 85% of national advertising in Canada. With our delegation also is Mr. James Musgrove, from Lang Michener.

We welcome the opportunity to have our voice—and the voices of our members, many of Canada's largest and most responsible corporate citizens—heard with respect to the aspects of the current round of proposed amendments to the Competition Act, which affects advertising and marketing practices in Canada.

Advertising is a significant economic force in the world. In virtually all developed countries, advertising is considered an important and necessary component of the communications infrastructure. It is estimated total worldwide disposable advertising expenditure topped $1.5 trillion U.S. dollars last year. In Canada, advertising expenditures in 2003 were projected at $11.6 billion. Direct and indirect employment in this sector represented approximately 250,000, or about 2% of all jobs in Canada.

But it also does more than just add dollars and jobs. Advertising is the force that provides the connection between healthy competition among Canadian goods and services and the benefits of innovation, wider choice, lower prices, and better service. Advertising is a powerful catalyst for competition, providing consumers with information and thereby lowering consumer prices. Advertising increases government revenues through the income tax derived from the jobs it creates, and from the greater sales tax base that results from it. In short, the Canadian economy would not be as vibrant without the ability, via advertising, to communicate and establish strong brands and the differentiating benefits.

Clearly, advertising makes a significant economic contribution to our country. It is the fuel for Canada's economy. A healthy advertising industry in Canada is critical to a healthy economy, and this is why we are very concerned about some of the amendments proposed in this legislation.

In very broad overview, as we understand the current proposals for amendments contained in Bill C-19, they do not deal with substantive rules with respect to advertising law, but, rather, focus on the consequences or penalties with respect to misleading advertising. We believe this focus is largely misplaced. We are particularly concerned with the proposal under Bill C-19 to increase the maximum administrative monetary penalties for deceptive marketing practices for corporations from the current $100,000 to $10 million, and to $15 million for a second offence. This represents a one-hundredfold increase, a level of fine that is the same as for the most serious criminal offence under the Competition Act.

While we agree there is a need for strong laws to prevent reckless or intentionally deceptive advertising and fraud, these cases are already covered by section 52 of the act. We do not object to severe penalties for fraudulent conduct—indeed, we welcome them to keep the marketplace honest—but non-criminal, reviewable conduct should not be subject to drastic penalties of this nature. An AMP of $10 million is significantly out of proportion with the nature of the conduct currently reviewable under part VII.1 of the act. It is simply much too high.

Further, an AMP of $10 million is inconsistent with the goal of encouraging socially useful comparative advertising. A penalty such as this would inevitably place a chill on advertising activity in Canada. Advertisers will refrain from engaging in healthy comparative advertising, essential for the promotion of competition in Canada. In addition, very high AMPs and the possibility of so-called restitution orders run the risk of undermining the effectiveness of the existing Advertising Standards Canada consumer complaints process.That process, which works well now, allows consumers to challenge advertisements and have them removed from publication very quickly, at no expense to the government or the consumer.

● (1540)

The government has provided no clear evidence to support its conclusion that the existing maximum level for AMPs is not sufficiently high to effect deterrence and encourage compliance with the act. It is our position that the current AMPs, together with cease and desist orders and corrective notices, already provide good incentives to comply with the law for honest advertisers. For dishonest advertisers, the criminal law provides more severe sanctions, as it should.

In conclusion, advertising represents a critical element and performs a crucial role in supporting a vibrant and healthy economy in Canada. It is vitally important that it remain an effective and competitive marketing tool for advertisers.

We wish your committee well in your deliberations, and we thank you for the opportunity to contribute. It's our hope that your efforts will benefit all Canadians.

We would be pleased to answer any questions later that you may have. Thank you.

The Chair: Thank you, Mr. Reaume. I appreciate the conciseness of your remarks.

We'll now hear from Mr. Addy, as an individual, of the law firm of Davies Ward Phillips & Vineberg.

Mr. George Addy (Partner, Davies Ward Phillips & Vineberg LLP, As an Individual): Thank you, Mr. Chairman. It's a pleasure for me to be here today.

I am here as an individual, not on behalf of any association. I'm here for a couple of reasons. One is because of my respect for the law, the bureau people, the work that the bureau does, and frankly, the work this committee has done and continues to do in this area of the law. I'm also here because I think I can bring a unique perspective.

I've acted as counsel to the Attorney General, to the bureau, to private parties, both in criminal and civil competition law matters. I ran the merger branch and I ran the competition bureau at one point as well. I also have spent some time in business, not just practising law. I was with TELUS Corporation for a few years and had to witness the application of this law and other regulatory laws from that perspective as well. So I think it's a unique perspective and hopefully you'll find it to be of value.

When you're considering amendments to this legislation, I think it's important to keep in mind the context within which the law is administered. The competition commissioner is a very powerful individual exercising enforcement discretion that can have a significant economic impact on firms and consumers. All the powers of a state enforcement agency are at her disposal, and as with all human endeavours, mistakes can be made. Part of our challenge, frankly, and I think it is a collective challenge, is to ensure that the legislative framework governing the law and its administration reflects a balance. That balance has to deal with two concerns. One is that we want to make sure that really egregious conduct isn't pursued unchecked. On the other hand, and I think sometimes we lose sight of that, we have to be concerned about a legislative framework that would actually chill or deter pro-competitive conduct, which is what the legislation is designed to achieve. It's on that basis that I think it's important for us to understand the amendments that are being considered in this bill.

The other important element of the framework is, how do you deal with the administration of the law? Well, if you're a private citizen or a private firm impacted by the law, the answer is litigation. Litigation is great for lawyers. It's very time-consuming, disruptive, and expensive for individuals to deal with. There's no ombudsman here in our competition framework, there's no oversight committee, there's no ministerial directive. If you think you are right and the commissioner is wrong, your only alternative is to compel the commissioner to take you to court and fight through the litigation process.

That's part of the issue of balance that we have to keep in mind, because the incentives and dynamics of how one deals with the problem in this legislation are significantly affected by the cost consequences of defending some enforcement activity. I think several of the proposals in the bill are going to disrupt the balance even further.

Let me first deal with the abuse of dominance provisions. I am against the introduction of AMPs in the abuse of dominance provisions for the following reasons. One, I think there's a serious risk of chilling good, healthy competitive behaviour. Two, I think the remedies under the existing provisions are sufficient. Three, there are serious issues of constitutionality, and I understand from hallway chat that a future witness appearing before the committee has commissioned a constitutional opinion and will be sharing that with you in due course.

I also believe that what I term in my submission “leverage”, the dynamics of discussions with the commissioner in relation to the enforcement of the legislation, will be significantly shifted. That balance will clearly go in favour of the commissioner, and I think inappropriately so. Also, I think the amounts being proposed are clearly excessive and penal in nature.

It's important to understand that reviewable practices like abuse are just that, they're reviewable. They are not per se wrong. That's why we have the tribunal process there to assess them.

The recent Canada Pipe case is a classic example. In that case the commissioner, after several years of study, objected to a practice that Canada Pipe had adopted in Canada—and I disclose, Mr. Chairman, that we acted for the respondent in that case. At the time it was Commissioner von Finkelstein who started it.

In his view, it clearly breached the act and he took our client to the tribunal. After several years, there were significant costs to our client, not only in direct costs associated with the litigation, but also in complying with section 11 orders, compulsory production orders, which I understand you're familiar with. And by the way, those were issued to 19 other parties who weren't even subject to litigation but had to incur those costs. After all of that, the tribunal said this conduct was actually lawful.

So it's a perfect instance of where the commissioner took one view and our expert tribunal, the one that is supposed to have the final say, said this was perfectly legitimate.

● (1545)

The reason I refer to that case is to underscore my point about needing a balance. You need checks and balances on the exercise of enforcement discretion. Secondly, I want to highlight the costs associated with somebody saying they're right and the commissioner is wrong, and that they're going to fight this. You're involved in years of litigation and years of costs, and that will influence your future business decisions from two perspectives.

It might convince you not to be as aggressive in the marketplace. Why should you run the risk of being very aggressive in the marketplace if the commissioner is going to haul you through the tribunal process and you're going to be stuck with these bills for years and this process for years? So it might chill you from even engaging in the activity. But if you do engage in aggressive competitive activity that is lawful and the commissioner knocks on your door and suggests that it's abusive, you might back off. You might agree to a settlement that you might not otherwise think is appropriate, just to get rid of it out of a nuisance value type of assessment. Again, I think that's not what we're trying to achieve with the legislation. We want aggressive, dynamic, innovative competition in the marketplace.

On the issue of constitutionality, as I say, I think you'll hear more a little later. I got cute in my submission with my duck analogy, but if it looks like a duck, walks like a duck, and quacks like a duck, it's a duck. I think the same can be said about AMPs. They're penal in nature, they're penal in size, and frankly, they look like fines, sound like fines, and they're in the same amount as fines, so they're penal. So as you will hear from a future witness, I think that means that if they're adopted, you're going to be inviting constitutional challenges.

On the issue of the current remedies being sufficient, is the committee familiar with the remedies that are there? If not, I might take a moment to remind everybody that there are injunctive orders permissible under section 79. Here are some of the problems. If you bump up the remedies, you are going to discourage risk-taking and innovative behaviour. There are significant cost deterrents even today. Under section 103.3 there is an ability for the commissioner to seek interim injunctive relief, to stop the conduct immediately, while the challenge or investigation is ongoing.

I think the most telling thing about why we shouldn't be changing the remedies is the fact that there has only been one fully contested case in seven years, and that was the Canada Pipe case. It's not as if there is a whole volume of cases, as if the commissioner has gone forward and brought a lot of cases and been unsuccessful. Nobody has claimed that abusively dominant behaviour is rampant in the industry. We haven't heard that. There is just no factual basis to be going ahead now with a change to these remedies. They work. The one case in seven years—and frankly the one abuse of dominance case ever, which the bureau lost—was the one that took place late last year.

On misleading advertising, my views on the AMPs there echo what I've said on the abuse. I think the current tools are sufficient. There is a chilling effect potential. In fact, I think it's more than just potential, I think it's likely.

The dual track that this committee reviewed and that was introduced in the legislation in 1999, if memory serves me right.... I know it was started when I was in the office and it finished after I left.

● (1550)

The thinking behind the dual track was that you have a criminal process for the really egregious conduct, but themajority of instances will take place in an efficient, expedited civil process. I think what we're talking about now completely undermines the intent behind those changes. The penalties will exceed anything that's available for a criminal offence under the act, which to my mind doesn't make sense, because the advertising provisions under the civil stream are meant to be of lesser severity. Again, you'll have constitutional issues.

I would suggest, as well, that moving in this direction is not in keeping with our trading partners. Sometimes we hear that some of the amendments are made because some other trading partner jurisdictions are doing it. The successive chairmen of the FTC, our closest parallel in the States, have not been pursuing this type of claim because they figure it does more harm than good.

Last on this issue, Mr. Chairman, the current remedies are sufficient. We've seen the cap, as it exists today, at $200,000. We've seen settlements in two cases of $1.7 million and $1 million. That illustrates both the ability to get awards in excess of the cap and frankly, as well, the negotiating leverage associated with the legislation and the election of being able to pursue matters criminally or civilly.

I'm out of time, Mr. Chairman. I'd be pleased to answer questions. The complete submission is before you, if any of the members have questions.

Thank you.

The Chair: Thank you, Mr. Addy.

We'll proceed then to the Canadian Federation of Independent Business. Mr. Whyte, please. I believe you're speaking.

Oh, Mr. Piché. Okay.

Mr. André Piché (Director, National Affairs, Canadian Federation of Independent Business): Thank you, Mr. Chairman. I will walk you through the presentation today.

I have with me Mr. Garth Whyte, who is the executive vice-president of CFIB.

I want to say at the outset that we're not lawyers, neither one of us. What we can give you today is a good perspective from a small business point of view. I don't think you've heard enough of that during the hearings you have had so far on this bill.

In front of you should be a copy of our brief, which is very short. Essentially it consists of three parts. In the first part we talk very briefly about the important role played by SMEs in the Canadian economy in terms of economic growth and job creation. In the second part we briefly describe our concerns with respect to the Competition Act, and that goes back quite a long way. In the third part we briefly outline reasons for our support of Bill C-19.

With respect to the role of the SME sector in the Canadian economy, if you look at figure 1, which is in our brief on page 2, the reality is that over three-quarters of businesses in Canada have fewer than five employees. Right away you know that the small business sector is a predominant factor in the economy. It's also 43% of the gross domestic product, and going back to the seventies it was about 25%, so it's a growing part of the economy.

The SME sector is also a very accurate indicator of the Canadian economy. If you look at figure 2, you will see where we track the business confidence of SME owners with the GDP, and you will see a very close relationship between the two.

We have tabled with the committee today a report that we did, called *Building Better Communities*. It consists of 8,000 responses. It looks at some of the attributes of small business owners in communities across Canada.

What we found very interesting is that over half of the surveyed owners stated that they started the business from scratch. The remainder have taken over a family business or purchased an existing business, or created a spin-off from an existing business. When we talked about the possibility of relocating their business, seven out of ten business owners stated that they did not plan to move over the next three years.

What you can conclude from this is that not only do small business owners play a large role in the Canadian economy but they also are a major contributor to the well-being of their communities.

I also have an update as to their current expectations. In figure 3, you'll see a measure, over time, of the optimism of the small business sector. As you can see, in the last quarter optimism is up. It's been up for the last two quarters. It translates into very positive hiring intentions. Figure 4 shows that 30% of business owners plan to increase full-time employment over the next year and only 7% plan to decrease employment.

To sum up that part of the presentation, the SME sector plays an important role in the economy and in the communities across Canada. Therefore, you need to be very attentive to their needs and concerns with respect to the Competition Act.

With respect to the Competition Act, the act itself says “that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices”. Those are the objectives of the Competition Act as it is stated now.

Back in 1999 we surveyed our members on whether the Competition Act should be strengthened. We had 8,700 responses to this survey. Of those who had an opinion, 64% said yes and 35.7% said no. Following that, the industry committee undertook a study of the Competition Act, which led to the plan to modernize Canada's competition regime that was issued in 2002. Our small business owners are fully supportive of the recommendations that were contained in that report.

What we have before us today are some of the recommendations made by the industry committee back in 2002. With respect to the bill itself, which reflects some of these recommendations, we are supportive of the abuse of dominance and the AMPS related to this. We feel that, as it is now, Canada is one of the few countries that does not provide for financial penalties in cases of abuse of dominant position, which is the most harmful form of anti-competitive behaviour. This is an area of great concern to our members.

● (1555)

With respect to deceptive marketing practices and AMPs, we realize that the AMPs as they are now are not sufficient, and we support an increase in the AMPs for deceptive marketing. We also believe the pricing provisions should be decriminalized. However, they have to be accompanied, of course, by an AMP regime; we cannot have one without the other.

With respect to the restitution aspect of the provisions, we also support it, but we believe it would be very worthwhile to have the competition bureau publish guidelines on the circumstances under which the bureau would use the provisions.

That, Mr. Chairman, is essentially our brief. We believe that Bill C-19 can help ensure that Canada joins other industrialized countries in safeguarding small business owners from unfair competition.

Thank you.

● (1600)

The Chair: Thank you very much, Mr. Piché.

Brian, do you have point of order?

Mr. Brian Masse (Windsor West, NDP): On a point of order, Mr. Chair, I am wondering if I could ask a couple of quick questions. I have to go to the House of Commons in the next five minutes.

The Chair: I'll have to ask your colleagues. Werner would normally be first.

Is there agreement?

Okay, Brian.

Mr. Brian Masse: Thank you very much, committee members. It won't be forgotten.

I just wanted to ask one quick question, and I'll go through the blues later. I'm sure my colleagues will go through a lot of the questions I have.

I was wondering if I could get a specific example of advertising or an issue of competition that would be chilled by the AMP. Could you give me a specific example of where that threshold would be in terms of aggressive advertising that might be eliminated or reduced? If you could give a specific example, I can draw my mind around the context of what you're saying.

Mr. James Musgrove (Legal Counsel, Lang Michener, Association of Canadian Advertisers): I could start.

What I have in mind in terms of real risk is a new product—shampoo or some sort of consumer cleaner, or whatever things you see advertised, which Proctor & Gamble or Unilever or whoever thinks is better than the competitor's product. They've done some testing showing that it's better and has superior attributes, and they want to tell consumers that they've got a new and better thing and advertise that it's a new and better product. They believe their testing is right and will show that, and so they run that ad.

Their competitor disagrees, as is often the case. In my practice, I end up being retained with some regularity by one party or the other on those kinds of things. Frankly, it is sometimes a matter of whose science is better, whose arguments are better—it's neither black nor white, but somewhere in between. But the fact is that this is a new product with new formulations, and the advertiser wants to be able to tell the consumers why it's good.

The consequence they face now if they're wrong, if they make an honest error, are AMPs in the order of $100,000, a stop in advertising, and corrective notices, etc. If it's a fraudulent error, there are all sorts of criminal penalties. The consequences they would face under this new regime are AMPs of up to $10 million—a different order of magnitude—plus the restitution, plus, plus, plus. So it's a different order of magnitude. In this case of the new product, the fear is that instead of saying, “New Zip outperforms Biff two to one”—or whatever the claim is they want to make—they'll say, “Try new Zip, it's great”. It's just an anodyne ad, not bringing to the attention of the consumer the benefits they genuinely believe are there.

That's what we had in mind, in answer to your question.

Mr. Robert Reaume: If I might add to this, we were discussing this and thinking of what an analogy might be. We thought that if you think about the infraction of speeding—which no one should do, but probably everyone does—and if you were caught speeding and had to pay a fine of $120, and changes to the law suddenly came in that made it $12,000 for being caught over the speed limit, people would stop driving, let alone speeding. That's the proportionality here.

Mr. George Addy: Would you like an example of an abuse case? I think a classic one is the one we've just lived through—at least, my client just lived through—in the Canada Pipe case. The error was that they instituted a customer loyalty program. You bought your product from them; you got a discount at point of sale; you got a quarterly discount; and if you were there at the end of the year, you got a yearly discount. They just spent years defending what the tribunal has held to be a lawful practice. Their direct costs—and I can't tell you what everything is—are well into the seven figures. Their customers were subjected to enforcement process.

Think about it: you're engaged in a business, in a practice you think is lawful, and your customers are being issued orders to produce records and documents and, in essence, incur costs because the commissioner is investigating you. So who knows what the business deterrent cost associated with that is? Are they going to be your customers next week, or are they going to go to the competitor?

If I'm thinking, am I going to introduce a loyalty program? The answer is no way, no way. That dampens rivalry in the marketplace, which is what we like.

● (1605)

Mr. Garth Whyte (Executive Vice-President, Canadian Federation of Independent Business): Rather than give you an example, I want to give you some principles, if I could. We deal with consumer legislation all the time, and we deal with penalties all the time, whether it's with the revenue agency or other things.

There are a few things that have to be brought in here, I think. First, a lot of firms will not be aware of what misleading or deceptive marketing is, and they're hit by it, so we need to have a definition of what the rules are. There have to be some guidelines as to what the commission thinks, in order for the commission and also for businesses at large to know what deceptive marketing is. I don't see that here yet. Also, a definition based on their terms of what deceptive marketing is has to be provided, because when you deal with consumer legislation—and this is moving into that territory—those are things that need to be clarified.

On the flip side though, if you have an international company that has been caught practising deceptive marketing in the U.S., and we don't have the same remedies here, there's something wrong. Some companies do know the rules. We have seen some of those cases. I think that's where there is some merit to this. But when it's loosely defined, I think you need, first of all, to set guidelines and establish a definition in terms of what it is. What do you mean by deceptive marketing? Is it the case that there's a new product out there, and claims made about it by the producer may have been off? I think it does say in the act, though, that if you can prove you've done due diligence, then you weren't being deceptive. But that's another case.

The awareness issue—which is, as Audrey pointed out, that 95% of all firms have fewer than 50 employees—we can't understate, at least for our constituency. They have no clue about what the competition bureau's definition is or what's required under the law regarding deceptive marketing.

Mr. Brian Masse: Thank you to the committee. I appreciate it.

The Chair: Thank you, Brian.

We'll go back to Serge.

The Chair: Werner, thank you for giving up your place for Brian.

Mr. Werner Schmidt (Kelowna—Lake Country, CPC): Thank you, Mr. Chairman.

Brian is actually a pretty decent guy.

Thank you very much, gentlemen, for being here this afternoon.

I find myself just a little bit confused, I suppose, in one sense, and really not confused, because I think what we're searching for as a committee—and certainly I am as an individual—is some clarity to distinguish between the problems that big business apparently has and the problems that small business has with regard to this issue. It seems almost as if there's a concerted effort on the part of big business to oppose the provisions of Bill C-19, but on the part of small business to support the provisions that are made in Bill C-19.

Now, what is causing this difference of interpretation of a common piece of legislation?

The Chair: Are there any takers?

Mr. Addy, do you want to go first?

Mr. George Addy: I'm not sure I have the answer to that question, Mr. Schmidt, but I think you have heard—at least from my reading of the transcripts—from the Canadian Chamber of Commerce, and many of their members belong to companies with five employees or fewer. As I understand it, none has opposed the policy amendment. So I don't think the divide is that clear.

Mr. Werner Schmidt: Let me be specific then. I hear no complaints on the part of small business about the size of the AMPs. They don't consider those to be excessive, and yet the Chamber of Commerce does, and certain other large businesses do. Now, am I misreading this, or is my memory not still quite clear on this issue, Mr. Piché?

Mr. George Addy: I guess I was just taking issue with the point about whether the Chamber of Commerce also speaks for small business. I think it does. One of the factors, though, is that if you are a small business, the likelihood that you're in a dominant position is probably remote.

● (1610)

Mr. Werner Schmidt: Yes, but you could run misleading advertising. It's not just a one-way street.

Mr. George Addy: Yes, advertising, that's right. I was thinking about the dominance provision.

Mr. Werner Schmidt: No, this goes well beyond that.

Mr. André Piché: Mr. Schmidt, I'd like to comment on just a couple of elements.

One, you are talking about two different organizations. The way we get our marching orders at the Canadian Federation of Independent Business is from serving our members directly—and we do. And when we come before the committee, we report to you about what they tell us. We don't have policy committees that get together to determine what the organization will do on a particular piece of legislation. That's the first point.

The second point is, when it comes to AMPs, our members are so small that it's irrelevant to them, the current rate as it is. So when the penalty is higher, in their view it just gives the competition bureau the teeth it needs to enforce the law, that's all.

The Chair: Mr. Whyte, did you want to jump in?

Mr. Garth Whyte: Yes, please, just to add to what André was saying. Right now a $75,000 fine is a big fine anyway. It's a big fine.

I don't want to undermine the power of the group we're representing. As you know, we have 105,000 members, all business owners. They're not bank managers. They're not directors of personnel. They're all business owners, and we survey them.

I think Mr. Addy said it best. There's only been one case since the time he was at the bureau. Yet we know of our members going out of business because of abuse of dominance. We know that. The bureau's known that. And we want to modernize the act.

We have seen our members—whether it's independent gas retailers or others—and when there's one case, and that's all the bureau could look at, it says, well gee, the bureau can't do anything about that. And we know about the grocery chains. I can give you examples of auto glass companies. I can give you examples of greenhouse operations. I can give you examples of bread bakeries. We can give you examples.

Why is this? What's the difference? What are the different points of view? Because the small and medium-sized enterprises, which are, by the way, major drivers of the economy.... People ask, what's happened since September 11? It wasn't Nortel or Enron that kept the economy going or created the jobs.

Our members have felt shut out under this act. We are being supportive of the bureau. I do have some concerns with the restitution remedy because it's loose in our opinion, and I'm worried that we're moving into the consumer protection side of things. But as far as the bill and a lot of the other things go, yes, we think it's incremental. We think it's important. And that's why there's a difference between large and small representatives.

Mr. Werner Schmidt: I don't think I want to pursue this too much further, actually, unless somebody else wants to come in. I think I understand what the difference is, all right.

I'd like to go further on the structure. I'm not sure whether it was Mr. Addy who raised the point or someone else, but there was an observation made about the fact that if you do a comparison between the penalties under AMP and the penalties under the Criminal Code or other criminal provisions, they are just about the same. AMP is perhaps even higher than the penalties on the criminal side.

Well, the question I have is, does this mean the criminal side is too low?

The Chair: Are there any takers on that?

Mr. Musgrove.

Mr. James Musgrove: Thank you. I guess I'll start.

I don't think it does mean that, but it certainly means that if the AMPs are set at $10 million, there's something wrong when you compare the two. There's something up.

Mr. Werner Schmidt: Which one should change?

Mr. James Musgrove: Exactly. Well, our submission is in fact that neither should change. AMPs should stay the way they are and so should the criminal penalties; but if you changed the AMPs without changing the criminal penalties, there'd be something very odd about that. I certainly agree.

Mr. Werner Schmidt: You wouldn't propose that the criminal penalties be changed.

Mr. James Musgrove: That issue is not before us. Certainly in this organization—

Mr. Werner Schmidt: I know it's a hypothetical question—I appreciate that—but it's an obvious kind of question.

My other question has to do with the structure of accountability, and I guess, Mr. Addy, you raised that. I think it's a very significant issue, because if there isn't accountability on the part of the commissioner or the tribunal, or both, I think we have a very serious problem.

So the question I'd like to address to you is this one. What kind of accountability mechanism would you set up so that indeed there was accountability and transparency on the part of the commissioner to do the job the way it ought to be done?

Mr. George Addy: The short answer is I don't know what would be best. There are ombudsman models out there. You have police commissions that oversee the enforcement by police agencies of their duties within municipalities, and so on. You have an oversight committee for CSIS. I don't know what the answer is. All I'm saying is there is no mechanism there. The only choice available...perhaps it's this committee that should have some sort of an accountability session. I don't know what the protocol is for that. The issue I was addressing, and I think it is a serious one, is what that means for somebody who has no other choice but to defend.

● (1615)

The Chair: Mr. Piché.

Mr. André Piché: Mr. Schmidt, we also agree on the importance of having transparency and accountability built in. But we must have examples, looking at other countries such as the U.S., Australia, and Europe, in that regard. I believe the information has to be out there as to how it's done in other countries. Canada is pretty loose in the way it enforces competition compared to other countries.

The Chair: You have one more question.

Mr. Werner Schmidt: Mr. Addy, you apparently were in the competition bureau at one time. Is that correct?

Mr. George Addy: Yes, I was a previous commissioner.

Mr. Werner Schmidt: What were the criteria, when you were the commissioner, for actually getting serious about investigating a complaint that came to the commission?

Mr. George Addy: When I was there we had a matrix of enforcement, what we called case selection criteria. I don't know if that still exists. I don't know what the current commissioner's approach is. But we would examine a complaint from a host of factors and basically weight them. We'd look at things like the nature of the product: is it widely dispersed in the economy, or a very narrow product? We'd look at the state of the jurisprudence: do we need some clarity of the law in this particular provision? Is it a product that has some sort of health and safety element to it? Is it a product that's targeted to vulnerable elements of the population, such as seniors, pensioners, people with illnesses, or whatever? We basically developed a matrix, and when complaints came in we'd weight them, and the highest weights would get priority attention.

Mr. Werner Schmidt: Was there ever a criteria that applied to the size of the damage done, or the size of the businesses involved?

Mr. George Addy: It wasn't the size of the business. The consumer impact was a criteria, but it was the size of the practice or the breadth of the practice: Is this a very local issue? Is it just sort of on the O'Connor-Bank Street block, or is it a national practice with a much broader scope to its negative consumer impact or market impact? But the identity of the individual, whether it was a multinational or a national, did not play a part in the selection.

Mr. Werner Schmidt: I ask those questions because of the example you cite as the one serious case that has happened: Canada Pipe. I wonder whether there wasn't a whole series of other issues that were raised but didn't ever reach the kind of public awareness of Canada Pipe, simply because there wasn't enough money involved and the product involved wasn't persuasive enough in the overall consumer market.

Mr. George Addy: Would you like me to respond to that, sir?

The Chair: Go ahead.

Mr. George Addy: There are a couple of features to bear in mind on that. I am sensitive to but not convinced about the resources issue. I'm not convinced about the bureau being under-resourced, because I haven't seen the books. I'd want to make sure of that, and I think you would want to, as parliamentarians, before you say it needs more resources. But the resources being expended today are being spent in the priority areas. In my view, the priority for the bureau is enforcement; it isn't international competition networks. If you have the luxury of a lot of resources, that's what you do, but the priority is enforcement. If you're satisfied that the priorities are being addressed, then you deal with the resource question.

Mr. Werner Schmidt: Priorities—according to whom?

● (1620)

Mr. George Addy: Well, I just shared with you my priorities.

Mr. Werner Schmidt: Yes, exactly—as commissioner. That's the point exactly.

Mr. George Addy: That's getting back to the accountability issue.

The Chair: We'll let Werner pursue that at the next round.

We're going to have Serge and then Jerry.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): You say you oppose administrative monetary penalties. For non-criminal cases, you consider such penalties excessive. In my opinion, as essentially the natural resources critic, I am not very knowledgeable about the economic implications of the Competition Act. So you are saying that there is an important distinction between penalties for criminal conduct and those for non-criminal conduct.

As we know, people can be prosecuted or charged for having acted knowingly, as well as for conduct they considered acceptable or necessary. These individuals are prosecuted all the same. A variety of situations may arise. We know that the anticipated profits vary depending on the offence committed. Furthermore, they could be smaller for a small company and bigger for a big company.

Should we address the problem by distinguishing not only between criminal and non-criminal conduct but also between normal and abnormal conduct, with respect to profits. Should we also consider establishing penalties in this regard?

Mr. George Addy: We must first remember that the conduct identified in the sections on criminal offences is, by definition, criminal. There are no grey areas, only black.

However, the practices subject to review or consideration by the courts do constitute a grey area. I understand perfectly when you say that, somehow, we must measure the impact of intentional actions by individuals who knowingly violate the law.

I come back to my fundamental proposal. We must also be able to assess the impact of individuals who hesitate about competing in the market. We cannot consider only the penalties.

Mr. Serge Cardin: Earlier, you gave the example of someone caught speeding. You were saying that if he got a $120 fine or even more, he would leave his car at home. I am not sure that he would. However, he would watch his speedometer more closely. Perhaps he would use the cruise control to stay within the speed limit.

If that fine is increased to $12,000, but that individual is speeding in order to arrive on time to sign a contract able to generate profits greater than the penalty, that person will willingly pay the fine. Perhaps too, he is going so fast that it is considered reckless driving. In this case, the Criminal Code would apply.

Just how far can we go to dissuade an individual from violating the law, when that same conduct will allow him to earn a profit?

Mr. George Addy: I will tell you that, currently, the legislation contains adequate measures. Here we are talking about the authority of a court to issue an injunction and about all the negative effects, in terms of competition, on customers. It is important for companies to have a good reputation in the market. We are also talking about the power of a court to issue an order and interim injunctions to stop the conduct in question. There are numerous costs associated with the current penalties.

Mr. Serge Cardin: Does Mr. Piché agree that such penalties should be introduced?

Mr. André Piché: I believe that it is essentially a question of balance. On one hand, some major corporations say that it might be difficult if they were subjected to significant penalties. On the other hand, small and medium-sized businesses, which represent a major part of the economy, also say that they would face difficulties, in the sense that they want to grow and demonstrate a sense of entrepreneurship. For these reasons, we believe that they should have the benefit of much more effective frameworks under the Competition Act.

● (1625)

Mr. George Addy: We must also be able to define what we mean by small business. Accusations were leveled against the Forzani Group, which is a sporting goods retailer. Is it as big as Sears? I do not know. What about Suzy Shier, the women's clothing chain? The AMP was $1 million. I do not know if you consider it a small, medium-sized or large company. It is important, when referring to such categories, to know which companies belong to which category.

Mr. Serge Cardin: I want to come back to the Canadian Federation of Independent Business. You are talking about decriminalizing pricing provisions. Could you give me a bit more information on this?

Mr. André Piché: Essentially, we believe that pricing provisions must be decriminalized. We believe this would be a positive measure, in the sense that it would be much easier for the bureau to ensure compliance with the criminal provisions in the act. For this reason, we support the government's position, which is shared by the Minister of Industry, the commissioner and the Standing Committee on Industry, Natural Resources, Sciences and Technology, in its 2002 report.

[*English*]

The Chair: Thank you, Serge.

We'll now go to Jerry first, and then Brian.

Hon. Jerry Pickard (Chatham-Kent—Essex, Lib.): Thank you very much, Mr. Chair. I guess I'm going to first direct a couple of questions to the Association of Canadian Advertisers.

I understand that most of your members abroad advertise the same as you do. You have major advertisers in all sectors of the world, yet it seems to me that you're suggesting the protections that exist in the United States, Europe, or other jurisdictions are much more intense than the ones in Canada at present. Canada is trying to upgrade our Competition Act and so on to bring us in scope with the rest of the countries we deal with. Do you not see that as important here in Canada?

Or I could take a flip side of your position and suggest that if Canada doesn't upgrade and come into conformity with the United States and Europe, then people who are affected badly in Canada shouldn't have the same protection that is afforded in the United States or Europe. How can you position yourselves in such a way as to say Canadian small-sized and medium-sized businesses shouldn't have the same protection as the rest of the people in the G-8 and other countries?

Mr. James Musgrove: I wonder if I can start the answer, and then others may have other views. They probably disagree with me. They often do.

At least vis-à-vis the United States and to some degree Europe, where I know something, I can start the answer. As far as truly fraudulent health devices that don't work, drugs that don't work, and bad claims are concerned, the Canadian law is a criminal law and is a strong law. So is U.S. law, and it's enforced by the government in more or less the same way.

We're talking about those kinds of examples that I gave at the outset, though, the new and improved product or whatever. Just before I came here, in fact, from 1:00 to 2:30 this afternoon, we had a joint teleconference between the Canadian Bar Association's competition law section and the American Bar Association's antitrust law section. We had representatives from the Federal Trade Commission, their enforcement agency, speaking on the phone, along with people from the competition bureau.

On the civil side, the position of the last two FTC chairmen—Bob Pitofsky, a Democrat, and then Tim Muris, a Republican—and the current position of the enforcement people in the United States is that this stuff is not worth government enforcement effort. This is civil stuff, so let people fight this out themselves. If one competitor doesn't like it, let the consumer complaint mechanisms we have here in Canada and the United States work, but the government should focus on the really bad stuff. That's the sensible way to focus.

So I guess I take some issue with the premise of the question, which is that Canadians are underprotected vis-à-vis our trading partners. I guess the U.S. enforcement agency, the FTC, does too.

I'm less familiar with Europe. Frankly, they've had a history in which they don't even like any comparative advertising, so it is a different environment there. I guess that's how I'd start to answer the question.

● (1630)

Hon. Jerry Pickard: Maybe I could respond to a bit of that.

I understand that in civil suits in the United States plaintiffs have an option of treble the damages that have been done. That's quite substantial. In Europe, I understand in most cases the monetary penalties for infringement of dominance is 10% of the gross product of that corporation—which in the case of Microsoft could be billions. They are much stricter in all of our trading partners, that's clear.

Canada doesn't have that protection. And these guys over on the other side of the table who would disagree with that have some real problems. They can't move ahead because there's such a limited amount of protection they have if they move. I think that's important.

Maybe I could just shift gears.

Mr. James Musgrove: Sorry, could I respond to that?

Hon. Jerry Pickard: Sure, absolutely.

Mr. James Musgrove: On the dominance side, which I wasn't addressing—I'll leave Mr. Addy to speak to it if he wants to—the Association of Canadian Advertisers is not here to talk about the dominance provisions. That's not their bailiwick. That reference, it seems to me, is about something other than advertising.

But with regard to treble damages, for the criminal misleading advertising we have—as they have in the United States—private actions available as well. They have treble damages. They've always had treble damages for anti-trust violations in the United States. Nowhere else in the world do they do that. Nowhere else in the world do they think that's a good idea. We haven't historically thought that's a good idea either. But we certainly do have single damages actions available, and we have class actions now in Canada for misleading advertising cases.

Hon. Jerry Pickard: We're not suggesting we join the United States; we're putting in the point that they do have protections that Canada doesn't have. That was the reason I raised it.

Do you agree that AMPs protections should be there for small and medium-sized businesses? Do you also agree that those protections are really necessary?

It's interesting, I just wanted to give you the fact that an OECD report recommending Canada strengthen its Competition Act by introducing AMPs came out just in January of this year. Why would the OECD come out with that kind of recommendation if it didn't feel Canada was not keeping up with the rest of our competitors and countries we do business with?

Mr. James Musgrove: Again, I think for the purpose of the Association of Canadian Advertisers, that relates to the abuse of dominance. We're not here making a submission on that. I can't make that submission.

I don't know if Mr. Addy wants to.

Hon. Jerry Pickard: We'll go to Mr. Addy on that one. He'll probably have an answer.

Mr. George Addy: I could entertain you for hours on the inner workings of the OECD. Frankly, as credible as the organization is, I wouldn't take that as a resounding recommendation from all the member states of the OECD that Canada's lagging, and we need this amendment. The inner workings of the competition law forum of the OECD is a maze.

I come back to my fundamental premise. I always thought that you changed a law when it needed changing because it was broken. And there is no evidence I've seen that it's broken. The only evidence we've seen is that there's no enforcement action being taken. We haven't heard why there's no enforcement action being taken. We haven't seen a succession.... It's not like the Criminal Code. When you see a whole bunch of convictions and people get upset because the fines aren't severe enough, then legislate your act, and let's increase the fine.

We have an expert tribunal there that's supposed to clarify the law. We're not using it enough.

Hon. Jerry Pickard: It's an interesting position. I think the OECD talked about Canada because it was a glaring problem. I don't think the OECD walks into countries like Canada, the United States, or Europe and makes recommendations without some good solid background. But I just heard a few minutes ago from André that many of the corporations don't have the opportunity to protect themselves well in Canada, and that is a difficulty for them.

There is evidence sitting right next to you.

● (1635)

Mr. George Addy: Well, the evidence I heard, sir, with respect, is that some of their members leave the market. Sorry, that's the way competitive markets work. Some people can be squeezed out of the market through legitimate exercise of innovation and competitive pressures by competitors. The fact that members exit isn't evidence that there is an abuse of dominance practice in the market.

Hon. Jerry Pickard: So because you don't have evidence for it, you're saying abuse of dominance doesn't happen in Canada?

Mr. George Addy: No, that's not what I'm saying.

Hon. Jerry Pickard: Help me, then. I'm having trouble understanding. I'm hearing that people are forced out of business, clearly. You're saying they go out of business. I have some problem equating those two things. If people have pressures—

Mr. George Addy: The issue is that you're equating their exit—

The Chair: Let Mr. Addy try to answer.

Mr. George Addy: You're saying that exit equals abuse of dominance. I'm saying you can't draw that equation. They can be exiting because they're selling outdated products. Somebody has come in with a more innovative widget. Somebody has introduced cost controls or cost reductions and can sell it more cheaply. Somebody's better at marketing. There is a whole host of factors at play in the dynamics of the market. That's the issue.

It's not as if the commissioner has lost a string of cases. They've lost one case in eight, and it's the first case they've brought in seven years. I haven't seen the study that says there is evidence that abuse of dominance is rampant in the industry or rampant in the market and we don't have the tools to address it. I haven't seen it. Maybe it exists; maybe you're right. I haven't seen it.

The Chair: Let Mr. Whyte jump in on the same question, okay, Jerry?

Hon. Jerry Pickard: Just before I do, I have just one other question, Mr. Addy, and then I'm going to go to Mr. Whyte, if I may. Thank you.

Mr. Addy, why would you oppose administrative monetary penalty changes, the way they're put in, if there isn't abuse of dominance in the system and therefore they would never be applied?

Mr. George Addy: No, you misunderstood my whole point. I oppose them because, having sat around boardrooms, having had clients come in and say that given this, they might want to adopt this practice, I say, “Here's the risk assessment. I think it's perfectly legal, but if the bureau takes a run at you, understand that you're going to be involved in court proceedings for *x* years. Your customers are going to be annoyed because they're going to be section 11-ed to death. Your name is going to be dragged through the mud in the media. Those are all costs. Plus, you're going to have to have your notes to financial statements for the next six years until the litigation is resolved”. That's what I'm talking about. That's what I'm concerned about.

When you introduce $15-million AMPs, people are going to avoid that. That's what I'm saying. It may be perfectly legal and pro-competitive behaviour. You'll be chilling people. That's my concern.

The Chair: We can come back to you on the next round.

Mr. Whyte.

Mr. Garth Whyte: I respect Mr. Addy and he deserves a lot of respect, and he says a lot of things you should listen to. But I think we should take competition lawyers, experts, and past commissioners, put them in Newfoundland, and tell them they should drive around and they can only gas up at independent gas stations. Have them drive around the province, and when they're stuck in the middle of the province because they cannot find one independent gas station—right at the bulkhead, right where the oil comes through—look at the prices and see that they're much higher than the rest of the country because there are no more independent gas stations. I would submit that as proof.

From our perspective, we have seen proof because we do 4,500 small business visits a week. Over the last decade, we've been running the businesses—single businesses, as Mr. Addy pointed out—on Bank and O'Connor, which would be a small little place, and the bureau couldn't look at it because it wasn't national in scope in that one instance.

We were going through them over and over again. We couldn't do a thing because it wasn't seen in the overall context, because it was only one independent gas station. Now, we know about the context, and the bureau knew about it, but said their hands were tied. We went to Industry Canada. They said their hands were tied. The three dominant players, the wholesalers of gas, are also retailers. The retailers, at times, were selling below the wholesale price. Yet the competition bureau couldn't do anything—and it's legitimate—saying, gee, there's no proof.

I submit that every competition lawyer who goes before you should have to drive in certain provinces, and you should say they can't gas up at the big gas stations; they have to go to independent gas stations. They won't be able to find any. What happened?

So there was a national policy here. There was an economic policy issue that we kept bringing forward to you and to this committee, and you listened. But we say we have to make some changes and modernize the act.

It's not about status quo. It's about how we change it to deal with the fact that our economy has changed. It's not just ma and pa grocery stores anymore. These are dynamic, innovative businesses that need to be allowed to compete.

The irony of this, if I can use the gas station analysis, is that it wasn't the big gas companies that brought in the innovation for convenience stores and those things. It was the independents that brought it in, and through competition, the big companies came afterward. I find this very ironic.

Again, Mr. Addy, I have to respectfully say, your hands were tied. You could only deal with the big pipeline issues. You couldn't deal with the little grocery store, or the little independent gas station, or the little independent auto repair glass company, because your hands were tied. If the fines were not big enough, they'd say, “Well, that's no big deal. It's not big enough. Who cares? I'll get caught. That's not a big deal”.

● (1640)

The Chair: Thank you, Mr. Whyte. I'm sure this will come back before we're done.

We're going to go to Brian Jean, then Paul.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chairman.

First of all, I want to congratulate the CFIB. I have a company that's been a member for 40 years, and you do an excellent job.

I would say, too, that I have seen that people in large businesses don't have a concept, quite frankly, of what small businesses go through. Until you're up against a big competitor, you don't realize how desperate you are in the marketplace, especially without proper regulation. I think the government is the big equalizer and should remain so.

I'm curious about a number of things. The first is the appeal mechanism from the commission.

Mr. Addy, you're probably best suited to this. I'm not familiar with it. Is it an administrative law, or do you apply by original notice—

Mr. George Addy: I understand the model. The model is that complaints come in and they're examined. If the commissioner wants to use enforcement powers, they go to court to get a search warrant, or whatever, a section 11 production order. They get the order, get the information, and analyze it. The decision tree is that if they think it's criminal, they then hand it over to the Attorney General with the recommendation, "Please prosecute", and it's then prosecuted in the criminal courts. If it's civil—i.e., if it's on the civil track for misleading advertising or dominance—then the commissioner becomes the plaintiff. The commissioner doesn't issue any orders; the commissioner becomes the plaintiff or applicant in proceedings before the Competition Tribunal.

The tribunal is a mix. The members of the tribunal generally sit in panels of three. The presiding member is a member of the Federal Court of Canada, the trial division, and he or she is supported typically by two lay members, who are retired small business people, retired accountants, consultants, or whatever. There's a roster of appointments there.

Mr. Brian Jean: What about the appeal mechanism from the commission itself?

Mr. George Addy: From the tribunal itself?

Mr. Brian Jean: From the tribunal, yes.

Mr. George Addy: It goes to the Federal Court of Appeal.

Mr. Brian Jean: It is extremely expensive. For a small business person, it would be impossible to afford.

Mr. George Addy: Right.

Mr. Brian Jean: What is the difference between criminal and civil? I understand the regulations, but is it based on *mens rea*, or is it based on the standard approval, or—

Mr. George Addy: I guess in layman's term—and James can talk to you about the advertising provisions in particular—it's the really egregious stuff. The language, as I recall, is "recklessness". So if it's really egregious stuff, you'll go to the criminal track. That's where you nail, for example, the fraudulent telemarketers; you won't go to the civil track for that. But that's generally speaking.

And in the area James was referring to in his remarks, the new product and an honest mistake, the amendments in 1999 were meant to say that sort of stuff should be dealt with quickly and efficiently through the Competition Tribunal.

Mr. Brian Jean: So it's similar to negligence under murder, something like that, as far as driving with...?

Mr. George Addy: I'm not familiar with the provisions on that.

Mr. Brian Jean: I was a criminal lawyer, so it's a....

The last question I have is about U.S. law. How do you deal with the advertising that's coming into Canada and the cross-jurisdictional issues there? There must be huge issues simply because of the boundaries.

Mr. James Musgrove: I'm not sure if you mean just the stuff flowing across the border or the campaigns that are run in both countries. The industry people will speak up about this, but you have both. Obviously you have spillover advertising—and we have Canadian spillover advertising in the U.S., too. And you have campaigns that somebody will run in the United States or run in Canada. It's a good campaign and you'll run it in Canada separately, buying advertising space in Canada for essentially the same advertisement. But if it's being broadcast in Canada, or wherever it originated, it has to comply with our law.

● (1645)

Mr. Brian Jean: Even the spillover advertising?

Mr. James Musgrove: If it's pure spillover and the advertiser isn't here in Canada, there's not a whole heck of a lot you can do about it. But that has not been a real issue; in my practice at least, I don't see those issues coming up. I see much more frequently issues with a U. S. campaign that's been brought to Canada and run in Canada. But sometimes it has to be reshot; there are issues where you have to comply with local law.

Mr. Brian Jean: Mr. Chairman, I know of some cases that actually have been ruled on, such as a shoe seller in Canada. But how many cases have actually reached the maximum, or near the maximum, penalties up to this stage?

I understand there have been tremendous difficulties with enforcement. I've always wondered how two paper companies can have two price books that are within pennies of each other, and under the Competition Act, of course, nothing happened. There were two or three complaints, I think, on those.

Mr. George Addy: Are you asking about the advertising or the conspiracy, or about what particular provision? Because on the advertising, the two cases I refer to, Forzani and Suzy Shier, were well in excess. The cap was $200,000, but the parties consented to $1.7 million, $1.5 million, and $1 million. So they agreed to pay an even larger amount.

Mr. Brian Jean: And that was more or less my point for Mr. Musgrove. There have been cases, from my understanding, that exceeded the penalties by some amount.

Mr. James Musgrove: Yes, that's true, and Mr. Addy has given you the particular examples. We don't know. I was not counsel on either of those, and the circumstances of negotiation are confidential. But you have the commissioner who has the choice of going criminally or going civilly, and the dividing line, as we were talking about earlier, is whether the conduct is knowing or reckless. If it's knowing or reckless, you can criminally prosecute. If it's not, you can't. That's the dividing line. But deciding where that line is in any real world situation is going to be a trick. So the commissioner has these two arrows in her quiver. She can go either way. She's investigating it. The advertiser knows that. The commissioner comes to the table and says "Let's do a deal. I haven't decided how I'm going to proceed, but let's do a deal". Well, you don't have to be a genius to see how you can end up there.

Another point I want to raise relates to an earlier comment. There was a suggestion that the AMPs, at the level they are now, might be seen as a sort of licence fee for driving faster, or whatever. I guess the example we have, and there's really only one fully contested case under this new civil provision now that we've had go through, is the Sears case, which has just been decided. It's in the newspapers. There's an example where the maximum AMP that the competition bureau is looking for is $500,000. Sears takes issue. It says you can't get $500,000, but the maximum that it's at risk for, monetarily, is $500,000. There is no doubt that it has spent, in defending this case, I don't know how much, but a lot more money than that. So it's not as though this is just a licence fee because it doesn't matter, and you just pay the money and drive on. If that were the case, Sears' conduct is entirely irrational. In fact, this is serious. It's serious for its reputation. It's serious for its marketing campaigns in the future.

They've decided it makes good sense for them—I'm not counsel—to spend more than they could be fined because they think the conduct is correct and they want to defend it. So seeing the current regime as a licence fee it is not necessarily so, I guess, and that's a real-life example to the contrary.

Mr. Brian Jean: I find it very similar with large corporations, very similar to how the medical association in Alberta treats litigation cases. They litigate everyone to the nth degree so nobody litigates with them anymore. I think that's exactly the point that Jerry was getting at. You have a big corporation and you have a small corporation. A small corporation does not have the capacity or the ability to litigate against a large corporation or to litigate against the tribunal itself. There's just no possibility. That's why we need government as an equalizer.

Mr. James Musgrove: I'm not taking issue with the government having a role. Only the level of the consequence seems to me out of proportion, given the type of conduct we're talking about. Secondly, on the fact that this is seen as a licence fee, that's clearly not what's happening. They're seeing it as a matter of principle of some sort.

Again, the submission isn't that the government doesn't have a role. The government has an important role. The law was structured six years ago to establish the role that it has. We've had one contested case since then. Throwing it all up in the air six years later seems an odd thing to do.

● (1650)

Mr. George Addy: Perhaps with your permission, Mr. Chair, I can jump in here.

The Chair: Go ahead, Mr. Addy.

Mr. George Addy: I think I agree with Mr. Whyte, and you might find that surprising. He mentions this issue of clarity of the law, and I think it's important to bear the importance of that in mind.

On the Sears case, there's a copy for you, and it's about an inch thick, about 300 or 400 paragraphs long. I don't know how long the litigation was. It deals with what we in the trade would say is the easier of the two provisions. That's the provision where you're comparing your price today to your price at some other point in time. You're not comparing it to the market; you're saying, I'm comparing it to my price. This has nothing to do with AMPs. This has nothing to do with the size of the fines, and the size of the fines isn't going to change this. This is the problem.

I pity your members, Mr. Whyte, trying to figure out what the state of the law is on the basis of the legislation as it exists and as interpreted by the tribunal.

The second point I'd like to make on the Sears case is this. The court found—and this decision was not appealed by the commissioner—that harm to consumers is irrelevant for purposes of the offence. That's why I mention in my submission that I think there's a disconnect between restitution and what the courts say are relevant considerations for the offence.

The Chair: Thank you, Mr. Addy.

We're going to go to Paul, then Jerry, and then either Brad or Werner.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Thank you, Mr. Chair.

My question is for the witnesses from the Canadian Federation of Independent Business. A paragraph in your brief refers to a poll you conducted in 1999. Today, you support Bill C-19. If you had the opportunity to introduce legislation amending the Competition Act, would you have added anything? I understand that you support the current measures, but do you consider them sufficient? In your opinion, is the report from April 23, 2002, sufficiently covered by this legislation, or are there other elements the government should have retained?

Mr. André Piché: You know, that report contains a number of elements. Today we have only a few measures, because there were consultations afterward. So, we see this as a balance. We did not get everything we wanted, naturally, but that remains a possibility in the future. However, the measures before us would make a difference to our members. That is why we strongly support them.

Mr. Paul Crête: Are there significant measures you would have wanted the government to include immediately in legislation amending the Competition Act? For example, in December, the new Commissioner of Competition told us that she was studying the possibility she be granted investigative powers, not in criminal investigations, but simply to initiate market references. She told us that the results would be made public in March. Would you be in favour of such an amendment to the bill, if the results support it?

Mr. André Piché: During consultations on this subject, we had supported that measure. Now, various considerations have been advanced. For example, if you are going to investigate and talk to people and criminal proceedings ensue, these people could find themselves in an awkward situation.

However, there may be other possibilities. Industry Canada, for example, could easily conduct investigations for the Minister of Industry, who is the minister responsible for both organizations. This distance could be maintained. I think that this kind of investigation could be useful in some cases.

Mr. Paul Crête: Currently, the minister does not have this power. Or, if he does, there is no framework and he does not use it regularly.

I want to use the example of gasoline again, which is a great example in my opinion. We are not able to prove on paper that there is collusion. I will avoid, at all costs, saying there is collusion because I will find myself out on my ear tomorrow morning. However, numerous allegations are made, regularly, every year. Should the Competition Act not contain a tool to assess that kind of thing, so we have the basic material we need without being forced to resort to allegations?

So, would it be appropriate to add such things to the legislation? We will not be able to change the Competition Act just any old day. In my opinion, before the government does anything to it, we could face at least one election.

● (1655)

Mr. André Piché: The question is whether this investigation should be conducted by the bureau as such, Industry Canada or a separate organization.

Mr. Paul Crête: Have you assessed whether the minister currently has the regulatory powers to do so?

Mr. André Piché: We believe that the minister has the power to do so. In fact, it could be extremely desirable in many cases. Let me give you a very recent example. Currently, one of the biggest concerns our members have is obtaining insurance for their assets and their company, as you know.

Mr. Paul Crête: A number of people have, in fact, told me that.

Mr. André Piché: It is extremely difficult for us to know what part of government to ask to investigate this. In our opinion, the most logical place would be Industry Canada.

Mr. Paul Crête: Have you made such a request?

Mr. André Piché: We have approached the government and various ministers about this a number of times. In fact, we made a presentation to the committee on this prior to the last election.

Mr. Paul Crête: What is the current minister's response?

Mr. André Piché: We have not yet received a satisfactory answer. We are continuing our efforts.

Mr. Paul Crête: When we asked about this, we were told that the Commissioner of Competition would investigate if formal charges were laid. It is like a dog chasing its own tail.

Mr. André Piché: In fact, the Commissioner of Competition herself indicated that her role is to ensure the implementation of the current act. Many issues go beyond that and could be addressed by Industry Canada, such as how this particular sector operates and if certain measures should be followed as a result.

Mr. Paul Crête: If you ever have any documentation on that, please forward it to me. I would be very interested in asking the minister if he is prepared to follow up on your request.

[*English*]

The Chair: Merci, Paul.

Oh, did you want to add something, Mr. Addy?

[*Translation*]

Mr. George Addy: I am not sure if you know, Mr. Crête, but at one time the Competition Act contained a section allowing this kind of investigation. It was section 79. In fact, for four years, I was counsel to the then commissioner during a study on the oil and gas industry. This section was repealed. The last time the legislation was updated, I think witnesses addressed this issue. I am not sure, but I believe the conclusion was that the minister had the power to ask the CITT, the agency that would conduct an investigation. Or so I recall. I am being told that it was the Governor in Council and not the minister.

Mr. Paul Crête: On the recommendation of the Minister of Industry or any other minister?

Mr. André Piché: The proposal presented during consultations was that a recommendation be made to the Minister of Industry who could ask the CITT, the Canadian International Trade Tribunal.

Mr. George Addy: Then, the fact that this responsibility lies with an agency other than the Commissioner of Competition would prevent what Mr. Piché referred to as overlapping duties in the legislation Ms. Scott has to enforce. This would allow an investigation of the overall state of competition, irrespective of any charges.

Mr. Paul Crête: To your knowledge, does this power currently exist? Does the minister have this power, or should an organization be granted this power? You say that, ideally, it should be an agency other than the one named in the Competition Act in order to avoid that situation. But does this power currently exist?

● (1700)

Mr. George Addy: I cannot say for sure.

You do not know.

Perhaps my colleague remembers. I do not know.

[*English*]

The Chair: Mr. Musgrove.

Mr. James Musgrove: Excuse me, my French is not up to the job.

The Chair: That's okay. Go ahead.

Mr. James Musgrove: Thank you.

My understanding of the law is that the Governor in Council can refer questions of this sort to the CITT. That power exists in law today. When I looked at this question about a year ago, that was the conclusion I came to. If I'm wrong, I'm wrong. But I'm reasonably certain of that.

The Chair: Okay, thank you very much.

Thank you, Paul.

Jerry, and then Brad or Werner.

Hon. Jerry Pickard: Thank you again, Mr. Chair.

I first would like to direct a couple of questions to the Canadian Federation of Independent Business.

This may be an open question to you, but I think it's important to get on the record. Why do you think there need to be changes in the administrative AMPs section?

You have, I think, explained a few things, but really it would be good to have your clear view of why those changes are required for your clients.

Mr. André Piché: Going back to what I pointed out before, during our brief and in 1999, our members are clearly concerned about the state of competition. Any measure that would help provide more rigour in the marketplace is something that's welcomed by our membership.

We also looked at what was proposed by the commissioner and was endorsed by the industry minister as to what's being done in other countries. For all these reasons, we felt that it would be in the interest of our members to have these measures in place.

In terms of decriminalizing some aspects and provisions, it is recommended. We feel it's worthwhile to do so in that the onus of proof is lessened, so it's easier to take action on bad behaviour and use AMPs to do so.

Hon. Jerry Pickard: I have just a very slight caveat, and then I think Mr. Whyte wanted to answer as well.

Would you support decriminalizing without AMPs?

Mr. André Piché: No.

Mr. Garth Whyte: I'll ditto that. No.

Hon. Jerry Pickard: I thought that would be the answer.

Mr. Garth Whyte: I'll just put it in context—and thank you for the question. This is going back 15 years to when we saw the importance of the small and medium-sized business sector grow along with its importance to the economy and the importance of job creation to community development. That's the front end of our presentation. It really is a foundation for a lot of policies you're seeing more and more.

Think back to September 11, and when we made a presentation to the finance committee in March 2002, all the large-firm representatives basically said we were going into a major economic downturn, possibly a recession. Who could have argued with them? Everybody saw what was happening to the stock market. But we came out that day and said we thought there were between 250,000 and 300,000 jobs that weren't being filled. We were wrong: there were 500,000 jobs that year.

Now, that shows you there are two economies. It shows you there's the stock market economy and there's the non-stock market economy. Our procedures and policies have to reflect that, whether we're talking about labour legislation or whether we're talking about competition policy.

And it's important to our economy. There was a diversification there that happened with job creation that kept our economy afloat and moving along pretty well.

It wasn't just small business. Of course there were pockets with larger firms. There's a close relationship. We're not here to beat up on large firms. That's not the issue.

We were watching our members being blindsided, and no one was helping them in certain sectors. We saw them just disappear, and we know because we're only funded through our membership. We had associations from Quebec and Ontario that were being formed by the independent gas operators, and they were asking for our help. GasMart...things were happening in Quebec, where they were selling below the retail price. The people who were supplying it to the independent retailers...and their competitors were selling their gas below the retail price, and the bureau couldn't do anything. We don't have any power.

Then, as you've pointed out very astutely, our members had no access. They couldn't hire a lawyer. They'd just disappear, and it would be a one-off. That gas station at O'Connor and Bank would disappear and then another one would disappear, yet no one was looking at it in a holistic manner, in our opinion.

Then we wanted access to the tribunal, and the concern was—if you remember three or four years ago—you're going to have a whole bunch of frivolous complaints and you're going to be overwhelmed. That was the position of the establishment at that time, but they haven't been overwhelmed. There haven't been a bunch of frivolous presentations to the tribunal to date, and I think you should look into that. I think you should say, how bad was this?

We talk about the AMPs, and these are a ceiling; they're not the requirement. Say it is Microsoft per se; a $75,000 fine for Microsoft is nothing; it's actually worth it; it's R and D for these companies. You might have to raise it so it makes it worthwhile for them to think about it. That's important.

The other thing is, I would like to come before this committee with respect to a paper burden committee I'm co-chairing with the government.

If we study regulation and public choice theory, we find a lot of the regulations weren't put in place by government; the regulations were put in by large firms to keep competitors out. Sometimes it's in their interest to keep the status quo. Why would you want to change things? It's working well. Don't change the Competition Act.

Some of the concern has been there. I think we have to change it a bit and modernize it. We're supportive on a lot of things.

I am concerned about the deceptive marketing side, I must say, the restitution side of it. I think there need to be more clarity and accountability and guidelines need to be put in place there.

● (1705)

The Chair: We'll let Monsieur Pickard follow up there, Mr. Whyte.

Hon. Jerry Pickard: I just want to go off on one other question I think is critical to this committee, and that is that the Chamber of Commerce claims to represent small and medium-sized businesses, as you do too, but the Chamber of Commerce has a very different position from the one you have. Can you explain that?

Mr. Garth Whyte: I can, from my point of view—and you know, where you stand is where you sit, right?

We work very closely with the Canadian Chamber of Commerce. We have many crossover members. Many members of our organization are members of the Canadian Chamber of Commerce. As a matter of fact, there are three levels in the Canadian Chamber of Commerce. There's the local chamber—and many of them are our members—the provincial chamber, and the national chamber.

The national chambers come here, and they have a committee made up of competition lawyers who are experts in this area. There would be apathy from their small business members; they'd be apathetic towards that particular committee. It would be set up by the experts, because you really don't care about the competition bureau or the Competition Act until you're about to go out of business or you're being unfairly competed with. Our members don't have to worry about the Competition Act until they're being hit by it. So that's one of the disconnects.

With the chamber, they have a broader base. They have a lot of large firms and a lot of small firms in their constituency. So this would be seen as a large firm issue, in my opinion, not a small firm issue.

We surveyed our members on this thing. We worked with the committee, the department, and the bureau and did a question. But it wasn't just a question: should the act be improved? We gave what supporters said and what opponents said. We vetted it through experts, through some people on this committee, and the minister and the department. Everybody said it was fine, and we got a vote saying we think the act should be changed. We know that. We know that just by our members.

The other thing is....

Sorry, I'm rambling on.

The Chair: I want Mr. Addy to get in before Jerry's time is up.

Mr. Garth Whyte: But we represent independent business. Every one of our members is a business owner, and for business owners, it is a lot bigger issue than it is to people who are not business owners.

Hon. Jerry Pickard: Can I ask Mr. Addy a question before my time is up?

The Chair: Yes. He's going to answer this one, though.

Hon. Jerry Pickard: Okay.

The Chair: Mr. Addy, you're next, but Jerry is going to ask a question of you. Let him ask the question, and then maybe you can wrap both into one answer.

Thank you, Jerry.

Hon. Jerry Pickard: My question has to do with the way the bill is presently drafted. The tribunal does not have to impose administrative monetary penalties. It says they "may" in appropriate circumstances.

Here we are, and if we're talking about $10 million and we have a reasonably logical tribunal group sitting and making a decision, should they not have latitude to make the appropriate conclusion if a larger penalty is required, or have no penalty if they feel that it was frivolous or a mistake, or whatever? I think we need to leave to the professionals the opportunity to make the appropriate decision and not pull out everything from the top level where they see egregious effects.

The Chair: Thank you, Jerry.

Mr. Addy.

Mr. George Addy: Just to pick up on some points that have come up in relation to small business, I have two comments there. I don't mean to be unfair to Mr. Whyte, but small businesses do breach this law. It isn't just big business. There have been land surveyors, car windshield repair firms, and snow removal contractors. So it's not just that small businesses are victims; consumers are victims of activities by small businesses as well. I don't think we should lose sight of that.

Secondly, I want to pick up on this issue about direct access to the tribunal. My friend is correct that when they were proposed, there was some opposition to that. I appeared on that occasion as well.

I raise that because I think my prediction was right, because I was asked, "What objection do you have, Mr. Addy, in providing this tool to small business for relief?" I said, "Go ahead; nobody is going to use it". When you go back and look at the private access to the tribunal, which your analyst can do, look at what cases have taken place in the intervening years. There's nothing there.

When I appeared before this committee at that time, I said that was not the right fix. I'm not sure what the fix is as to how you ensure that small business complaints are dealt with efficiently and don't automatically go to the bottom of the pile. I just want to address that point, that what Parliament thought was a fix the last time was not.

● (1710)

The Chair: Thank you very much, Mr. Addy.

We'll go to Brad, and then we'll have a—

Hon. Jerry Pickard: Mr. Addy didn't answer the question.

On the requirements of the tribunal, they do not have to impose them. They are given tools to work within, or a framework to work within. They look at all the testimony and judge each case appropriately, I would think, the same as any other legal system. Why is that not the appropriate way?

Mr. George Addy: I'll be brief. I come back to my basic premise that abuse of dominance is not, per se, wrong. It's only those exceptional cases that are presumed wrong. I'm worried about the chill. People will become so risk-averse that they won't engage in activity that is pro-competitive. That's my concern.

The Chair: Thank you, Mr. Addy.

We're going to go to Brad, then Werner had a dangling question at the end of his first intervention.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): Werner always has questions left.

Mr. Addy, toward the end of your testimony, you were roughly where I'm going on my question. What is the solution to some of these problems?

I've listened to the CFIB and heard their frustrations, but I look at the AMPs and I'm not sure they're going to necessarily solve their problems, assuming we do decide to go that way. I hear fears there, but I'm not sure if AMPs solve that. I'm hearing, of course, that AMPs are causing that problem.

When you were talking earlier, you were talking about how we have no ombudsman. We have nothing for bringing real access to the situation. We have the tribunal, but essentially no one uses it.

I'll start with the CFIB. These penalties may be there, but they may not help at all. Those might be numbers. If they're not enforced, if there's no access, do you have some ideas about what would give more members more access if they see a complaint? Would it be an ombudsman type of thing? One of my colleagues here suggested maybe the ability to grant intervenor status to organizations such as yours.

What I'm hearing from you—and correct me if I'm wrong—is that your problem is that we're not hurt. It's not just the size of the penalty, it's that we cannot bring our cases forward in a reasonable way. We're killed by the lawyers. We're killed by the red tape. We're killed by our complete lack of knowledge about what's going on. We don't call the firemen until the house is burning, and then it's too expensive.

If my analysis is incorrect, correct me. Start there. I'm looking for solutions that are more than just pro- or anti-AMPs.

Mr. Garth Whyte: Right, and there's no easy quick fix. It's a very frustrating target group, in that you can do everything they ask and they still will not use it. I think it's important to point that out.

I couldn't agree with you more, George, and with some of the comments you made. I like the idea of an ombudsman. I like the idea of intervenor status. But I think we should note that some things are already working.

I take exception with Mr. Addy when he says no one will use it. I liked what he said at that time, because most of the people would say that when you have access to the tribunal, you're going to be overrun. It turns out that they weren't overrun, but I should point out that since June 21, 2002, there have been nine notices of application for leave filed directly with the competition tribunal. We heard there was only one before that.

So the first argument I would make is an argument on incrementality. At one time, people put all the things they wanted in a bill and it was easily defeated. Every time something was put forward, “Here's our wish list...”. We don't have a wish list.

Our objective is not to harm large firms, by the way. we are stridently pro-competition. People know that's not our objective. But we do want to see some improvements. Access to the tribunal, which was fought vehemently, has now been passed, and do you know what? We think it has been a good thing. I think it takes awhile for people to understand what's being done. There's an awareness campaign that needs to be put forward. We don't want to drum up all sorts of frivolous cases, but I think it's important.

I think this definitely isn't the next silver bullet, but these four recommendations are some of the things that improve the bill. I think they're another nice next step. There are some things we'd have to work on with the bureau and with experts in order to really assess how severe some of these problems are and how we can deal with them. But right now I think just the access to the tribunal took a lot of the pressure off of people who felt they didn't have an opportunity to go forward. At least they feel they have that opportunity now.

I do think some of the suggestions you've made on the ombudsman are a good thing. I like the idea of improved accountability and transparency. I like the idea of clarity if we can get that. But I again have to go back to some of the points this committee has pointed out. This is a ceiling in terms of a penalty. It's not the requirement.

André.

● (1715)

Mr. André Piché: Just as a final point, I think it's the signal that you send. If you go ahead with this bill, you make some improvements in the way the Competition Act functions. That is a very positive development as far as all SMEs across Canada are concerned, in terms of how they look at the government and the way it provides them with the rules of the game that they should have.

Mr. Bradley Trost: Would any of the other gentlemen here like to respond? I'm looking for ideas.

Mr. George Addy: I think you can start from a clean slate, frankly, if it's a question of having some means of ensuring that small business is given some priority within the enforcement agenda with the commissioner's office. I don't know if you'd call for them to create a small business branch within the agency that would be completely focused on the issues around it. I'm not sure what the answer is.

On Mr. Whyte's point about the applications filed, I haven't looked at the state of the record yet, but I think a lot of them got turfed. Four were thrown out. You have to look into that a little more deeply.

Mr. James Musgrove: Can I just make a comment very quickly? We're facing flashing lights, I see.

[*Translation*]

Mr. Paul Crête: We have to go vote. Some of us are in a bigger hurry than others.

[*English*]

Mr. James Musgrove: I'll go very quickly. The AMPs on abuse of dominance and the AMPs on the advertising side—and I'm here with an advertiser hat on—are quite different things with quite different implications, and I urge you to give thought to that as you go through this.

The second thing, by way of solutions you're looking for, is in our submissions you'll see that we think the real problem is not that a bigger hammer is required. The real problem is, if you look at the Sears case, it took six years from the advertising to the decision. Some way is needed to resolve these cases that aren't federal cases. This is misleading advertising. It's not rocket science. Get some quick answers to these cases. Don't have a big hammer, just resolve the thing quickly.

With another hat on—not the ACA hat—I've written an article as to how that could be done. So having a creative solution on the advertising side is my personal suggestion.

Mr. Bradley Trost: Maybe, as Werner will say, we need smart regs for competition.

Does someone else want to answer that?

● (1720)

Mr. Garth Whyte: No. I thought that was a good idea.

Mr. Bradley Trost: The other thing—I believe it was when the Chamber of Commerce was in front of us, and you also touched on it, so I roughly have your view now—is incrementalism versus doing it all in one shot. My understanding—and again I'm the rookie member who's not the lawyer or the expert on this—is that there are going to be other changes made in the future, and other legislation built on this. I would like a little bit of an overall feeling about incrementalism versus doing it all in one shot. If we change the AMPs now and decide to go ahead with that, how could that affect future changes? The great unknown is there.

I've heard a little bit there. Take the lead, and if they want to come back there, go right ahead.

Mr. George Addy: I'll be brief, Mr. Chairman.

The Chair: Then we're going to have a short question for Michael and a short question for Jerry.

Mr. George Addy: I think the problem with incrementalism is your ability to thoroughly understand and balance the trade-offs. That's the risk you run. I will admit that when I was in Ms. Scott's position, and I think Mr. Manley was the Minister of Industry at the time, we initiated a review process. I was out there at the front saying we should have a continuous improvement type of approach to the legislation. Frankly, in hindsight, I'm not so sure that's the right model. I think we're losing sight of the trade-offs and the balancing that has to take place between various provisions within the legislation.

The Chair: Are you okay with that, Brad?

Mr. Bradley Trost: I'm okay if no one else wants to comment.

The Chair: Respond very briefly then, because we're under some pressure.

Mr. James Musgrove: I forgot to mention when I was answering the other question that in our submission we also talk about the Advertising Standards Canada process that deals with these consumer complaints. That is a very good and effective model. It works well and may not be well known on Parliament Hill. I just wanted to flag that again.

The Chair: Michael.

Mr. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

My question is for Mr. Addy. But before I go to Mr. Addy, I want to say to Mr. Musgrove that two of his colleagues are friends of mine: Bob McDermid and Erik Penz.

The Chair: Is that a good thing or a bad thing?

Mr. Michael Chong: It's a good thing. If you could say hello to Mr. McDermid for me I would appreciate that.

Mr. Addy, I have two very quick questions. When you were at the competition bureau, roughly how many cases per year were prosecuted criminally, and roughly how many cases a year were reviewable?

Mr. George Addy: The statistics are there in the annual report. I really can't recall. Sorry.

The Chair: Jerry, you have one minute.

Hon. Jerry Pickard: Thank you very much, Mr. Chair.

Australia, the European Union, the United Kingdom, and France all have very high levels of monetary penalty that can be imposed. Has a chilling effect been noted at any place? I hear the idea of a chilling effect, but I see absolutely no evidence from any of those effects. Where is the evidence? What has happened where they have been imposed at high levels?

Mr. Robert Reaume: Are you speaking of monetary penalties for abuse of dominance or for misleading advertising?

Hon. Jerry Pickard: Both. You're saying a large penalty creates a chill. At least that's what I heard from Mr. Addy. Am I wrong on that?

Mr. George Addy: No, that's correct.

Hon. Jerry Pickard: Wherever it goes, it creates a chill. So I'm asking, where is the evidence?

Mr. Robert Reaume: There are large penalties in the United States for criminal activity with regard to misleading advertising, but they don't have a civil track. Much of the misleading advertising is dealt with by the NAD in their self-regulatory process.

Hon. Jerry Pickard: There are civil suits in the U.S.

Mr. Robert Reaume: Yes.

Hon. Jerry Pickard: That is a civil track, and it's three times—

Mr. James Musgrove: That's right, and we have a civil plaintiff's track, too. We're talking here about a strange animal, a government civil enforcement, and that's what the American's don't have on the advertising side. They just don't do that.

Hon. Jerry Pickard: But where there are AMPs, I asked you to give me any evidence you have of a chilling effect. That's your basis of argument that I've heard. I would like to know where it comes from and how it is. It was consistent with the chamber, it was consistent with Mr. Addy, it was consistent with you, but I have not seen one iota of evidence to show that.

The Chair: Thank you, Jerry.

We'll have quick comments from anyone, and then we're going to adjourn.

Mr. George Addy: Mr. Chairman, it's sort of like, do you still beat your wife? It's that type of question. I've been practising in this area for 30 years. I've advised clients and I've sat in boardrooms and seen decisions made, and I can tell you without a nanosecond's hesitation that this will chill competitive behaviour.

The Chair: Are there any other final comments?

Thank you, colleagues.

Thank you very much for coming to help us out today.

We have about five minutes to get into our seats. I think we'll make it.

We're adjourned.

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