



House of Commons
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 041 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Monday, February 5, 2007

—
Chair

Mr. James Rajotte

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Industry, Science and Technology

Monday, February 5, 2007

• (1535)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): Ladies and gentlemen, we'll call the 41st meeting of the Standing Committee on Industry, Science and Technology to order. We are here today, pursuant to Standing Order 108(2), for a study on the deregulation of telecommunications.

We have two sessions today. The first is with the CRTC, and the second is with the Department of Industry and the Competition Bureau.

We have an hour with three representatives from the Canadian Radio-television and Telecommunications Commission. The first person we have is Mr. Richard French, vice-chair, telecommunications. The second person we have is Mr. John Keogh, senior general counsel. The third person we have is Ms. Fiona Gilfillan, acting associate executive director.

Welcome.

We have up to ten minutes available for a presentation, and then we'll go directly to questions from members.

Mr. French, I believe you'll be leading off.

Mr. Richard French (Vice-Chair, Telecommunications, Canadian Radio-television and Telecommunications Commission): Thank you, Mr. Chairman.

We're very pleased to be here. We won't be speaking for ten minutes; it will perhaps be three to four minutes.

I'm here to speak for the CRTC.

Our new chairman, Konrad von Finckenstein, has asked me to communicate his regrets to the members of the committee. As you may be aware, he's been in office exactly one week. He's very busy getting up to speed on the commission and his new responsibilities.

[Translation]

He is looking forward to appearing before you at your convenience, once he has mastered the various issues which face the commission. And that will not be long because he works very hard.

[English]

We're very pleased to have the opportunity to join the committee for an hour to discuss the important issues in the turbulent environment of telecommunications. We know the debates you undertake are important in a democracy. In industrialized democ-

racies, the function that we have of independent regulation, carried out within the laws and policies that are the product of responsible government, is also important.

We hope that today we'll be able to help you to frame the issues. As I said, the environment's been a rapidly changing turbulent one for the companies we regulate, for the consumers who use telecom services, for the various public interest groups, and for the CRTC itself.

[Translation]

It is our role to adapt as rapidly as possible to all forms of change, in pursuing the objectives of our act.

[English]

It's what we've been doing, and it's what we will continue to do.

The status of a quasi-judicial tribunal, which is ours, imposes a certain constraint on my candour today. It is incumbent on the commission, for example, to forswear a full participation in public debate. As much as we would like to express our views fully and freely, we can't always do so. I hope the members of the committee will understand that I can't always be as frank and as complete in my responses as you would wish.

The commission cannot, by the words of its members such as myself, bind itself with respect to issues that may subsequently come before it. For example, if I were to be asked my views on something the commission might have to implement or rule upon, I could not express myself in definitive fashion without creating an impression of bias.

[Translation]

However, I want to stress that I will remain available to provide as much information as possible in order to assist members of the committee and instruct them in their reflection.

[English]

We'll do our best today to overcome those limitations and to try to ensure they don't defeat your purposes.

Thank you, Mr. Chairman.

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

We will go directly to Mr. McTeague, for six minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you.

There'll be no comment from the bureau at this point, Chair, until an hour after?

The Chair: Yes, they're here for the second hour.

Hon. Dan McTeague: Thank you, Chair.

Thank you, colleagues for being here today. I wish you didn't have to be here.

First of all, on behalf of my party, I want to compliment you on the work you've done to enhance competition in wireless, the Internet, and long distance.

Of course, our view is that the order was done prematurely, so I have a very specific question for you, Mr. French, or your colleagues.

Given that section 34 of the Telecommunications Act calls for a factual determination of the level of competition, in that we all know market power is crucial in terms of determining how the CRTC can make a determination by counting the numbers of companies supposedly offering services, what if there are three companies, but one has a 90% market share and the others each have 5%? Are you certain the interests of consumers will be protected by deregulating the pricing of the company with 90%, without knowing more under the circumstances?

Mr. Richard French: Mr. McTeague, I think that the taking of a photograph of a market like that might appear to be a very simple answer to the problem of who has market power and who is dominant, but in a dynamic environment like the one we're living with, there are a range of other issues you want to examine. The commission, in its original decision, used a market share parameter along with a number of others. If I may say respectfully, before we can give a fair answer we probably need to have a whole range of other information. Quite clearly the question of market share, while not irrelevant, can't be the final determinant of whether or not significant market power exists.

• (1540)

Hon. Dan McTeague: The issue of forbearance in the market has often been a question that most have assumed might come at some point down the road. I've spoken to many in this industry, consumers and people on both sides of this equation, who have wondered quite rightly what impacts this will have after we have prematurely or hastily rushed to this order.

In your view, what will it mean in the long term—if you could give a snapshot—if we only have at least two of the former monopolies reasserting their market share without an opportunity for others, the CLECs, from coming back in or being given an opportunity to at least have a foothold in terms of competition? Do you see the future of local telephone as positively as we've seen with the CRTC's intervention in the three other areas I've identified?

Mr. Richard French: Well, I don't share all of the premises of your question, Mr. McTeague.

I recognize that the incumbent telephone companies will be formidable competitors. I must note that the rapidity with which they have lost market share in those areas where major cable companies are offering voice-over-Internet protocol gives me reason to be optimistic about the vitality of that particular competitive pairing. Whether or not other players will come into the marketplace I think is an important consideration and not one on which any of us can necessarily see clearly enough into the future.

Perhaps I'd just make a neutral observation that doesn't come from the commission, but in placing the forbearance scenario traced out by the commission in its decision, and comparing or placing it beside the draft order in council, the financial analysts have asked themselves if it would result in faster forbearance, greater or less competition. They've suggested that forbearance would be advanced by a matter of six to ten months under the order relative to what it would have been under the original CRTC decision. I guess we have to ask ourselves whether those six to ten months in the major markets where large cable companies are presently competing represent a major danger to the vitality of competition or not.

I really don't feel I can go much further, because it raises issues the commission may find itself grappling with in the coming months.

Hon. Dan McTeague: I'm wondering if you have been aware in the last year or so of Bell Canada having raised the telephone rates some several percent in terms of its requests in the past. This is supposed to be a boon to competition, and yet I understand there has been an increased rate. Is this correct?

Mr. Richard French: Are we talking about local service rates?

Hon. Dan McTeague: Local service rates in the past year and a half.

Mr. Richard French: Fiona is going to correct me, but Bell Canada has proposed to us a change in the structure of their local rates, the effect of which would be to reduce the cost of initially bringing in Bell Canada service and to increase slightly the regular monthly rate to compensate for that reduced service charge. The commission, to the best of my knowledge, has not yet made a determination on that application. It is argued that the proposal is revenue neutral, and we'll have to look at it in that regard.

Hon. Dan McTeague: There was an increase of 7% in 2006 on application. Is my understanding correct that you've approved that increase?

Mr. Richard French: Not to my knowledge.

Hon. Dan McTeague: Let me sum this up. There are decreases and increases that could take place. The current rules, however, certainly suggest a more inviting environment. I'm wondering, if the increase does not take place or there is no 7% increase across the board for local telephone rates, perhaps you could clarify in the next minute or so, or to other questioners, as I understand my time may be running out, whether or not in fact there is an application before you for such an increase.

Mr. Richard French: There's an application before us that wishes to remove the service charge associated with either connecting or reconnecting with Bell Canada, and I guess also with Bell Aliant, and to add to the money that they would have earned that way a small increment in the local rate of something like 80¢ a month. It's purportedly a revenue-neutral proposal. That's the only increase in local rates of which I'm aware.

• (1545)

Hon. Dan McTeague: Is that revenue neutral for consumers?

Mr. Richard French: Yes; you take the quantum of money forsworn by the service charge and add it to the monthly rate.

The Chair: Thank you.

Monsieur Crête is next.

[*Translation*]

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

Thank you, Mr. French. I agree with you that this is a very important process for democracy. We are taking steps today, and I hope that we will put an end to the minister's blundering in this file.

What exactly has changed in terms of the decisions the minister has made since June 13 regarding the guidelines and the consultation periods?

Mr. Richard French: Are you referring to market prices and activities?

Mr. Paul Crête: No, I am talking about the regulations, the impact of the June decision and the December decision. What impact are these decisions having? Are they effective or not?

Mr. Richard French: Briefly, there was a change in the access-independent VoIP services regulations. I must say that this a fairly minor change in daily terms.

The CRTC must respect the various elements of the guideline we received. For example, we implemented a procedure over an 18-month period, which represents a great deal of work. The purpose of this procedure is to revise the overall regulations for incumbent telephone companies and ensure that their competitors have an opportunity to take advantage of their overall network. This process is the result of the panel's report and the minister's response to that report. We began an ongoing process in cooperation with the Competition Bureau. You can talk to the woman responsible for this subject.

Basically, we are taking our cue from the panel's report, the minor change to the regulation on VoIP, and management. There is clearly a lack of enthusiasm and support from the minister with regard to the CRTC's activities, which seeks to guide the market so as to promote competition.

Mr. Paul Crête: To this end, Mr. French, subsection 34(3) of the Telecommunications Act forces the CRTC not to refrain from regulating:

[...] if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

How do you balance this legal requirement with the minister's order?

Mr. Richard French: We do not believe that the minister's order clashes with this aspect of the legislation. The minister's order takes a different approach from the approach taken by the commission as evidenced in its decision. However, another section of the legislation gives the governor in council the power to issue such a directive to the CRTC.

I am unable to tell you whether we have concluded that the evaluation of local services deregulation criteria set out in the order in council which is still being developed—

Mr. Paul Crête: Consultations on this were held from December 15 to January 15?

Mr. Richard French: Yes.

Mr. Paul Crête: So, the minister has yet to make a decision on this matter?

Mr. Richard French: No final decision has been made.

Mr. Paul Crête: It is not yet in force.

Mr. Richard French: No.

Obviously, we will examine its legality, but I would be extremely surprised if we were in a better position to make this decision than the elected government. I must stress, Mr. Crête, the importance of accountability with regard to an elected government.

● (1550)

Mr. Paul Crête: Do decisions now being made, which are being made under one aspect of the legislation, not change the rules of the game or ensure that the Telecommunications Act operates in a sort of vacuum?

Mr. Richard French: The Telecommunications Act was written in sufficiently generous terms to leave sufficient room for interpretation. Historically, the CRTC has benefited from sufficient latitude from successive governments of various political stripes to interpret the legislation as it sees fit.

This no longer seems to be true, but this is consistent with the Constitution and the statutes.

Mr. Paul Crête: At present, do you believe that the rules of the game are clear for industry?

Mr. Richard French: To the extent that the order in council is not complete or made public, it is somewhat vague. Does this vagueness create a significant problem or encourage certain individuals to reconsider their investment plans, based on what they've said? You will convene them and hear from these witnesses. They will tell you.

Mr. Paul Crête: Did the CRTC issue a notice about this consultation?

Mr. Richard French: The CRTC was not invited to issue an opinion, since this concerned a review of the commission's decision.

Mr. Paul Crête: However, between December 15 and January 15, you could have decided to issue a notice on your own initiative.

Mr. Richard French: Technically, that would be possible. I will ask our legal counsel.

We cannot say, since the government can return decisions to us without further information. It can amend these decisions or not. We cannot get involved in these decisions before receiving a final version.

We must not compromise our freedom to reinterpret our own decision in light of a decision being rejected, without a specific comment from the minister.

Mr. Paul Crête: This could be a contradiction of section 34 of the act, for example.

[*English*]

The Chair: Monsieur Crête, they'll have to answer that in the next round.

We'll go to Mr. Carrie.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chair.

I'd like to thank you very much for coming here today.

I would like to clear something up right at the beginning. In the last session we had here in committee, certain members of the opposition were saying that we're pushing forward too quickly and perhaps improperly. We even had one member say, "You have the possibility here of an illegal action by the minister who has used his order-in-council powers in order to subvert parts of the Telecommunications Act."

I was wondering, with regard to the policy direction and the process, if in your opinion the minister acted properly.

Mr. Richard French: With regard to the policy direction, let me first be honest and say that the minister and the government would have to do something very flagrant for an agency such as ours to conclude that it was somehow improper. The fact that I don't regard it as improper may not be a guarantee of its wisdom, but it's a guarantee of its constitutionality, and that I can say with respect to the policy direction.

Mr. Colin Carrie: All right. Thank you very much.

With the change, do you still see yourself as the number one regulator? We got the impression that it seems that we're making these drastic changes with this policy direction. Do you still see yourself as the number one regulator?

Mr. Richard French: Mr. Carrie, we have certain statutory responsibilities that we carry out, and the Governor in Council has certain prerogatives with respect to our responsibilities that he can choose or not choose to exercise. It is our job to either conform to those statutory and constitutional requirements, or, if we feel as responsible people that there's something fundamentally wrong, to resign. That's the option that a member... I'm not talking about my colleagues who are public servants. I'm talking about me and my ten colleagues who are commissioners, the members of the commission.

If we felt in our hearts that somehow we were no longer pursuing the public interest in an appropriate way because of things that are legal but ill-advised, we'd resign.

I don't know if I've answered your question. I hope I have.

Mr. Colin Carrie: That's good.

Has the policy direction in any way taken away your ability to regulate?

Mr. Richard French: It has substantially reduced the choices before us, but that's in conformity with the Constitution and the statute.

•(1555)

Mr. Colin Carrie: If these proposed changes do occur, can you still do your job as a regulator?

Mr. Richard French: I think we would consider the changes when they arrive and ask ourselves that question, but at the moment I don't see a reason to say we could not do our job.

Mr. Colin Carrie: At the CRTC, how do you go about implementing change? What is the process?

Mr. Richard French: As a quasi-judicial tribunal, we have certain framework requirements that come from the law and jurisprudence of quasi-judicial tribunals, our particular acts, the

requirements of natural justice, and the requirements of the judicial review process under which we are subject to the Federal Court of Appeal, and we try to observe all those. We therefore try to have a procedure—and you appreciate that I'm not a lawyer, but the lawyers among you will agree—and requirement for the opportunity for everyone to know what's on the table in order to have sufficient time to respond effectively; to understand how they respond; to make comments on the responses of others; and to be assured that the people who make the decisions are unbiased and untainted. We have all those requirements that the energy board or any range of other administrative tribunals would have to meet.

Is that a fair way of responding to your question, or is there something more detailed that you'd like to know?

Mr. Colin Carrie: No, that's very good. Thank you.

We notice that with these changes, some companies seem to be happy with the changes, and some people aren't so happy with them. Overall, with the players that are in the market these days, would you say these companies can compete on their own, or do certain companies out there need the protection?

Mr. Richard French: That's a pretty vague question, Mr. Carrie, with the greatest respect. There are dozens and dozens of companies out there.

Mr. Colin Carrie: What about the major players?

Mr. Richard French: I said before that the major cable companies that have offered VOIP products are, as one can see by reading their marketing and financial reporting, very pleased with the performance of their voice-over-Internet products. If we look at the data, we can see that they are making rapid incursions into the marketplace historically dominated by the incumbent companies.

We could give you data if you're interested, or leave it with the committee. Those data suggest that the market share of competitors, in the twenty months from December 2004 to August 2006, tripled to about 11% or 12%. That's a rate of change that, if it occurred in the beer industry, in the entire marketing apparatus of all the beer companies, would see everybody fired overnight. It's a very rapid change in market shares by the standards of most businesses, and certainly by the standards of the telecom business.

I'm talking about residential, Mr. Carrie; I'm not talking about business markets. I said it's where the cable companies are competing, and they're not competing in the business market, generally speaking.

Mr. Colin Carrie: I'm curious. What is the CRTC–Competition Bureau working group? What have they been working on? Could you explain that to us?

Mr. Richard French: In a way, we're going to have to hand the ball off to our colleagues in the Competition Bureau. I think it's fair to say that we both hope there will be legislative amendments to our respective legislation that will clarify that hand-off and make it more effective, but we've been working together in the absence of those changes to try to ensure that we understand their position, and they understand our position.

They recently published their draft information bulletin on the abuse-of-dominance provisions as applied to the telecommunications industry. That was in September 2006. It was fully their responsibility, but it was the product of long conversations with us. We tried to benefit from their knowledge of competition law and economics and they tried to benefit from our knowledge of the telecommunications industry and the technological implications of different forms of anti-competitive behaviour or potentially anti-competitive behaviour.

The product is, I think, a much more solid relationship than historically had been there, and we hope—and you can ask Ms. Scott—that the legislature may, in the medium term, help us to clarify our relationship even more. There are some problems of *arrimage*, some problems of relationship between the two laws.

Mr. Colin Carrie: Thank you, Mr. French.

The Chair: We'll go to Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you, Mr. French and panel, for attending today's session.

Minister Bernier has had an interesting record with the CRTC in the past year, to say the least. He has called on the CRTC to reverse some major decisions on voice-over-Internet protocol. He has proposed an executive direction to the CRTC. He has introduced a bill replacing the CRTC's proactive power. He has also proposed a cabinet order that would lead to premature deregulation of the local telephone service.

I'm not asking you, Mr. French, to comment with your opinion on it, but in comparison to that of previous ministers, how would this activity relate in terms of their interaction with the CRTC to this current situation?

• (1600)

Mr. Richard French: I think, speaking as someone who's been knocking around this area for 20 to 25 years, there is no precedent for this degree of initiative on the part of the political executive.

Mr. Brian Masse: I want to understand about your decision on a voice-over-Internet protocol. Can you explain to the committee a little bit how you go about the process to come to that conclusion? My concern is that it was a pretty significant step that he called for in reversing that decision. Can you provide what the parameters are of the CRTC when you do make a decision such as that?

Mr. Richard French: I was not a member of the commission when the initial decision on voice-over-Internet protocol was made, but I've read the decision. The commission at that time asked itself, is voice-over-Internet protocol a new service, or is it a new technological fashion of delivering an old service to local telephony? It concluded the second, and it said that given that it was sold as local telephony, that it was understood by the customer to be local telephony, that it was, as it were, transparent to the customer—who picked up the phone and dialed it exactly the same way and got the same kind of service with possibly some additional features—then, to the extent it was offered by the former monopolies, it should be regulated as local telephone service. That was the initial VOIP decision, for the reason I've stated.

There have been two or three subsequent chapters. I don't know if you want to go through them. The basic premise was at that time—

we're talking two and a half years ago—the VOIP product offered by competitors had not made major incursions into local service, and the commission felt it was important that the VOIP product be regulated as local service, just like standard circuit-switch telephony.

I hope I've answered your question.

Mr. Brian Masse: You have. Just a further question about that process, though, the commission uses researchers, legal experts—there's a whole bunch of background—

Mr. Richard French: There is a large and complex process of canvassing of opinions of a systematic nature with a series of dates so that everyone submits their own view. The commission can ask questions of the people who submit their views, and these people have to answer those questions, all in public. Other parties can comment *inter se* on other people's views, and we do our own analysis of all this material. It's a record, just like a judicial record. We then analyze it and make recommendations to the commission. The commission debates the issue. It probably votes. It did in that case. There were dissents, so there were some members of the commission who felt differently than the majority. Then we finalize the decision, translate the decision, and that process will take nine months, twelve months, fourteen months, depending on the depth and complexity of the issue.

Mr. Brian Masse: It is important to put that on the record, because, unlike the CRTC, the minister can make policy on the fly and is not held to the same account. That is where the criticism of the minister is, in the sense of violating the act, or at least the spirit of it, with regard to calling for the reversal of decisions and in tabling some of the legislation.

If I can, I'll move quickly to another question I have with regard to a different subject. On the ombudsman position, about the office, what is the status of that? Is it going to be created, and how quickly can it be done? I have grave concerns with the issue over deregulation and this not being in place, as well as with the consumer protection rights aspect.

Mr. Richard French: Mr. Masse, we receive thousands of complaints about telecommunications services a year. The provincial consumer offices receive thousands of complaints a year, and the various NGOs who work in support of consumers receive thousands of complaints a year. The commission in its decision on forbearance proposed to the industry that the industry, with forbearance in view, should establish its own telecommunications ombudsman and should finance it in the interests of ensuring that it, as an industry, effectively serves consumers.

We are not well equipped to respond to those complaints. The provincial consumer offices are not well equipped to respond to those complaints, and the NGOs, goodness knows, don't have the financial resources or the personnel to respond to and follow up effectively on those complaints. So we are strongly of the view, as a commission, that either a government-established or an industry-established, or some combination of the two, telecom ombudsman would be a highly desirable thing.

• (1605)

Mr. Brian Masse: Do I have time for a quick question?

The Chair: You're running out...but one more question.

Mr. Brian Masse: With regard to the Bell issue that Mr. McTeague raised, I have a concern to express to make sure I understand it correctly. If they're going to reduce their original fees coming in, if they are going to tag that on to an annual bill that would happen every single month, I don't know how it could be revenue neutral. I'm just concerned about that aspect of—

Mr. Richard French: Mr. Masse, I can well imagine how you can't imagine it's revenue neutral, but believe me, it's something that we do in our industry regularly, and I don't claim to you that we get it to one dollar, totally, precisely.

The real issue here, to be honest with you, is that people who don't move are going to be subsidizing people who move often. That's what's going to happen in that deal. It's not that we'll be able to calculate the total amount of money they make and make a trade-off that will be fairly well controlled, but the issue is the one I've just stated.

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

The Chair: We'll go to Mr. McTeague again.

Hon. Dan McTeague: I may just ask Mr. McCallum at the end... for a split second. I think he has one small question.

I'd like to follow up on that last point, Mr. French. I don't want to belabour it, but I am concerned. Our understanding is that the increase was for all phone customer services and that it was not revenue neutral for loyal, existing customers whose rates are going up. It would appear that they've also increased, at the same time, business rates, including that of the Government of Canada, by 10%.

I'll leave that, because I think the real issue that is of great concern to us is that normally, in the past, section 34 of the Telecommunications Act calls on the CRTC to find as a question of fact that competition is sufficient to justify forbearance in any given situation. Given that you've been removed, and to use your words that there's no precedent for this removal from the equation, how are we then to determine whether or not forbearance can in fact take place in the retail pricing structure of a company? How are we now going to do it? We've removed our eyes, our ears, our ability to see what's happening. We've thrown this over to the Competition Bureau, which will be another question I have. How do you expect to be able to do this? Is there a chance of reversibility if this is wrong?

Mr. Richard French: Mr. McTeague, you're referring to the proposed order in council. There are basically two tests, but it's clear that the one test is the one that constitutes the body of the innovation. Basically, that test says that where there are three facilities-based telecommunication providers, including one mobile wireless provider, which are independently owned and which offer residential local exchange services throughout the market, then that market can be forborne. That is the test.

The business test is slightly different, and perhaps I may, just in passing, note that we're troubled by the draft business test, which we feel will leave us with very substantial questions as to how we're going to implement it. I'll just note that in passing.

Hon. Dan McTeague: If I happen to have, as my earlier question alluded to, 5% of the market and the other one has 95% of the market and wireless is simply making its foray, that would be accepted under that test, 95%, 5%?

Mr. Richard French: Yes. With the greatest respect, the market is not a market for stand-alone services. More and more, the market is a market of packaged services. So what I want to do is this. I want to get cable, I want to get high-speed Internet, I want to get my television, and possibly my wireless from the same company. That is the nature of the business, because you're going to incur customer acquisition costs. Instead of incurring them for one stand-alone product and the revenue stream that's attached to the single stand-alone product, you're going to get three products and three revenue streams associated with that. So more and more, the consumer is going to be looking at packages.

It is, I think, intuitively obvious that at the moment the major cable companies have a television product and the major telephone companies do not have a television product. So I suggest to you, respectfully, that though the market share may appear very impressive, the major entrants, the major cable companies, are well equipped to compete in this marketplace.

Hon. Dan McTeague: Then why is there the decision on local forbearance? It almost sounds as if you're supporting what the government is doing.

Mr. Richard French: I'm not here to support either. I'm trying to provide you with as many facts as I can, and I don't wish to try to persuade you of the validity of one point or another.

Hon. Dan McTeague: Then, Mr. French, perhaps you could give us a description of this new bundled market. What is that percentage across Canada today in the urban-rural settings, and do you have a market breakdown from region to region?

• (1610)

Mr. Richard French: I can only give you the breakdown in terms of the voice-over-Internet product. And let's be clear that we're talking about five companies—Cogeco, Vidéotron, Rogers, Shaw, and EastLink. EastLink's product is not a voice-over-Internet product, but it has a very high competitive market share.

In the areas served by these major cable companies, we're looking at a market share in August of last year of 11.8%. That market share in December 2004 was 3.5%. That's a dramatic change, sir. So that's the kind of growth of that competitive market we're looking at.

Now, it has occurred under the current regulatory framework.

The Chair: Mr. McCallum, did you want to go now?

Hon. John McCallum (Markham—Unionville, Lib.): No, I won't go.

Hon. Dan McTeague: In light of the order in December, you've had consultations with the Competition Bureau on how to settle this regulatory imbroglio. That's my word, so you can obviously change that. How's that coming along?

Mr. Richard French: I haven't been directly involved in those discussions, but you'll be hearing from Sheridan Scott, and I think she's probably in the best position to give you the response. From our point of view, it's been extremely educational, because we've been able to access a lot of competition economics expertise that we didn't have ourselves, and that's been very helpful.

Beyond that, I'm not sure exactly how much more precise I could be, because, as I say, there will be and there remain ambiguities resulting from the fact that the two laws were not written with a view that they should intermesh perfectly, and therefore they do not intermesh perfectly. Therefore legislative amendments would be helpful.

The Chair: Thank you.

We'll go to Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman.

Thank you, Mr. French, for coming out.

I have just one comment on principle. In terms of regulations and regulatory legislation, would you make a comment to me on where you stand in terms of regulations? Do you support that regulations need to be put in place for pretty much most things? Or do we wait to determine through a process that we have regulations, knowing that there are areas out here in which there likely aren't going to be problems, and then regulate those if there is a problem? Or do we just lay out the regulations right off the bat?

Mr. Richard French: Mr. Shipley, I want to say first that the interpretation of our act suggests that we do not have, in relation to telecommunication rates and services—and John will correct me if I'm wrong—the option of saying let's wait and see what happens. We have, in fact, an *ex ante* regime in our act.

If you ask me more generally, I can only say to you that there are 11 members of the commission. They each have an opinion. I'm not allowed to express my own, and I don't want to try to express theirs.

Mr. Bev Shipley: Okay, I have a comment about regulations. There's obviously been some discussion about the reason we're here. They need regulation and the minister's direction. In terms of regulations, do you have a comment about where regulations will enhance or deter or have no impact on competition?

Mr. Richard French: I'm sorry, could you help me with that?

Mr. Bev Shipley: I guess I'm just asking whether the more regulatory the legislation is, the more negatively that affects competition.

Mr. Richard French: Here's the counterintuitive reality: Nowhere in the world has competition in a former monopoly telecom system—and they were all former monopoly telecom systems—ever occurred without policy initiatives to foster that competition in the early stages. The discussion and debate right now are on how soon you walk away from those pro-competitive initiatives. They're very counterintuitive.

It's a bit like the airline industry or the railway industry. You've historically had these network industries where competition cannot be fostered without a public policy that creates access for the competitor to facilities owned by the former monopolist. The real question is when you stop doing that. The answer is that we don't know, and there's never been a simple conclusion to that in any country in the world.

As the regulator backs away, there's controversy. Right now we're going through an intense one of those periods. It's extremely important, I think, to recognize that we're talking about network

industries that formerly had, under government policy, 100% of the market. The things you do to foster competition in those former monopolies are not the things you do when you're policing competition for soap flakes or cars. It's a different problem.

• (1615)

Mr. Bev Shipley: In my riding there are more rural small towns. In terms of telephone, there's some concern being raised by some people—I have not necessarily heard it—that some of the small companies won't be able to compete. You talked a little bit earlier about the three-by-three test, or the test for protection. Can you tell us a little more about how we can have some assurances that those small companies, most of them independent, will be protected in our small rural communities?

Mr. Richard French: I can't give you an answer, but I'll give you two answers. I'll try to make it short.

One point of view—from a rural operator who has 4,000 to 12,000 customers and competes with Telus, SaskTel, Bell Canada, or Aliant—is why would I invest to bring my network and organization up to the capacity where I can offer voice-over-Internet protocol when, under the minister's proposed order in council, Bell Canada, Aliant, or SaskTel, my incumbent competitor, is immediately forborne and can immediately compete, targeting my customers? He'll know exactly when someone leaves his network, and he'll phone that person and make an offer. His financial capacity and his organizational capacity are hugely larger than mine, so why would I even try, under those circumstances? That's what you're going to hear from the small cable companies.

My second answer is inspired by a certain notion that the business is going to packages. You're not going to survive with a single stand-alone communications offering. You'll need to have, at a minimum, high-speed Internet, television, and telecom. These companies will need to have that or they will not succeed in the marketplace, because the television companies are going to roll out their television products.

If these companies find themselves at a sub-economic scale where they don't have the organizational wherewithal to meet the challenge of a multi-product offering, they should probably make the rational decision to be consolidated into a larger company.

So those are the two answers. Where you sit on it depends a lot on your feelings and your notion on the role of the state.

Mr. Chairman is telling me my two answers are long enough. Thank you.

The Chair: Merci.

We'll go to M. Crête.

[Translation]

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

Mr. French, why did the CRTC not choose to fully follow the guideline, or the position, of the minister and not allow full competition, as the minister recommended? Why did you, instead, retain the progressive rule of 25% of the market? Under section 34 of the Telecommunications Act, are you required to adopt regulations when there is no competition, or for any other reason?

Mr. Richard French: Following the important process that I described earlier, the CRTC had a very lively internal debate.

Mr. Paul Crête: Very lively?

Mr. Richard French: Very lively in the sense of very active, very intense.

Mr. Paul Crête: Okay, that's clear.

Mr. Richard French: The CRTC ultimately decided to interpret the sections of the legislation, including the one you referred to, in the manner recommended in the decision on the absence of regulations.

Furthermore, did the commission believe at that time that this was the only possible interpretation? Surely not.

Mr. Paul Crête: Perhaps you believed that it was the best, in any case.

•(1620)

Mr. Richard French: We clearly believed, generally, that this was the best way to focus the various opinions around the table in the public interest, despite our radically different interpretations, sometimes, of that public interest.

Mr. Paul Crête: I want to come back to my previous question. In his guidelines the minister asked the CRTC to allow the market to operate as freely as possible and to adopt regulations, when necessary, so as to exert the least possible influence over the situation.

Will this aspect of the guideline, in conjunction with subsection 34 (3), cause you to act like a dog chasing after its own tail? In fact, even with the guideline, you would be legally obligated, if the legislation were unchanged, to reconsider that there could be regulations.

Mr. Richard French: First, the minister has remained undeniably consistent in all his interventions. The CRTC is therefore required to interpret and apply the legislation in light of the guideline and the order in council, if such exists. It will do so to the best of its abilities and the collective conscience of its 11 members.

Mr. Paul Crête: Does this not make the legislation obsolete? In fact, if you are unable to exercise the right set out in subsection 34 (3), the legislation then becomes obsolete: the minister is the emperor, he does what he wants.

Mr. Richard French: We will need to study the order in council, but as far as we know, the guideline does not clash with the legislation.

Mr. Paul Crête: That's not what I'm saying either.

Mr. Richard French: Okay.

Mr. Paul Crête: You just said that once the minister has made the decision, you are required to respect that decision.

Mr. Richard French: I was referring to an order in council.

Mr. Paul Crête: Okay.

In your opinion, to date, have the minister's decisions been consistent with the spirit and the objective of the strategic framework that was proposed back in March or April by the expert group, that is the government's round table?

Mr. Richard French: They are consistent with some parts and with a certain thematic orientation in the report.

Mr. Paul Crête: For example, Bill C-41 states that the Competition Bureau is responsible for imposing fines, while the report gave the CRTC this responsibility.

Are the minister's positions in keeping with the thrust of the report? I know this is somewhat delicate for you.

Mr. Richard French: The minister has adopted some significant parts of the legislation, but I cannot confirm that he has adopted it as a whole or that he has decided to fully implement all the recommendations. There are several dozen. No doubt, some of the minister's or the government's decisions are not consistent with the report. Those are the facts and not a personal opinion.

Mr. Paul Crête: Could you tell us whether his actions have respected the report overall or whether he has deviated from it?

Mr. Richard French: This is a question you should ask my colleagues and members of the expert panel who will testify before you later.

Mr. Paul Crête: I believe that the CRTC's expertise is more than sufficient.

Mr. Richard French: It possesses the expertise, but its role is not to judge the minister's decisions based on qualitative rules or provide an assessment such as the one you are asking us to make.

Mr. Paul Crête: Okay.

If Bill C-41 is passed and unamended, the Competition Bureau will be responsible for increased fines. If only this change is implemented, without amending the rest of the framework, what effect will this have?

Mr. Richard French: This speaks to the relationship between the two pieces of legislation, an issue that was raised in the report in a particular recommendation. I can't find the right words in French. It concerned the Telecommunications Competition Tribunal. The government recommended joining the two entities.

If Parliament confers the power of imposing fines on the Competition Bureau, the issue of the relationship between the two pieces of legislation will most certainly be raised.

Mr. Paul Crête: A key part of the report is missing.

Mr. Richard French: Work remains to be done.

Mr. Paul Crête: Thank you.

[English]

The Chair: We'll go now to Monsieur Arthur.

[Translation]

Mr. André Arthur (Portneuf—Jacques-Cartier, Ind.): Good day, Mr. French.

I want to talk about significant stakeholders. In Quebec, Bell and Videotron are major players, while Telus and Cogeco are much smaller. There is a duality between Bell and Videotron.

With regard to residential telephone service, Videotron has currently succeeded in tripling if not quadrupling its market share while you are holding Bell back and preventing it from running. By how much would Bell Canada have cut its rates if you had not stopped it?

Mr. Richard French: Bell is able to cut its rates, but it cannot do so selectively, meaning only in areas that it shares with its competitors Videotron and Cogeco. Your question is valid with regard to those areas. I couldn't say, but I can tell you that, according to Mr. McTeague, Bell may increase its prices. You mentioned the opposite possibility.

•(1625)

Mr. André Arthur: You told him that he was wrong, by the way.

Mr. Richard French: We do not have the same information he does. Clearly, Bell would like to cut its rates in the short term so as to better compete with Videotron and Cogeco.

Mr. André Arthur: And you prohibit it from doing so?

Mr. Richard French: Under our regulations, this company must cut its rates throughout Quebec, not just in areas where it has competitors.

Mr. André Arthur: You are acting as a mediator between two giants that have the means to play frequent, effective and seductive games. At the CRTC, you're constantly in contact with the people at Videotron. You know them well. We are also talking about Quebecor, a dominant television network in Quebec, and numerous newspapers. These people are extremely rich and their wealth depends on your decisions.

How long is the arm you use to keep Quebecor, Videotron and TVA at a distance and maintain the CRTC's integrity?

Mr. Richard French: But there are also Bell, Telus—

Mr. André Arthur: No, no. The question specifically referred to Videotron, Quebecor and TVA.

Mr. Richard French: I don't know whether you are aware of this, Mr. Arthur, but I worked at Bell for 10 years. So I am quite familiar with this company.

Mr. André Arthur: I'm not talking about Bell, but rather Videotron.

Mr. Richard French: Yes, I noted that.

Mr. André Arthur: Could you tell us the distance you maintain between you and Mr. Péladeau's interests?

Mr. Richard French: I can tell you that we're trying to maintain an optimal distance between the CRTC and everyone affected by its decisions, equally.

Mr. André Arthur: The CRTC as a whole was invited to the Star Académie gala in Montreal. You were red-handed and you rectified your expenditure accounts, one after another, to make it look like Mr. Péladeau had not paid the airfare, hotel, restaurant, the gala and all the other perks given to the CRTC members.

How far apart was the CRTC and Star Académie on that night?

Mr. Richard French: Mr. Arthur, given your ill health, I'm pleased to see that your legendary spirit has not deserted you.

With regard to this event, I was not on the board at that time. I have no idea what you're talking about.

Mr. André Arthur: You don't remember that the majority of your colleagues who were members of the CRTC at the time had been invited to the Star Académie gala?

[English]

The Chair: Monsieur Arthur, let's keep this to the deregulation issue of telecommunications.

Mr. André Arthur: It's quite important for the deregulation issue to know how close these guys are to some of the biggest interests in Quebec.

The Chair: I don't see what expense accounts have to do with deregulation.

[Translation]

Mr. Richard French: Mr. Arthur, what Star Académie gala are you talking about?

Mr. André Arthur: The one held three years ago.

Mr. Richard French: I wasn't there at that time. I apologize, but I cannot answer your question.

Mr. André Arthur: Has no one at the CRTC ever talked about this event?

Mr. Richard French: Honestly, no one's ever talked about it.

Mr. André Arthur: Everyone fixed their expense account at the same time.

Mr. Richard French: I don't have the faintest clue; it's possible.

Mr. André Arthur: To make it seem as if they had paid.

Mr. Richard French: The Auditor General can audit us at any time. I have nothing more to say on this matter.

[English]

The Chair: We're out of time here, Mr. Arthur.

We'll finish with Mr. Masse.

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

Mr. French, with regard to the proposal, can you explain how a market like Toronto could be rather unique? I understand you could have different sections of Toronto deregulated in different ways. Is that a correct interpretation?

Mr. Richard French: Are we talking about business or residential?

Mr. Brian Masse: Residential.

Mr. Richard French: Under the order in council the incumbent telephone company has the choice of applying in a territory as small as an exchange—an exchange is 587, 586, 585—or as large as a local interconnection region, which could be more than a million people. They have the choice under the order in council to take either a geographical territory or a technological territory, which is an exchange.

They would have to demonstrate to the commission's satisfaction that the conditions in the order in council—we're always under the hypothesis that it becomes official—had been met, which essentially are the conditions I read out earlier. There are three networks.

•(1630)

Mr. Brian Masse: So you could get around that, for example, little fiefdoms of different service and levels of competition, if you believe that would take place and literally across the street or across the—

Mr. Richard French: Well, the city of Toronto, with so much Rogers infrastructure, probably would fairly quickly become a homogeneously regulated area. It will be more in the interface between the suburbs and rural areas, or in smaller towns, where there are fairly large differentials in location of business sections that might have less intense competition than the residential sections. There's no cable in business sections. There will be a Swiss cheese effect in some places.

Mr. Brian Masse: That would depend on growth and a series of things in terms of urban expansion as well as emerging markets.

Who would make the decision on that? I understand the minister would actually have some fairly significant powers. Is that correct?

Mr. Richard French: No, I don't see that the minister would have any powers. His power is exhausted when the order in council comes on our table. I could be wrong, but to the best of my knowledge neither he nor the government foresee that he would actually make specific decisions on forbearance territories or applications.

Mr. Brian Masse: So that would be entirely done by the CRTC then.

Mr. Richard French: Under the current act, it would be entirely our responsibility.

Mr. Brian Masse: How long could that take? For example, a new subdivision comes on line; and once again, I think Swiss cheese is a good description as to what you could potentially get for an area like that. How long would that take to correct itself?

Mr. Richard French: It depends on the terrain. The cable company wants to serve as many people as it can. Then, always assuming that the terrain is reasonably welcoming, it could be fairly quick. I live in Chelsea, and we have a 27-channel analog cable offering. There's no competition in that area, and that's 20 minutes from Parliament Hill. So those things will have to work themselves out, but they will, because it's an extremely attractive market and we're facing two sets of large, well-financed, aggressive, sophisticated brands that are well known to the public. They'll have a good, competitive battle in most of the areas where they're both present. There are areas where only one of the two is present, and those are the areas where I gave the two-answer answer.

Mr. Brian Masse: I want to move quickly to one other issue—that is, the deferral accounts decisions with the hundreds of millions of dollars that are going to move to go out to broadband and other types of services for rural areas. I strongly believe in a rural policy for an incentive, as well as a policy directive to expand it, but what was the logic in terms of consumer fairness to decide to dedicate that, as opposed to returning it to the consumer's pocket?

Mr. Richard French: We would have returned something like \$2 or \$3 to each consumer, on one bill. We looked at that money in one place and we thought, what can we do that would make a fundamental change in the infrastructure of the country? We thought about Chibougamau, we thought about Moosonee, and we thought about isolated areas in the northern prairies and the terrible terrain in

B.C. that phone companies have had to deal with. We said maybe we can devote the majority of that money to extend broadband to these areas, which would otherwise be commercially non-viable. That was the rationale. It was a fairly classic Canadian decision.

Yes, a whole lot of urban consumers who already have high speed will not get their \$2.80. I guess we don't apologize for that, because we thought we were trying to extend high-speed services to communities, which would have better educational and health opportunities and all the other things we believe flow from the high-speed service to a town.

Mr. Brian Masse: I just want to get on the record that it was just a one-time return.

Mr. Richard French: It was a one-month return of.... I could give you the exact amount, but it's in the amount of \$2.80 or \$3 a person.

The Chair: Mr. Masse, thank you.

Thank you very much, Mr. French, to you and your colleagues for being with us here today.

Members, we will suspend for about two minutes and ask the other witnesses to come to the table.

Mr. Crête, on a point of order.

[*Translation*]

Mr. Paul Crête: I don't think that the order in which members are to speak has been respected. The Conservatives decided to give their time to Mr. Arthur. If the Conservatives skip their turn, we should move on to the next person on the list. The party should not have the power to give its time to Mr. Arthur. I think that, in the future, this situation should be recorded and rectified.

•(1635)

[*English*]

The Chair: Monsieur Crête, actually, during the manufacturing study we did across the country, there were instances on the opposition side when members of one party did give their time to members of another party. I allowed it at that time. I've allowed it in the past. If the Conservative Party wished to give up their time to Monsieur Arthur, I've allowed that as well. So I've allowed it on both sides of the table, both the opposition and the government side. I've done that as a matter to try to be fair.

Seeing as we have a lot of our witnesses only for an hour, the fact of the matter is that with the rotation, Monsieur Arthur would never get to ask a question. I'm trying to balance fairness here. If the Conservatives choose to have one of their members not ask questions and give that time to Monsieur Arthur, I see it as time allotted to the Conservative Party. If they choose to donate it to Monsieur Arthur, it's their time.

[Translation]

Mr. Paul Crête: I am simply asking you to think about this. Our discussion has not been guided by logic. This has distorted the amount of time each member may speak. I am not asking for an immediate decision, but I am asking you to think about it. We'll come back to this once the witnesses are gone, so that we may keep our commitment. If you move the goal posts around, you change the rules.

[English]

The Chair: We'll raise that at a meeting on future business. Thank you.

I don't know if we'll need to suspend. We have all the witnesses here.

We welcome Ms. Sheridan Scott, Commissioner of Competition from the Competition Bureau. Welcome, Ms. Scott.

Also from the Competition Bureau, we have Mr. Richard Taylor, the deputy commissioner of the civil matters branch.

As with the last witnesses, we have allotted you an opening statement time of up to ten minutes, and then we will go directly to questions from members.

Ms. Scott, you'll be starting off.

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

I'm pleased to have this opportunity to appear before you today to discuss recent developments concerning regulation in the telecommunications sector. As Mr. Rajotte mentioned, I'm accompanied today by Richard Taylor, deputy commissioner of competition in the civil matters branch of the bureau.

In my opening remarks I would just like to highlight the bureau's position with respect to telecommunications deregulation and the steps the bureau is currently taking to prepare itself for the coming changes in the telecommunications regulatory environment. As you would expect, the bureau strongly supports efforts to place greater reliance on market forces in this vital industry.

The bureau has a long history of engaging itself in the debate about telecommunications regulatory reform. Under section 125 of the Competition Act, the commissioner has a statutory right to make representations and to call evidence before federal boards, commissions, or tribunals in respect of competition in relevant proceedings. This power of intervention has been used extensively by the bureau over the years in a number of industries, but in none more extensively than in telecommunications. Since 1990, the bureau has made 65 interventions before the CRTC, including full participation in the 2005 local forbearance proceedings.

The bureau's objective has always been the same. Our role is to encourage regulators to adopt approaches that rely to the greatest extent possible on market forces. Where regulation is necessary, the bureau has advocated that regulation be at the minimal degree necessary to achieve the objectives of the regulator.

[Translation]

Over this period of time, the Bureau has advanced several guiding principles which we believe provide an effective framework for deregulation.

Where competition in an industry is feasible, that is, when it is not a natural or government monopoly, one should move to rely on market forces as soon as possible.

Second, where continued regulatory oversight is required, one should adopt the regulatory model that emulates market outcomes as closely as possible.

Third, where regulation has distorted the prices, regulators should move quickly to ensure that prices reflect the costs of providing the service.

Fourth, if new entrants do not have market power, they should not be regulated.

Fifth, former monopolies should be deregulated as soon as market conditions are such that you have sustainable and effective competition to protect consumers.

Sixth, the period of transition, where some market participants are regulated while others are not, should be no longer than necessary.

• (1640)

[English]

As the telecommunications policy review panel noted in its final report, the telecommunications sector has evolved through technological change and innovation to a point in most markets where it is now safe to move away from continued regulatory oversight and to begin to place greater reliance on market forces. Indeed, competition has already replaced regulation for a number of telecommunications services, such as long distance, the Internet, and wireless. Local telephony is the next step in this transition.

As deregulation continues, the bureau will have an increasing role in encouraging and maintaining competition in the telecommunications sector. This means that it will be competition and market forces, not a regulator, that will discipline the activities of the industry and will determine prices and levels of service. The bureau's role will be as it is with any industry: to intervene only in those specific circumstances where anti-competitive conduct threatens the proper functioning of the market. It will not consist of ongoing regulatory oversight.

Nonetheless, the bureau anticipates that it will initially see an increase in the level of complaints in this industry. In this regard, we have been developing and refining our tools and resources. The bureau recently supplemented its general abuse-of-dominance enforcement guidelines with a draft information bulletin on abuse of dominance in the telecommunications industry. This document sets out the specific types of conduct the bureau believes could result in enforcement action under the act. The purpose of this bulletin is to provide clarity for industry participants on the conditions that must be met under the Competition Act before the Competition Tribunal can issue a remedial order. The bureau has recently completed its consultations with interested parties and is in the process of finalizing the bulletin for release later this spring.

[Translation]

As a final point, I would note that the TPRP recommended that the Bureau and the CRTC collaborate on finding ways to make the best use of our respective areas of expertise. In this regard, even before the publication of the panel's final report, we were working to improve the level of cooperation between our two agencies. Subsequent to the release of the final report, we put in place a working group to follow up on the panel's recommendations. This provided a valuable forum for the Bureau to draw on the expertise of staff of the CRTC as we developed the Telecom Abuse Bulletin. Subject to the limits imposed by the existing legislative framework, we believe that there is scope for even further cooperation and information sharing and I look forward to working with the new chair, Konrad von Finckenstein, in this regard.

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

[English]

The Chair: Thank you very much, Ms. Scott, for that presentation. We appreciate that.

We will start with Mr. McTeague, for six minutes.

Hon. Dan McTeague: It's great to have you here, Commissioner, and congratulations, belatedly. I never had a chance to sit on this committee when you were elevated, and I want to take the time to thank you for the good work you've been doing.

There are a lot of documents and information here that have never been made public, although they've been shared. The order itself by the minister has a number of effects. The first is, of course, it would eliminate two very common tests that are used to assess market power, the first being market-share loss, and the second being evidence of rivalry, with a much more rudimentary competitor presence test.

Given the time it takes to argue or to bring before the bureau a case dealing with abuse of dominance, is it fair to say that these tests, including the fact that the competitor presence test, would no longer have a structured rule of reason paradigm? How do you propose to be able to stop or arrest an anti-competitive abuse-of-dominance situation in a given market, especially given that there's been no market analysis, which usually follows in every other OECD country prior to deregulation taking place?

● (1645)

Ms. Sheridan Scott: There are two aspects to your question, first with respect to the tests that are being proposed in the variance of the CRTC's decision. One of those tests is a test that we, the Competition Bureau, developed ourselves to assist the CRTC that was looking for an administratively streamlined and efficient test to apply to determine whether there should be forbearance in the market. So we tried to use our expertise to develop what could be a relatively straightforward test for forbearance purposes, and we believe that's a test that does incorporate many of these elements you're speaking about. It has a rivalry dimension to it; it looks at the nature of the competition between the parties in the marketplace. So that is going to be one of the tests that is available.

With respect to looking at abuse of dominance, should those issues come to us once there is deregulation, following a forbearance order by the CRTC, then we will obviously use the traditional tools we have at our disposal. Richard may wish to add some comment to what I'm talking about. He is responsible for that.

I would say when we are focused in a market, we can move with huge speed. I know some of the parties that have been speaking to you have suggested we take many, many years to carry out our work. I'm not sure that's an accurate description. When we have a major issue before us and we put the resources on it, we can work in a fairly expeditious timeframe. For example, when we had one of the major complaints in the airline industry, we were able to investigate the entire issue in a process of five months. We were able to obtain relatively speedy injunctions where we felt that was necessary.

For the last year, Richard has also been very active in streamlining how he comes at abuse-of-dominance complaints, and this is across all industries we regulate. I think we will be able to put our resources on this issue if we need to and be fairly quick in the marketplace.

Hon. Dan McTeague: Madam Commissioner, I am familiar with the airline regulations. I was responsible for getting them before this committee back in 2001, but that was in response to a real dramatic perception that there was a loss in competition, whereas this may be very much a manufactured loss of competition at a time when I think we're trying to ensure long-term competition.

The order eliminates market-share considerations, as you know, and proposes to deregulate the telephone companies based on the mere presence of one wireline competitor in an area. This is of course the so-called competitive facilities test. It's our understanding that you would not agree with this test. In the hearing that led to the CRTC decision and the order overturning the bureau, I think it's clear you made the point that telephone companies would have to lose market share before it would be appropriate to deregulate them. You've done an analysis on this statement, from what I understand, accompanying the proposed order references?

Ms. Sheridan Scott: Our traditional position, which we've articulated over the years, is that market share is actually not determinative of such matters. Indeed, the Competition Act stipulates that we should not rely on market share to determine the state of competition in a particular marketplace.

Hon. Dan McTeague: You have six tests, however, to make that determination. I won't go through all of them.

Ms. Sheridan Scott: Yes.

Hon. Dan McTeague: The entrant must be able to obtain and retain a customer base. There is, of course, one issue that's not been raised here: it's the question of winability. If someone gets into and uses their deep pockets to basically buy customers back before the new entrants have a chance to even start, how would you propose to stop the possibility of and real potential for re-monopolization of this industry, despite significant presence in very specific markets across Canada where there may be two or three competitors—and those tend to be in urban areas?

Ms. Sheridan Scott: We don't protect particular competitors. We're interested in protecting the competitive process. When we look at an issue such as targeted reductions, we would be looking at whether they were going to result in a substantial lessening of competition in the marketplace. The way we would look at the targeted discounts that might be offered is within the same terms as we would use in looking at targeted pricing.

Hon. Dan McTeague: But the rule of reason test has been put aside in favour of merely a competitor presence. I don't even have to have a customer, and you're prepared to accept that—you must be prepared to accept it—as effective, vigorous competition.

Ms. Sheridan Scott: I think there are two different tests going on here. One is the test with respect to forbearance by the CRTC, and that's the test you're referring to—the three-by-three test. Then, a second test included in the same document is our streamline test. With respect to our work in the civil matters branch, we would use our traditional tools that are used to do a competition assessment.

• (1650)

Hon. Dan McTeague: I've had many commissioners come before this committee saying we need more resources to do our job, since these are on a case-by-case basis. I appreciate the fact that you can do this. We didn't hear much from Mr. French. He was unable to talk about the legislative difficulties of constructing two regulatory authorities together.

How do you propose to do this, given the limited resources you have? Where are you going to take it from, in other words?

Ms. Sheridan Scott: We have a process of prioritizing the use of our resources. Certainly telecommunications is an area where we

believe we'll be prioritizing our work in the coming period of time. We believe we have sufficient resources to deal with those issues.

The Chair: Thank you, Ms. Scott.

Thank you, Mr. McTeague.

We'll go to Monsieur Crête.

[*Translation*]

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

In your document you list seven criteria with regard to deregulation. It begins as follows: "Where regulation is necessary, the Bureau has advocated that [...]".

Do you feel that the minister's current decision, according to which local telephone services did not need to be regulated, is based on actual facts?

Ms. Sheridan Scott: What part of the document are you referring to?

Mr. Paul Crête: In the paragraph preceding the list of criteria, you stated: "Where regulation is necessary [...]".

Normally, it's the CRTC that decides whether regulations are necessary, but the minister decided to go beyond his own powers.

Do you know if the minister's decision is based on some study to determine whether there currently is real competition in the local telephone service market?

Ms. Sheridan Scott: No, not that I'm aware of. In the current context, we do not give advice to the minister. Because we took part in the hearing before the CRTC, we recuse ourselves from any discussions about changing the CRTC decision. I'm not at all aware of the minister's analysis.

Mr. Paul Crête: All right. Do you have any analysis indicating that right now, in the area of local telephone services, there is sufficient competition, or is there a monopoly or a duopoly?

Ms. Sheridan Scott: We did not examine that question. That was not before us. We described and attained what we thought was reasonable in the process before the CRTC. Given the evolution of the market over the past 18 or 24 months, our criterion probably conforms with market conditions and is not very different from the other criterion regarding competitive infrastructure, I believe.

Mr. Paul Crête: In many regions, they were determined by the minister. There will be three players on the market. Right now, between 90% and 99% of the market belongs to one of these sectors. Does that market seem competitive to you?

Ms. Sheridan Scott: It could be.

Mr. Paul Crête: With 90%?

Ms. Sheridan Scott: Market share is the first indicator we examine. Then we consider market conditions and rivalry between people. With regard to the abstention process, we proposed to the CRTC that the cost structure be compared. That's what in fact creates the competition dynamic in the market. It will be possible for the second competitor to reduce his price because he also has a competitive cost structure.

It's our impression that that is what in fact happened in the market. In the past 18 months—and Mr. French cited the figures—we've seen the arrival on the market of a competitor, which is rather interesting and which leads to a drop in prices.

Mr. Paul Crête: Given your criteria, was the CRTC decision to wait until these entities achieve 25% market share a wise decision?

Ms. Sheridan Scott: We made a case against that decision during the public hearings.

We strongly recommended that the CRTC not adopt this kind of thing. That's our position, because according to our expertise in the area of competition, market share is just the first question to be asked in order to determine concentration. Thereafter, one examines barriers to entry into the market, rivalry, the competitive dynamic. So, we were against that decision.

Mr. Paul Crête: In your opinion, is Bill C-41, which gives you the power to impose sanctions, sufficiently in keeping with the recommendations of the Telecommunications Policy Review Panel or is this a power that's given to you piecemeal? Are there other points in the review panel's recommendations that seem essential to you?

Ms. Sheridan Scott: It's a step in the right direction, there's no doubt about that. The members of the review panel said that greater reliance should be placed on market forces, on having a well-defined regulatory framework and encouraging effective competition. That is the gist of the recommendations. From that standpoint—

•(1655)

Mr. Paul Crête: But the review panel recommended that this power be given to the CRTC and not the Competition Commissioner.

Ms. Sheridan Scott: No. It recommended that power be given to the CRTC for work that remains subject to CRTC powers—

Mr. Paul Crête: Yes.

Mme Sheridan Scott: —and that we be allowed to impose pecuniary sanctions when it is deregulated.

From what we can see, Bill C-41 is supposed to follow deregulation. So it is indeed in keeping with the report.

There were no sanctions for the CRTC, but this was limited to the regulatory period. So the fact of giving us the power to impose pecuniary sanctions as soon as the market was deregulated was part of the recommendations contained in the report.

Mr. Paul Crête: Yes, but Bill C-41 was tabled before the market was deregulated.

Ms. Sheridan Scott: They go together. There are three parts, if I can put it that way. There's the directive, there's Bill C-41 and there's the change.

Mr. Paul Crête: The minister announces a directive. Then he tables Bill C-41 during the consultations. Maybe this doesn't come under your purview, but it seems to me that that's putting the cart before the horse.

Ms. Sheridan Scott: It's not up to me to determine what procedure should be followed. Bill C-41 is perfectly in keeping with the recommendations of the review panel, because it recommended

In fact, they referred to Bill C-19, presuming that this would become law. They felt that the CRTC should have the same kind of system of sanctions as they did, presuming that C-19 would pass. That's one reason why that part was repeated in Bill C-41.

Mr. Paul Crête: So, what you're telling me is that with what was put in place by the minister, the power of correction for a citizen who feels negatively affected by competition, for example in Montmagny or some other city, will be exactly the same as if there had been regulations, since the CRTC continues to do this until there's a 25% market share.

Ms. Sheridan Scott: I'm not at all familiar with the market conditions. I don't know which cable company is present—

Mr. Paul Crête: Telus probably has 105% of the market.

[English]

The Chair: Okay, the last question.

[Translation]

Ms. Sheridan Scott: Do you want me to answer?

We would have to determine who's the telephone company and who's the cable company, and make a comparison. And if the large cable companies that are established, such as StarChoice, also have advantages that allow for competition in the marketplace.

As Mr. French said, as a matter of fact, it's a matter of twinning services.

[English]

The Chair: Thank you, Monsieur Crête.

We'll go to Mr. Carrie.

Mr. Colin Carrie: Thank you very much, Mr. Chair.

I thank you very much for coming before us today.

I have a simple first question. Do you agree with the principle set forward in the policy direction the minister brought forward?

Ms. Sheridan Scott: The general policy direction is based on greater reliance on market forces, and that would absolutely line up with our statutory mandate.

Mr. Colin Carrie: Okay, thank you very much.

I'd like to talk a little bit about the proposed Bill C-41. One of my colleagues brought up abuse of dominance, and I think that's something we're all concerned about.

If Bill C-41 is adopted, will it help prevent abuse of dominance in the market?

Ms. Sheridan Scott: Well, we certainly hope so, and I hope I'll have the chance to come back and speak to you again when Bill C-41 comes before this committee.

What I can say for now is that we've clearly been on the record supporting the introduction of administrative penalties relating to abuse of dominance in the marketplace. We believe this has an important deterrent role to play, as well as providing the opportunity for the Competition Tribunal to address the anti-competitive behaviour in a financial way, if indeed it proceeds that long. But we trust it will have both this deterrent effect, so there will be less of this activity in the marketplace, and provide us with tools to address the situation, if indeed the anti-competitive behaviour takes place.

Mr. Colin Carrie: With the tools you have today, if you compare it to Bill C-41, is an amendment like that really necessary?

Ms. Sheridan Scott: From our perspective, I would say it's an essential tool for us to have as we look at abuse of dominance in general.

Mr. Colin Carrie: Okay. Unlike the CRTC, the Competition Bureau can only intervene in an *ex post* fashion. It means you can't prevent the anti-competitive behaviour and you can only sanction it after it happens. Do you think the bureau has enough teeth to prevent the abuse of dominance in the market?

Ms. Sheridan Scott: Well, it's certainly one of the reasons we believed it would be good to have a greater deterrence through the potential implication of AMPs on anti-competitive behaviour. We believe the tools we have are quite appropriate for abuse of dominance, because you have to remember this type of behaviour is often very pro-competitive.

The types of complaints we get that are related to abuse of dominance often relate to aggressive pricing in the marketplace. For example, allegations of predatory pricing would be something that we'd handle under the provisions of abuse of dominance. Predatory pricing can also just be extremely aggressive low pricing.

It's why I was saying to Mr. Crête that when we look at the marketplace to try to get a handle on the competitive dynamic, we often look at the cost structures of companies. To the extent you have a more efficient entrant in the marketplace or at least an entrant that has similar types of cost structures, you will anticipate that prices will be driven down through the competitive process. We believe it's a good thing for consumers.

• (1700)

Mr. Colin Carrie: Realistically speaking, how fast do you think you would be able to act if this is put in place?

Ms. Sheridan Scott: Do you mean with respect to a type of complaint of abuse of dominance?

Mr. Colin Carrie: Yes.

Ms. Sheridan Scott: This would assume that there is forbearance and that these companies are now subject to our jurisdiction and not the CRTC. It would again depend on the resources we have at that particular time, but Richard has made a priority of getting ready and prepared for the telecommunications sector.

I can cite the example of Air Canada, where we were certainly very focused on the complaint and completed our process of investigating within a five-month period. We were then able to take it forward to the tribunal.

In these cases, they often end up in settlement negotiations. We may not have to proceed all the way through to enforcement actions before the tribunal. The parties may choose to settle with us.

Mr. Colin Carrie: Thank you very much.

What do you think of the cabinet's decision to maintain quality of service requirements for incumbents in the proposed variance of the forbearance decision?

Ms. Sheridan Scott: I think you're straying a bit from our area of expertise. I suspect the telecommunications experts might be better placed to talk to you about that.

Our view is that our test has six elements that relate more to rivalry, cost structures, and what not. We didn't see that it was necessary to maintain that in the test we put forward, but whether or not it's absolutely essential in the telecommunications sector might be something you want to ask them.

Mr. Colin Carrie: In your opening statement you said the bureau has advanced several guiding principles over a period of time that you believe provide an effective framework for deregulation. In the sixth one, it says: "The period of transition, where some market participants are regulated while others are not, should be no longer than necessary." Why do you feel the urgency there?

Ms. Sheridan Scott: Well, in many cases you will have additional obligations that remain on the company being deregulated. Our advice has always been that one should very carefully look at the objective the regulator is pursuing, have the least interventionist restriction in the marketplace, and move as quickly as possible to full reliance on market forces.

Now, that being said, we recognize that there are other appropriate objectives in society one wants to pursue, other than competition; health and safety would be obvious ones. The CRTC will almost certainly be retaining those sorts of regulations that deal with the social side of their jurisdiction.

But to the extent you're looking at economic regulation and trying to deregulate, all we're saying is remove the obstacles as quickly as you can. Some examples of that would be the restrictions, for example, on win-backs and promotions. It would be an example of trying to move out of that regime and into one that fully relies on market forces.

Mr. Colin Carrie: How am I doing, Mr. Chair?

The Chair: You have 30 seconds left.

Mr. Colin Carrie: You brought up win-back, and I thought maybe we could bring it up as well. In the proposed order, one of the major promotional restrictions imposed on the ILECs is that the win-back role would be eliminated in every telecom market in Canada. This role prohibits the incumbent providers from directly contacting former clients who have switched to a competitor for a period of 90 days.

The telecom panel in its March report said that making offers and counter-offers to the same customers is the very essence of competition, and that, in general, win-back campaigns should not be restricted by the regulator. Do you agree with the telecom panel?

Ms. Sheridan Scott: It's a reasonable observation that they've made.

We've actually given it a fair amount of thought. I would say our thinking evolved over time, if you look at our various public positionings on this. We were relatively cautious. We hadn't decided or determined our view on this yet, and we moved on to one view that said once deregulated, it probably could be safely removed.

I think if you look at our bulletin on abuse of dominance, you will see we are suggesting that as long as there is no suggestion of predatory pricing being pursued through a win-back strategy, we would be comfortable with those restrictions being removed immediately.

Mr. Colin Carrie: Thank you very much.

The Chair: Thank you, Mr. Carrie.

We'll go to Mr. Masse, for six minutes.

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

Thank you for appearing here today.

Would you agree that the Competition Bureau is more of a complaints-driven process with regard to consumers making contact with your department?

Ms. Sheridan Scott: No, I wouldn't. We've just introduced an incredibly interesting triage tool that is quite proactive, and we're doing a systematic analysis. We get over 15,000 complaints, I think, from consumers, something like that. We decided that we probably don't want to be held captive to complaints. We like to be complaint informed, and not complaint driven. So we've been working for the last year on a fairly sophisticated and comprehensive mechanism that will allow us to assess in which areas we should intervene in the marketplace with respect to consumer issues, false and misleading advertising in particular.

•(1705)

Mr. Brian Masse: Well, what proactive work have you done? Can you give me a specific case where you've gone out—

Ms. Sheridan Scott: Yes, one of our enforcement priorities and advocacy priorities at the bureau is with respect to health. We think that's an extremely important sector of the economy for Canadians. We have taken a number of our enforcement responsibilities and advocacy responsibilities and given them a health theme.

I gave a talk to a gathering of health experts put on by the Canadian Medical Association. We have quite an extensive back-grounder that will give you examples of how we proactively reached out to do enforcement action and advocacy with respect to health issues.

Mr. Brian Masse: The reason I ask that is because of the concern that the degree of policing that's going to be required on this sector is huge. In previous discussions there have been concerns over whether you can have the budgetary resources to do all the things you're expected to do.

How much has your budget increased over the last few years, as a percentage?

Ms. Sheridan Scott: Let me come back to that question, because there are different parts of our jurisdiction that will be engaged by

telecommunications deregulation. I was talking to you about the consumer complaints we get about false and misleading advertising. That tends to be most of our consumer jurisdiction. Issues with respect to abuse of dominance tend to be raised more frequently by business participants, rather than consumers.

Now, with respect to abuse of dominance, we don't actually receive that many complaints. Again, I may hand this off to Richard to talk to you about his workload and whatnot. He has instituted a process to move very quickly through complaints now so that we can pull apart the more serious ones from the less serious ones.

Richard, why don't you say a bit about abuse of dominance, in particular.

Is that what you're interested in hearing about?

Mr. Brian Masse: Well, it's partly that, but it's also whether or not in taking on this role you have the budgetary resources necessary to carry out all the other work that's being done at the bureau. In the past, the bureau's budget actually has been cut and work has been increased—unless I'm wrong, and I don't believe I am. So what I'm worried about is whether it's going to be at the expense of other work or whether, during this most important transition time, there needs to be some budget allocation to make sure that things go as positively as possible for consumers.

Ms. Sheridan Scott: Let me just say a few words about that, and you can tell me if it's sufficient, or if you'd like to hear from Richard.

With respect to our resources in particular, you're right, over the years we've had this constant challenge of attempting to have an adjustment to our base so that we're not always going back cap in hand. That process isn't completed, but I can tell you we are getting a very warm reception wherever we go on this. I think I said this to you the last time you asked me the question, we're actually feeling relatively reassured that the gap will be addressed.

I must say we're also getting a relatively warm reception that we may need to have some temporary resources to address telecommunications in particular, for a short period of time, say five years.

It's not finalized yet, but we do get a positive feeling about it.

Mr. Brian Masse: Okay, I would expect it's more than just a reception, hopefully.

Ms. Sheridan Scott: The budgetary process is quite a long process. And it's not for want of trying, it's just that it's a long process to get into that budget cycle.

Mr. Brian Masse: Yes, I know. I've been asking about it for four and a half years.

Ms. Sheridan Scott: I know, and we appreciate your support.

Mr. Brian Masse: Quickly, with regard to point four of your framework for deregulation, you say if new entrants do not have market power, they should not be regulated. Would it not be prudent to have some type of ceiling in place?

I guess my concern is where perhaps it's a rural area and there's already been a public subsidization, either through the CRTC's program, where they're just reaching out to different places, or through public policy that has been done through this department in Industry Canada.

Is it not prudent to have some type of ceiling in place to ensure that people are protected?

Ms. Sheridan Scott: Well, the new entrant in that statement would be someone who hasn't competed in telecommunications. An example of that would be Call-Net getting into the telecom business or what not. These tend to be relatively new players in the marketplace, so there doesn't seem to be a particularly compelling reason to regulate them.

When we look at market power, there are tests that we look at. Below 35% would never be an issue for us. Other than that, we would want market power to be only one of the factors that we took into consideration.

Mr. Brian Masse: I just wonder about some places being charged too much because there's no ceiling.

• (1710)

Ms. Sheridan Scott: Are you talking about the incumbent telephone company being able to increase?

Mr. Brian Masse: Yes.

Ms. Sheridan Scott: As I understand the proposal right now, there would be a freezing of the rates right now, so the rates could not go up. As I understand it from the minister's variation of the CRTC's decision, there would actually be a ceiling imposed.

Mr. Brian Masse: I have one last quick question, Mr. Chair.

With regard to the bureau itself, would it be advantageous for consumers if the bureau were actually an independent agency and not actually a department of Industry? One of the things I've often wondered about since coming here is how it's actually part of the department, whereas other models are not.

Ms. Sheridan Scott: We are independent of the government, the department, with respect to law enforcement. The crossover comes with respect to policy advice. I'm of two minds on this in the sense that we do have probably the greatest expertise with respect to competition policy. If one wanted to put it in the department, in a sense you're duplicating that. The question is whether you want to have two sources of knowledge and expertise and awareness or not.

There's no doubt that there are some advantages to being a separate operating agency that might be appealing as well, but I have to say I'm of two minds. When I think of actually approaching others to get their opinion on this, I know it would take a fair amount of energy to move in this direction. I'm not sure, given all our other challenges, that I want to be looking to institutional matters. I prefer to be looking to a number of the challenges we have in the enforcement side.

Mr. Brian Masse: Has that ever been done?

The Chair: Mr. Masse, you're at about seven minutes.

Mr. Brian Masse: I just have this.

Has a review or a study ever been done?

Ms. Sheridan Scott: Over the years, I think people have looked at this.

The Chair: Sorry, Mr. Masse, but your time is up. Thank you very much.

I just want to indicate to members and Ms. Scott that there have been some questions about the release of our manufacturing report tomorrow. If I could ask members to stay just five minutes past 5:30, we just have a very few items. We'll go in camera and I'll indicate... especially for those members who are speaking at the press conference tomorrow.

Sorry to intervene in this discussion on telecommunications. We'll go now to Mr. Thibault. Welcome to the committee.

[*Translation*]

Hon. Robert Thibault (West Nova, Lib.): Thank you, Mr. Chairman.

Thank you for being here, Ms. Scott.

[*English*]

I've been listening to your questions and answers, as well as those of the representative from CRTC. If you look at the question of competition as opposed to a monopoly or a regulatory system, a regulated service, it sounds good. Everybody will agree that if I get people competing with me with equal or better services for an equal or better price, then as a consumer, I will have improved access. But it's not always the case. There tends to be a lot of competition on the low-hanging fruit, in the urban areas where the markets are good and very profitable. But that does not always translate or seldom translates to rural areas. We've seen that in airline travel. While it has improved maybe for a lot of people, in a lot of areas we've lost service.

On the question of telephony and these services, I have great concerns. In rural Nova Scotia, where I live, we don't have that competition out there. We don't have broadband. We don't have cable everywhere. In some areas, we've been able to negotiate with small cable companies to get broadband, with government assistance on the infrastructure costs, but it's still not there for everybody. Voice-over is not available. The incumbents are providing the telephone service at a very expensive price. Getting the wires and the switching equipment and those things in those rural areas is a lot more expensive, per revenue, than in the urban areas.

If we let competition go unregulated, with no interference, don't we risk at one point that the reinvestment in the less profitable areas by the incumbents will be at such a point that the service is not available or of very inferior quality to that of 50% of Canadians?

Ms. Sheridan Scott: It's interesting to look at the evolution of competition in many markets. You're quite right that, generally speaking, competition begins in more concentrated urban markets and what not. Certainly one can see this in telecommunications in general. The introduction of long-distance competition, Internet, and wireless began in the more densely populated centres. But what we also observe is that it slowly moves out into the less populated areas and you have the arrival of competition.

Our view is that, generally speaking, if one were to compare regulation versus competition, one wants to rely as much as possible on market forces because they will bring competitive prices and greater choice. There's no doubt that it's not going to be a perfect solution everywhere, and if one looks at the various tests that have been proposed and been debated today, it could very well be that you will continue to have regulation in some areas. That is a possibility, and the regulator will substitute itself for market forces. But that is what the regulator does.

I spent ten years of my career at the CRTC, actually. What one is trying to do is to get as close as you possibly can to the market forces, because you're trying to provide those efficiencies and pass those on to consumers because you believe they are going to bring advantages to consumers.

So, sure, there isn't going to be a perfect solution and it's certainly not going to work overnight. But if we're going to pick a model that we want to rely on and work toward, I would just suggest to you that relying on market forces is going to be, I believe, a better model in the long run than relying on government regulation.

• (1715)

Hon. Robert Thibault: In your calculations and decisions, do you factor in the equality of service between rural and urban areas, and the similarity of service and similarity of cost?

We've already seen what the incumbents are suggesting: that rural areas would pay a larger monthly fee for basic service because of the increased cost. That was greatly due to the competition they were having in urban areas.

Ms. Sheridan Scott: These are very hard issues that we grapple with. There's no doubt that it is more expensive to serve people who live in rural areas. Generally speaking, we would support prices that are based on cost. There are other tools that the government can use if they want to redress some of those inequities. That being said—

Hon. Robert Thibault: But would their costs be to the individual service, or would there be the same costs for all Canadians, for similar services?

Ms. Sheridan Scott: I'm saying there are different costs to providing different services, and the price that is charged for a service should reflect the cost of providing that service.

Hon. Robert Thibault: So rural Canadians would pay more.

Ms. Sheridan Scott: They might in some circumstances, depending. What's very interesting about the evolution of telecommunications, and I think quite exciting from a competition perspective, is that there are new services being developed, such as applications that are actually independent of infrastructure. They can be used in the context of a single telephone provider if they're providing high-speed access. You can use an application that you can attach and get your telephone service that way. It's an infrastructure-independent type of competition.

Hon. Robert Thibault: We haven't seen that. We don't see that.

Ms. Sheridan Scott: It's early days of that, for sure. If you look at the penetration of Vonage, which is the name of one of these companies, you're going to be seeing that more and more in the marketplace, I think.

The Chair: Thank you, Monsieur Thibault.

We'll go to Mr. Van Kesteren, for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): I thank you both for coming.

It was asked at the last session, and I just want to clear the record, but I'll fashion the question somewhat differently. Some have suggested that the minister's policy direction was illegal. I would like to ask about the policy direction of the report on Bill C-41, with the forbearance. Was it prudent? Did the minister act prudently in moving in this direction?

Ms. Sheridan Scott: As I understand the package that's before the House right now, it's a package that is moving in a direction that would favour market forces, and it deals with various aspects of that. I'm not sure what you mean by "prudent".

Mr. Dave Van Kesteren: First of all, did he act illegally? Did he break any rules?

Ms. Sheridan Scott: My understanding of the questions that have been asked on this to date is whether the policy direction would amount to being a breach of the Telecommunications Act.

We're not responsible for the administration and enforcement of the Telecommunications Act, so I'd really not be able to provide you with any expert advice on that. I think you heard from Mr. French that he thinks they probably do line up.

Mr. Dave Van Kesteren: About "prudence", was it the right direction? Is this the direction we should have taken?

Ms. Sheridan Scott: We're very supportive of an increased reliance on market forces in the telecommunications sector. This is a sector that is undergoing a huge change. It's a very dynamic sector. By relying on market forces, you have innovations like the development of an application to provide telephone service as opposed to the necessity of building a very costly communications infrastructure. We think the sooner one can benefit from that sort of dynamic that you get in the marketplace, the better, but with an appropriate consideration of where you have to protect social objectives, which is not something we would address through the Competition Act.

Mr. Dave Van Kesteren: If I'm understanding what you're saying, this is a good policy and all parties should look at this and support this policy.

Ms. Sheridan Scott: Generally speaking, I would say that the orientation of the various initiatives is toward greater reliance on market forces and the removal of regulation. That's certainly the direction we think we should move in.

Mr. Dave Van Kesteren: We were talking about Bill C-41 and the penalties, and we heard \$15 million. Is that per occurrence, or would that be a collection of occurrences?

• (1720)

Ms. Sheridan Scott: The \$15 million is a maximum amount. It's a cap. It cannot be more than \$15 million. It would be up to the tribunal to determine what amount it could be. It could be \$3 for that matter. It's anywhere from zero to \$15 million. Bill C-41 has a number of criteria that the tribunal is to assess in determining what the appropriate amount should be.

Other jurisdictions around the world that do have financial penalties associated with abuse of dominance frequently have an amount that's related to the volume of commerce, like 10% of the volume of commerce. If you look at the bottom lines of the incumbent telephone companies, you'll see that \$15 million is probably less than 10% of their volume of commerce.

It would relate to the specific charge that is brought forward, so we would look at it on a charge-by-charge basis. It's not really on a charge—that's more of a criminal concept—but on an order-by-order basis that they would be bringing forward evidence of a particular contravention. It would be on a contravention-by-contravention basis.

Mr. Dave Van Kesteren: Okay. So if I understand that correctly, then, if a large player, like Bell or Telus, thought they might eliminate the competition, that would hang over their heads.

Ms. Sheridan Scott: It would act as a deterrent. That's correct.

Mr. Dave Van Kesteren: Right. And do you feel that that is enough? Do you think there's...?

Ms. Sheridan Scott: Well, they would probably have other things on their minds. If they were contemplating eliminating the competition, they might find people moving for re-regulation. So I suspect that would also act as a disincentive.

Mr. Dave Van Kesteren: Okay. Do you have enough tools, do you feel? Do you have enough tools to implement this and to make sure that this is going to be respected and...?

Ms. Sheridan Scott: Well, I'd hate to say that I have enough, because I suspect that they'll come back again and again asking for more, so I don't want to limit my options at this stage.

What I can tell you is that since 1986, the only consequence of breaching the abuse-of-dominance provisions has been the issuance of a cease-and-desist order. There's another separate power that allows for some divestitures, but that has never been used, and I don't suspect that it ever would be. So really, the only power the tribunal had was to say to stop doing that on a forward-looking basis. I see the addition of administrative penalties as being a step in the right direction.

Mr. Dave Van Kesteren: Madam Commissioner, do you feel that deregulation is happening too quickly?

Ms. Sheridan Scott: Do I think that deregulation is happening too quickly? Well, we don't yet have deregulation. This is a proposed test that has... With respect to local telephony, if you're talking about that, we already have a number of telecommunications markets deregulated. I think Canadians have seen huge benefits from deregulation in these markets. With respect to local telephony, the future is still to be. It's a proposed direction and will have to go back to the CRTC to be administered.

Mr. Dave Van Kesteren: Okay.

Thank you.

The Chair: Thank you, Mr. Van Kesteren.

We'll go to M. Crête.

[Translation]

Mr. Paul Crête: If Bill C-41 is not passed, you'll be more or less like a declawed cat.

Ms. Sheridan Scott: No, my agency will be the same as it is now. I don't feel like a declawed cat.

Mr. Paul Crête: You said earlier that without fines, you didn't have too many cases, because there was no reason to go—

Ms. Sheridan Scott: No, I did not say that. I said that there had been cases. We do not have many of them, because the behaviour described under section 79 is favourable to competition, and provides the benefits of competition. This is why there are not many cases. We do not often prosecute, because we see the advantages on the marketplace. It is quite difficult to demonstrate an offence under that section. Certainly, supplementary tools are always helpful.

In an article in the Quebec magazine *Les Affaires*, we were described as very persistent. Thus, I think of myself as a terrier, rather than a declawed cat.

Mr. Paul Crête: In the gasoline file, let me say that I see you rather like a very peaceful cat.

Ms. Sheridan Scott: And I would say that I am like a terrier.

Mr. Paul Crête: Regarding the dominant position and the percentage, I find it very difficult to understand what I just saw.

If an entity has 90% of the market, you do not consider that as a criterion. In a given region, the entity that holds 90% of the market automatically buys all the tickets for all the programs that could be beneficial to the region. It wields extraordinary influence.

Ms. Sheridan Scott: This is an indicator. Of course, we examine this factor. However, it does not end there.

Mr. Paul Crête: Earlier, you said that you did not take it into consideration at all.

Ms. Sheridan Scott: No. I said that this was one factor among other factors that we take into consideration.

Mr. Paul Crête: The minister decides that there should be three stakeholders on a given territory. Could it be that someone who holds 90% of the market in a territory would make sure that the other entity keeps 5%, because if there are only two of them, they immediately become subject to regulation? If that is the case, how would you go about evaluating the situation?

• (1725)

Ms. Sheridan Scott: I suppose that that would be collusion, and we certainly do have tools for investigating such things.

Mr. Paul Crête: Do not give me the collusion example, I cannot take it.

Ms. Sheridan Scott: But you are speaking of two competitors who turn into partners—

Mr. Paul Crête: Currently, in the territories that are covered, there should be three stakeholders: the first should have 90% of the market, the second 8% and the third 3% of the market. If the second or the third is out of the picture, the region must be regulated.

Would there be a special situation where the chief stakeholder keeps the second one alive artificially to ensure that they are officially in competition?

Ms. Sheridan Scott: Our study of the telecommunications market shows that it is a very dynamic market. We are no longer dealing just with the telecommunications market. As Mr. French said, there is a steady growth of markets with matching services. Thus, nothing guarantees that telephone companies can control the market by such means.

Mr. Paul Crête: Let us take the cell phone market which is not regulated. The prices are about three times higher than in the United States or anywhere else.

Ms. Sheridan Scott: Not anywhere else. We have done—

Mr. Paul Crête: In several places. In any case, this is the case in Canada in the overall market.

Ms. Sheridan Scott: I would be careful with such comparisons. We made a few comparisons. It is difficult to make them, especially because we are dealing with a set of services. But if we compare public statistics, you are surely right about the comparison with the United States, but not with regard to other countries where that is not the case.

Mr. Paul Crête: The United States are our neighbours.

Ms. Sheridan Scott: Of course, but if we want to study the market dynamics, we cannot necessarily compare ourselves to the United States, because service providers in Canada are different, they are not the same.

Mr. Paul Crête: When you tell me that, you are also telling me that you are having trouble studying the markets. You say that it is difficult, because you do not have the figures or the data from the unregulated market.

What we are afraid of is that in a market with large providers, like Bell, as you know, the flexibility available to smaller companies and the possibility that others could replace them...

And this is in accordance with your criteria. Do you not think that it would have been better to continue with the intermediary stage proposed by the CRTC, whereby regulations apply up to the point where someone reaches 25%, and past that point, we have a truly competitive market?

Ms. Sheridan Scott: The 25% is not guaranteed. There are industries—

Mr. Paul Crête: At least, at 25%—

Ms. Sheridan Scott: As far as we are concerned, even at 25%, some industries said that it was not enough, nor even 30% or 40%. This is why the market share is not always a solution—

Mr. Paul Crête: I want to know whether it would have been better to prolong that stage?

Ms. Sheridan Scott: In our opinion, we should proceed as quickly as possible. This is why we proposed a test based on the elements of competition, namely the costs for the company, the rivalry on the market, as these are also reasonable factors for determining the level of competition in a market.

Mr. Paul Crête: It is already finished. Thank you.

[English]

The Chair: Merci, Monsieur Crête.

There are a couple of minutes left. I am actually going to take the next Conservative spot, as that's the chair's prerogative.

First of all, I think the main issue, if you try to get away from some of the jargon, is that you're almost looking at two approaches here. You're looking at an approach that says you have to rely on percentage of market power, for instance, which is the approach the CRTC takes with respect to forbearance for local telephony, which obviously impacts VOIP. Or you take an approach, which to me the minister is trying to do, that looks at whether there are actually competitive services available.

It seems to me from your answers and your presentation that you adopt the latter approach—at least in philosophy. Whether you would specifically advocate for that or not, I'm not saying.

So you've got the 25% market power on one side, and then on the other side you've got competition between three facilities, two wireline and one wireless.

If you look at the figures given by Mr. French, he talked about 11%, I believe, for COGECO, Vidéotron, Shaw, and Rogers; and then he talked about the 25% needed for the forbearance issue. If I just look at the city of Edmonton, a mid- to large-size city, you've got Telus providing local service, telephony, Internet, including ADSL; you've got Shaw for television, local telephony, and Internet through cable. You've got VOIP with Vonage. Vonage exists in Devon, a community of 7,000 outside the city of Edmonton, and in Leduc, a community of 17,000. You've got wireless, Telus, Bell, and Rogers. And yet I would suspect that Telus's share of the market is greater than 75% local telephony.

So if you take the first approach, you would actually not deregulate the market, and yet as a consumer in the city of Edmonton it would just seem to me common sense that in that situation—albeit perhaps not in a rural area—you would just say yes, that as a consumer I can switch to ADSL with Telus, or to Shaw and get my Internet that way, or I can switch back and forth on wireless if I don't like the Telus service or don't like the Bell service.

So it seems to me, and I just want to clarify this, that you favour the second approach, looking with common sense at the situation existing on the ground and saying yes, there are companies there that can provide services, rather than relying on a 25% market power figure, which to me seems increasingly unrealistic in the world we're dealing with in telecommunications.

● (1730)

Ms. Sheridan Scott: We came up the middle on that, in a sense. I think I've said several times that the market share tests are useful, but they don't determine the matter in all cases. We don't like market share; we wouldn't agree with the 25% test. What we're looking at instead is whether there is another equally efficient competitor that could provide service.

Again, it's a shortened version of our normal analysis. The test is present right now in the regulation the minister is proposing. We would have looked at a couple of things, such as the cost structure, the presence of rivals and what not. Because we're looking at the presence of two competing infrastructures in our test, we are closer to simply having independent infrastructures that can provide a competitive alternative. Had we been doing this analysis when we first started talking about forbearance two years ago, we might have looked at some of these elements.

Something we would also observe now is exactly the series of figures you're citing—the percentage presence in the marketplace. There are 1.1 million consumers who are now served by cable systems, and there are another 300,000 served by Call-Net. We would see those figures as evidence that parts of our test likely satisfied the rivalry and those sorts of elements.

I think you will find we're partway in, but we're certainly not on the market-share side of the analysis. We are clearly proposing a test that relies on the importance of those competing infrastructures.

The Chair: Thank you very much, Ms. Scott.

I just want to wrap up by saying I appreciated your reference to yourself as a terrier. I think that was a very good example.

As the chair, I think I certainly speak for members regarding your direct responses, your forthrightness, and your knowledge of your files, which were very impressive.

We appreciated your appearance here today—both of you. Thank you.

Hon. Dan McTeague: Mr. Chair, I wonder if it might be helpful for the committee to have the two pieces of information and to have them properly explained. One is from the previous witnesses with respect to Bell's percentage of increase. It seems there were several questions by members that didn't get adequate explanations. There's some confusion.

Finally, if I could also, Chair, ask a question, from the previous CRTC decision there was a question of suggesting how much market share a telephone company would have to exercise in order to appropriately deregulate them. I think this is an intervention that was made by the bureau. I'm wondering if the bureau could provide us with that information.

The Chair: Can we formally do that through the clerk?

Hon. Dan McTeague: Yes, I'm asking the clerk to look this up, Mr. Chair.

Thank you.

The Chair: We can certainly write to the commissioner and seek to obtain that information.

Thank you, Ms. Scott, and thank you, Mr. Taylor.

We are going to go in camera. I promise members it will be a very brief session. I just want to highlight what we're doing tomorrow with the release of the manufacturing report.

We will have only members and their staff in the committee room.

[Proceedings continue in camera]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.