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# Standing Committee on Agriculture and Agri-Food

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## Thursday, May 28, 2009

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## Chair

**Mr. Larry Miller**

# Standing Committee on Agriculture and Agri-Food

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● (1120)

[*English*]

**The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)):** I call the meeting to order.

We've lost close to 20 minutes here. This session was supposed to end at 12. If it's okay with the committee, we will extend this segment to 12:10, so each delegation here will lose 10 minutes. That will put us on schedule. We have the briefing by DFAIT immediately after 1 o'clock, so we will have to adjourn then.

Is that okay with everyone?

Hearing no complaints, I welcome our witnesses from the Competition Bureau: Mr. Currie, Mr. Fanaki, and Mr. Corriveau. You have 10 minutes or less, gentlemen.

Mr. Fanaki.

**Mr. Adam Fanaki (Senior Deputy Commissioner, Mergers Branch, Competition Bureau):** I'll try to be quick.

[*Translation*]

Mr. Chair and members of the committee, thank you for the opportunity to appear before you this morning as part of your study on competitiveness in the agricultural sector.

My name is Adam Fanaki and I am the Acting Senior Deputy Commissioner of Competition for the Competition Bureau's Mergers Branch. I am accompanied by Morgan Currie, who is an Acting Assistant Deputy Commissioner of Competition in the Mergers Branch, and by Denis Corriveau, who is the Senior Competition Law Officer in the Mergers Branch.

[*English*]

We've been invited here today to discuss our analysis of mergers of meat processing and livestock auction facilities in Canada from 2005 to the present. Specifically, I'll be discussing two recent transactions reviewed by the bureau—the 2005 acquisition by Cargill Limited of the Better Beef group of companies, and the 2009 acquisition by XL Foods of Lakeside Packers.

Before I address these transactions, I'd like to provide the committee with a brief overview of Canada's competition framework, including recent amendments to our principal legislation, the Competition Act.

The committee has already identified competitiveness as an issue that is central to the future of agricultural productivity and the future of Canadian producers. We look forward to assisting the committee in its deliberations on this important topic.

In 2007, this committee recommended certain amendments to the Competition Act. We are pleased to note that the government recently enacted significant reforms to the Competition Act that incorporated many of this committee's recommendations and the recommendations of the Competition Policy Review Panel. These changes, along with other amendments to the civil, criminal, and merger provisions of the act, will improve the effectiveness and efficiency of competition law enforcement in Canada.

In respect of the merger review process, acquisitions of shares or assets, like amalgamations that exceed certain financial thresholds, must be reported to the Competition Bureau prior to closing. The bureau reviews these transactions to determine whether the evidence demonstrates that such mergers are likely to substantially lessen or prevent competition in a given market. If the bureau determines that a merger is likely to substantially lessen or prevent competition, the commissioner may seek a remedy either by negotiating with the parties or by litigating the case before the Competition Tribunal. In all cases, the bureau's goal is to preserve competition in the marketplace.

The importance of timely but thorough merger reviews based on sound economic principles and convincing evidence cannot be overstated. In short, getting merger reviews right in respect of determining which transactions should be challenged and which should be allowed to proceed has important consequences for the Canadian economy.

The recent amendments to the act improve the efficiency of the merger review process by establishing a mechanism that enables the bureau to obtain the information required to conduct its review of mergers raising material competition concerns, while reducing the number of mergers for which pre-notification to the Competition Bureau is required. I should emphasize that the amendments relate to the process of merger review. Our substantive approach to merger review remains the same, including the economic analysis applied by the bureau to assess the competitive effects of mergers.

Besides the changes to the merger review process, there were a number of other changes to the Competition Act, including amendments to the conspiracy provision. By increasing penalties for criminal conduct, these amendments create a more effective criminal enforcement regime for the most egregious forms of cartel agreements, without discouraging firms from engaging in potentially beneficial alliances, joint ventures, and other collaborations. One of these amendments, consistent with the recommendation of this committee, allows the Competition Tribunal to award administrative monetary penalties for abuse of dominance. In addition, to provide greater flexibility in innovative pricing strategies and discounting, the criminal offences dealing with pricing practices have been repealed.

I'd like to turn to the specific mergers that the committee has asked us to address today, beginning with the 2005 merger between Cargill and Better Beef. This transaction involved the acquisition by Cargill Ltd.—which owns an integrated beef packing facility in High River, Alberta—of the Better Beef group of companies, an integrated beef packing facility in Guelph, Ontario. As part of our inquiry into this merger, we sought and obtained court orders requiring the production of relevant documents and written returns of information under oath from Cargill and Better Beef, as well as from competing beef packers. We also interviewed, and obtained information from, feedlot owners, farmers, industry associations, cattle brokers, grocery retailers, and officials from the federal and certain provincial governments. To assist in our review of this transaction, we hired two independent experts—a specialist in agricultural economics and a specialist in industrial organization.

The bureau's analysis of the Cargill-Better Beef transaction focused on the potential impact of the merger on competition in three different aspects of the operations of the merging parties: competition in the supply of retail boxed beef; competition in the supply of "case-ready" beef; and competition in respect of the purchase of live cattle.

One of the key issues in our review was defining the relevant geographic market, meaning the relevant area within which products compete. For example, one of the issues considered was whether the relevant market for the supply of boxed beef was limited to all or part of Canada, or whether the relevant market was broader, so that suppliers of beef located in the United States could be considered as competitive alternatives to suppliers located in Canada. This issue fed into our examination of whether the merged entity could be considered to face competition from suppliers in Canada only, or whether Canadian suppliers also faced competition from suppliers in the United States.

With respect to the supply of retail boxed beef, evidence confirmed that when the U.S. border reopened in August 2003 to boneless beef exports from cattle under 30 months of age, a North American market for boxed beef was re-established. In fact, Canadian customers purchasing boxed beef clearly indicated that suppliers located in the United States were competitive alternatives to Canadian suppliers of boxed beef. In the context of such a broad geographic market relating to the sale of boxed beef, we concluded that the acquisition of Better Beef would not raise competition issues in the downstream market for the supply of boxed beef because the merged entity would continue to face competition from suppliers located both in Canada and in the United States.

The bureau also examined the potential competitive impact of the merger on the supply of "case-ready" beef products, or boxed beef that has been further cut, fabricated, and packaged into servings suitable for display and sale in retail stores. On this issue, we concluded that retailers possessed sufficient countervailing power, including the ability to do their own meat cutting, to counter any attempt to exercise market power by the merged entity.

The third principal issue that we considered was whether the merger was likely to significantly lessen or prevent competition in the purchase of cattle. We concentrated our examination on fed cattle under 30 months of age. The test under our law requires us to consider whether, as a result of the transaction, the merged company would have the ability to profitably lower cattle prices to a level below the competitive market price for a significant period of time.

Again, the key issue in analyzing the effect of this merger on cattle procurement lay in determining the relevant geographic market for the purchase of fed cattle. In the context of this case, what mattered was the ability of sellers of cattle to switch their sales of slaughter cattle in sufficient quantity from one location to another in response to changes in relative prices. We examined the issue of where Canadian suppliers of cattle could sell their cattle—for example, whether Canadian cattle suppliers could sell fed cattle to beef packers located in the United States—and we also examined whether the parties to the transaction competed in respect of their purchase of cattle.

Defining the relevant geographic market also required us to determine the extent to which the Better Beef slaughter plant in Guelph purchased fed cattle in western Canada and was able to influence prices in western Canada. Because Better Beef's plant was located in Guelph, particular attention was paid to the potential impact of the merger in Manitoba. To determine this issue, we examined evidence relating to interprovincial and trans-U.S. border cattle flows, source of origin procurement data for major Canadian packers, transportation costs, and pricing data in the pre- and post-BSE periods.

Evidence established that the two beef packing facilities of the parties purchased cattle in separate geographic markets. We found that there were two relevant geographic markets for suppliers of cattle: one market consisting of western Canada, including Manitoba, plus certain U.S. northern plains states, and another market consisting of eastern Canada, plus certain northeastern U.S. states.

I notice that the chair is kindly asking me to limit this. My full comments are before you in our submission, but I'll perhaps move on and just talk briefly about the next merger before I conclude.

● (1125)

**The Chair:** For 30 seconds, if you can.

**Mr. Adam Fanaki:** Sure.

The second merger that we examined was between XL Foods and Lakeside. The bureau conducted a comprehensive examination of the matter, interviewing over 50 industry participants in western Canada. As with the previous merger, one of the key issues was the relevant geographic market for the purchase of cattle. As I noted in our review of the Cargill-Better Beef transaction, we concluded that the relevant geographic market for the procurement of cattle was western Canada and certain U.S. northern plains states. Following our investigation of the XL-Lakeside transaction, we had a similar view that U.S. packers located in northwestern and midwestern states represent competitive alternatives for western Canadian cattle producers. Industry participants confirmed that U.S. packers purchased substantial volumes of slaughter cattle and would continue to influence prices paid to Canadian cattle producers post-merger.

One issue we focused on was the ongoing uncertainty about the impact of legislation for mandatory country-of-origin labelling, or MCOOL. We decided that we would need to continue to monitor the industry and reassess the competitive impact of the transaction once there was more clarity surrounding the implementation of MCOOL. In this regard, the bureau remains in regular contact with various officials and industry participants to continue to assess the impact of MCOOL.

At the end of February, we announced that we would not at that time challenge the XL-Lakeside transaction. However, we made it clear to the parties—and to the public—that we would continue to monitor the industry and reassess the competitive impact of the transaction in light of any developments with respect to MCOOL. I can assure the members of this committee that the bureau will not hesitate to take appropriate remedial action should our assessment reveal that a transaction has resulted, or is likely to result, in a substantial lessening of competition.

To conclude, agriculture producers and Canadians in general can be confident that the bureau takes its work in this area very seriously and recognizes the importance of competition as a key driver of growth, productivity, and innovation in the agricultural sector.

Thank you. I'd be happy to take any of your questions.

● (1130)

**The Chair:** Thank you.

Mr. Easter.

**Hon. Wayne Easter (Malpeque, Lib.):** I want to go to potash and get some comments from the Competition Bureau on what may or may not be done there. But first I have a question on the beef industry. Have you looked into packers, Cargill or whatever, owning or controlling their own supply? What impact might that have on pricing?

**Mr. Adam Fanaki:** Yes, and I'm glad you raised that question. We did examine that issue. It has a few different labels—some participants refer to it as “captive supply”. It's a good example of the differing perspectives that exist in the industry. What we mean here, really, is the purchase or ownership of cattle by packers two or more weeks prior to slaughter.

When we spoke to cattle suppliers in western Canada, they did not express concerns about captive supply. What they included in that definition would be common arrangements, like purchasing agreements or forward contracts, under which suppliers commit to supply a certain volume of cattle to packers for a predetermined time and are paid a price based on an agreed-upon formula. It would also include what's known as grid pricing, where suppliers commit a certain volume of cattle to beef packers and are paid under a formula. The cattle suppliers we spoke to told us that these types of arrangements can significantly reduce the risk taken by feedlots and increase the return to suppliers by locking in profits and allowing suppliers to take advantage of higher-yield cattle. These types of arrangements provide suppliers with stability that they may need to survive in what are otherwise volatile markets.

I want to give my colleagues an opportunity to comment, because —

**Hon. Wayne Easter:** We may get time to come back to that, but I do have to get the potash question in. Maybe we can come to back to that later.

Mr. Chair, as you know, one of the areas that we're really hearing a lot about is the price of potash and the dominance of three companies in the world clearly managing supply to meet demand—*clearly* managing supply to meet demand.

In a conference call, Bill Doyle, who is president and CEO of Potash Corporation, in the first quarter of 2009.... He basically admitted they're managing supply to meet demand. He said, and I quote:

> With weaker market conditions, we have the ability to exercise the defensive part of our strategy and match potash production to demand as necessary. This response to short term changes in potash demand is the same strategy that has supported our success for more than 20 years now.

We had the fertilizer companies before us a year ago, and they were saying that potash prices were high, that there was nothing they could really do until two new mines were brought in, one in Russia and one in Saskatchewan.

Then we had the recession and the commodity price downturn. All of a sudden, they were laying off people at mines in Saskatchewan and elsewhere in order to manage supply—not because they weren't making money. They were making money. Their profits just weren't gross enough. That's the reality of the world.

I want to read into the record just a little bit of a letter from a former minister, Eugene Whelan. He said he was worried about potash:

> Research has led me to believe that there is collusion amongst the world Potash producers. These producers have been able to short supply the world market and at the same time receive outlandish unwarranted prices for the product. When the market price is compared to the cost to produce the Potash, there is no comparison. ... I believe that the actual purchase price for a tonne of Potash should be closer to $250. Yet when I spoke with a local fertilizer supplier, I was quoted $1035 a tonne to buy the Potash.
>
> The end result of the actions by the fertilizer companies is that this essential product for food production is outlandishly priced and many farmers cannot afford to buy it. The Potash producers say there is no demand for the product and have laid miners off. Potash production has been cut back.

There is a real impact here. If there is collusion among these companies....

Now, Mr. Doyle is not poorly paid. His salary in 2007 was $324 million, with bonuses. That's a substantial salary. He's the highest-paid CEO in this country by a long shot.

Something's going on here, guys, with the potash companies globally. Is there anything you can recommend to us? Whether you can deal with it at the Competition Bureau of Canada, I don't know, but more and more there is collusion globally among the corporate sector, which is either increasing prices to farmers on the input side or decreasing prices to farmers on the output side. This has to stop.

Can you give us some recommendations, or tell us what you can do?

● (1135)

**Mr. Adam Fanaki:** I could try—putting the salary issue aside—to speak to what it is the Competition Act does and the mechanics of how that works. I can't talk to the specific situation in potash and the various other facts that you addressed in the question.

It's important, I think, for people to recognize that high prices, in and of themselves, are not contrary to the Competition Act. I understand that high prices are a concern for Canadians, and should be a concern for Canadians, but it's important to note that businesses are generally free to set their own prices at whatever level the market will bear.

Where the Competition Bureau has a concern, though, and where the act has application, is where those high prices are a result of a contravention of the act, such as price-fixing among competitors. Part of the reforms that were recently introduced under Bill C-10 would provide a more effective mechanism for addressing these most egregious forms of cartel agreements, such as price-fixing agreements between firms, whether they take place within Canada's borders or outside, and have an impact on Canada.

I would suggest that at least a partial answer to your question is that to the extent that such high prices are as a result of a contravention of the act in the form of a price-fixing agreement between competing firms, we have, through the amendments introduced recently under Bill C-10, an effective provision to address those forms of cartel agreements.

**Hon. Wayne Easter:** Larry, do I still have time?

**The Chair:** No, you don't. You got an extra minute anyway.

Mr. Bellavance, seven minutes, please.

[*Translation*]

**Mr. André Bellavance (Richmond—Arthabaska, BQ):** On the subject of dominance positions, what we have just heard is quite scandalous. Mr. Easter was reporting the remarks heard in that conference call that the big boss of PotashCorp was part of.

However, I would like to continue on another matter, still related to dominance positions. Recently, down our way in Quebec and all over Canada, a lot of small producers, suppliers and processors received a letter from Loblaws, the grocery chain. The letter informed them that their relationship was terminated unless they registered for the list of products in their warehouse. So, for example, the honey producer in my constituency, who supplied the Loblaws just a few kilometres away, now had to send a lot of his honey to the warehouse in Toronto and pay the fees that allowed him to be registered on the list of products there. About 500 small producers, processors and suppliers in Canada received that letter and are no longer able to sell their products on Loblaws' shelves.

But we are supposed to live in a time when we are looking for markets closer to home, when we want to fight the effects of greenhouse gases and when we prefer to purchase locally, to the extent possible.

A company like Loblaws, together with Sobeys, takes up 75% of the market. Those people are powerless in the face of the powerful economics of the agri-food market.

Representatives of independent grocers have come here on several occasions to tell us how difficult this unacceptable situation is for them. They have also told us that the Competition Bureau could intervene because of recent amendments to the act. An intervention like that might knock some sense into the people in those big companies who do not seem to understand that local purchasing has to be given preference these days. I am sure that they will have all kinds of reasons up their sleeves, reasons to do with making a profit, no doubt. Are there any other reasons?

I would like to know if I am interpreting the act correctly. When sanctions are provided for in situations of dominance like that where the market is being interfered with, does the Competition Bureau have enough power to act?

● (1140)

[*English*]

**Mr. Adam Fanaki:** Thank you for that question.

I'll try my best to address this issue in a broader context. I should confess, I'm here in my capacity as the head of the Mergers Branch, to speak to mergers in the agriculture sector, so there are certainly limitations on my knowledge in specific areas.

In terms of the—

[*Translation*]

**Mr. André Bellavance:** Mr. Fanaki, I just want to point out to you that this is the Standing Committee on Agriculture and Agri-Food. It is quite logical for us to ask questions like that.

[*English*]

**Mr. Adam Fanaki:** Not at all. I'm not saying it's inappropriate. I'm just trying to explain, to the extent that there are gaps in my knowledge on particular matters, why that may be the case. But let me speak to the issue you're addressing.

The question raises an issue with respect to the application of the abuse of dominance provisions of the Competition Act. Broadly speaking, the way the provision works is that where a dominant firm engages in the practice of anti-competitive acts that are likely to substantially lessen or prevent competition in a relevant market, we may seek a remedy from the Competition Tribunal, and the Competition Tribunal may issue a remedy.

Your interpretation of the law is correct. One of the recommendations made by this committee was that the abuse of dominance provisions be amended to include, within the scope of remedies available to the tribunal, the ability to award administrative monetary penalties. In the recent amendments to the act brought in through Bill C-10, the government amended the legislation to allow the tribunal to award administrative monetary penalties for abuse of dominance in the amount of up to $10 million for a first remedy, if you will, and up to $15 million if a remedy is required a second time. So you're absolutely correct that administrative monetary penalties are available.

As to how those provisions would operate in the particular context of the grocery industry, I would just like to point out to the committee that we do have guidelines that discuss the application of the abuse of dominance provisions in the grocery industry specifically. I would be happy to provide a copy of those to the committee. They discuss the application of those provisions in the particular context of that industry in much more detail.

● (1145)

[*Translation*]

**Mr. André Bellavance:** The independent grocers I am speaking about have testified before this committee. They were satisfied with the amendments to the act. They just felt that it was not being applied.

Does the bureau have examples of a case where the law was applied, where fines were imposed, as the result of allegations or investigations into the abuse of dominance? Are there public cases that you can talk to us about and tell us what happened? How did the bureau react?

[*English*]

**Mr. Adam Fanaki:** I should just clarify that the administrative monetary penalties were just introduced approximately a month and a half ago, so there are no cases in that short period of time in which the administrative monetary penalties were issued. But certainly there are examples of remedies having been granted under the abuse of dominance provisions as they existed prior to the amendment of that act. If my numbers are correct, there have been six abuse cases that have been brought since 1986, and in five of those cases, a remedy was issued through successful litigation before the Competition Tribunal.

I can perhaps provide a more detailed explanation of each of those examples. Again, they would be in guidelines I could make available to the committee. They provide a short synopsis of each of those decisions.

The most recent example was a case involving Canada Pipe Company Limited, a company that was found by the tribunal to hold a dominant position in respect of the market for cast iron pipes, couplings, and fittings. It offered to its distributors what's called a stocking distributor program that provided a system of rebates based on purchasing all three types of these products exclusively from Canada Pipe. The bureau argued that the program acted as a barrier to entry by foreclosing potential competitors and impairing their ability to enter the market or to continue to compete in the market, with the result that competition was substantially lessened. The tribunal disagreed with the bureau on that issue and declined to grant a remedy.

It was then taken to the Federal Court of Appeal by the bureau, and the court ruled that the tribunal had made an error in law in applying the abuse provisions. The matter was ultimately settled by a registered consent agreement between the bureau and Canada Pipe.

That's the most recent case under the abuse of dominance provisions, but there are others that are summarized in the guidelines, which I'd be happy to supply.

**The Chair:** Thank you very much. Would you be able to supply those documents?

**Mr. Adam Fanaki:** Absolutely.

**The Chair:** Okay, thank you,

Mr. Atamanenko, seven minutes.

**Mr. Alex Atamanenko (British Columbia Southern Interior, NDP):** Mr. Chair, before I begin my seven minutes, I'd like to move that we debate the motion I have before the committee today. I can be very quick in explaining that, and I'd like to do this while these gentlemen are still here. It shouldn't take a lot of time.

**The Chair:** Okay. I haven't seen it and I'm not aware of it, but we will. If we could continue with our debate, we could do that towards the end.

Mr. Atamanenko.

**Mr. Alex Atamanenko:** No. According to procedure, I have the right to do that now, to move a very quick debate on this. As I say, it shouldn't take time, and it should happen while these gentlemen are still here.

**The Chair:** You want to debate your motion now instead of questioning the witnesses?

**Mr. Alex Atamanenko:** I believe I still have the authority to question witnesses once this quick debate is over with.

**The Chair:** Okay. We have limited time here.

Mr. Easter.

**Hon. Wayne Easter:** In fact, I think this is in order. If you recall at the last meeting when we had the Wheat Board here, there was a motion tossed on the table and it was debated. I'm saying it's in order.

**Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC):** It's in order, Chairman.

**Mr. Alex Atamanenko:** I think once I explain it, you'll understand much better.

**The Chair:** I wasn't saying it wasn't in order. We just have limited time here.

You'll have to read your motion into the record, Mr. Atamanenko.

**Mr. Alex Atamanenko:** The motion states:

> That the Competition Bureau of Canada be ordered to provide in both official languages the documents as required by the motion passed by the Standing Committee on Agriculture and Agri-Food on March 24th, 2009; and that the documents be provided to the Clerk of the Committee no later than September 18th, 2009.

I'll just explain why I'm doing this. About two months ago a motion was passed by this committee that ordered the Competition Bureau to provide copies of any and all studies and briefings and/or analysis documents pertaining to the approval and/or denial of all sales, mergers, and acquisitions of meat slaughter packing, processing facilities and livestock auction facilities in Canada from the year 2005 to current, at least four days before you were to appear here.

Now, it's my understanding you have provided the committee with approximately 800 pages of largely court orders and the products of those court orders without translations. They obviously cannot be distributed according to the rules. Having spoken to the clerk about the nature of the documents, apparently there are no studies or briefings or analysis documents. In other words, it's not what was asked for in the motion.

The motion basically states that we want what I asked for by the date of September. That's all I'm trying to do here.

● (1150)

**The Chair:** Any discussion of the motion?

Mr. Lemieux.

**Mr. Pierre Lemieux:** I just want to discuss a few points.

This is the binder that has been submitted so far. We are not being televised, but wouldn't that be roughly five inches thick?

**Some hon. members:** Four.

**Mr. Pierre Lemieux:** Thank you. Once again there is helpful assistance from my colleagues on the other side.

Chair, through you, I just want to understand. Alex feels that's not the information he required. Maybe he can confirm that.

**The Chair:** No, I believe what Mr. Atamanenko is saying is that that's the information he requires, but in order to have it circulated by the laws that we operate under here, the procedures—in order for it even to be distributed to Mr. Atamanenko—it has to be in both official languages. Am I correct?

**Mr. Alex Atamanenko:** Yes and no. According to the clerk, the material I requested really is not reflected in the binder. There are a whole bunch of court documents and things. Maybe there are a few documents in there, but in effect this is not what I asked for. It's not a matter of translating that big binder.

**Mr. Pierre Lemieux:** Mr. Chair, maybe I'll just go back to my point, then.

**The Chair:** Okay. I just have a little question of clarity. If you haven't seen it, how do you know...?

**Mr. Alex Atamanenko:** In talking with the clerk, she basically led me to believe, in looking through the binder.... So it's not a matter of translating the whole four inches of binder, basically.

[*Translation*]

**Mr. Pierre Lemieux:** We have a rule on bilingualism. It is very important: documents must be distributed in both official languages. But we would like to make sure that the information we need is there. We do not want to do a huge translation of information that is of no use to the committee.

As I understand it, each member of the committee can go to the clerk's office to look at the documents. So Alex could go to the clerk's office himself to see if the material is of use, rather than a third person doing so.

[*English*]

We can then see what information comes in and how best to deal with it.

**The Chair:** Mr. Atamanenko.

**Mr. Alex Atamanenko:** I think passing this motion doesn't preclude what we're doing. All that would do is say that there's some information in there that can be translated right away and there is other information that needs to be received. All I'm requesting in this is that we get all this stuff by September. So I think if we pass the motion today, we can go along and do this—

**The Chair:** Mr. Hoback.

**Mr. Randy Hoback (Prince Albert, CPC):** Mr. Atamanenko, do you want to be a little more specific on exactly what you're looking for? This is an old Liberal trick, where you throw six inches of pages at somebody and you really don't.... What you want is in there, but you can't find it.

**Mr. Alex Atamanenko:** I haven't seen that document. I am told by the clerk that the analysis and studies...it's basically a bunch of court orders and other information that may not even be relevant. It's possible, in looking through that in detail, that there may be some documents that are relevant that then could be translated. But it doesn't seem to me, from what I understand, that it's worthwhile translating this four-inch binder.

● (1155)

**Mr. Randy Hoback:** Any specific areas?

**Mr. Alex Atamanenko:** Well, we're looking at the whole sales, mergers, acquisitions, of these meat slaughter, packing, processing facilities since 2005 to the current year, which I think is really relevant to what we're trying to do here in the area of competition. I think we perhaps deserve to have that information when we come back in September.

**The Chair:** Okay. I'm going to take Mr. Lemieux and Mr. Easter, and then call the motion.

Mr. Lemieux.

**Mr. Pierre Lemieux:** Chair, I actually want to work with Alex on this, but the concern I have is...for example, if this binder had been translated first and then distributed to committee and then it was determined that it wasn't the correct information.... The cost of translating a brick like that is $20,000 to $40,000. Those are the estimates I've heard, and the amount of time, of course, that is required.

That's why I'm hesitating to pass the motion, where whatever is submitted automatically gets translated, automatically gets handed out to the members, if there is a concern that whatever is going to be submitted—especially if it's thick like that—may not be pertinent to what Mr. Atamanenko is actually looking for. Normally, when we ask for reports, presentations, and copies of speeches to be distributed, they're four or five pages long, and that's not a big issue. But this is a different matter. That's why I'm hesitating here. I'm completely in favour of having documents translated for committee.

[*Translation*]

It is very important.

[*English*]

I only want to make sure that we don't misspend the committee's time and resources translating something that isn't actually pertinent—

**The Chair:** Requested.

**Mr. Pierre Lemieux:** Exactly. So I'm trying to think of a way that we could perhaps do this so that we can determine whether we have the right material and then is it what we need translated or not, as opposed to passing the motion and then end up translating, perhaps, another big brick that might not be all that relevant.

**The Chair:** I'm going to take Mr. Easter's comment, then I'll maybe let Alex finish up on it.

Mr. Easter.

**Hon. Wayne Easter:** I understand the problem the parliamentary secretary alludes to, but one of our experiences with this government is that often the key documents are what we don't get. I don't expect the same thing would happen with the Competition Bureau, but our experience is that if there's any way the government can prevent us from seeing some documents, they will do so. Therefore, we pretty well have to be pretty broad in terms of what we ask for.

Therefore, I'm quite supportive of the motion, Mr. Chair. What goes around comes around, I guess. It will be costly, but the government has no one to blame but themselves for the cost because of our experience with them.

**Mr. Alex Atamanenko:** I think regardless of what has happened or what's happening or cost and government and so on, I think the main thing here is that all I asked for was any and all studies, briefings, and analysis documents pertaining to the approval and denial of all sales, mergers, acquisitions of meat slaughter, packing, processing facilities and livestock auction facilities.

These are studies and analyses. We have a clerk who understands her job, I think, and perhaps she could then determine, once she receives a document, whether it is in fact what we need. If it is, then that could be translated, and we can do it in consultation. We're not asking for this today. We're asking for this in September, so I think if we pass the motion, it gives us the green light to get it done properly. That's all I'm trying to do.

**The Chair:** I am going to call the motion.

(Motion agreed to)

**The Chair:** Go ahead, Mr. Atamanenko, for your seven minutes.

**Mr. Alex Atamanenko:** Thank you, gentlemen. We understand what we're facing here, so hopefully we can get some information.

Here's a question in regard to Tyson and XL Foods. Less than two months ago, you approved the sale of the Tyson beef packing plant to XL Foods. Now XL has closed the only major beef packing plant between Toronto and central Alberta—its Moose Jaw plant. The Canadian Cattlemen's Association says that the closure may be permanent. The association's research arm, CanFax, is quoted as saying that "The closure will lower prices for both fed and non-fed cattle." The CCA's CanFax also said of the closure, "We're reducing capacity and the plants don't have to go out there and be quite as aggressive on their bids to procure cattle."

So did the Competition Bureau anticipate this? Did it know that the Tyson-XL sale would lead to less aggressive bidding and lower cattle prices? Isn't that exactly what a Competition Bureau examination is supposed to determine? Did the Competition Bureau fail when it approved the sale?

● (1200)

**Mr. Adam Fanaki:** Thank you for that question. I'm going to answer certain parts of it and ask my colleagues to speak to some specifics of other aspects of it.

Obviously we are concerned about the temporary closure of the plant in Moose Jaw. We have asked for more information from XL in order to obtain an explanation. What we understand from XL and industry sources is that the corporation has temporarily ceased production there until September because cull and fed cattle supplies have recently diminished to the level where it is not possible to effectively operate the plant. That cattle shortage is unusual and is expected to abate in the coming months.

I think the best answer I can provide to you is that we are certainly aware of the issue. We are concerned about the issue, and we are taking steps to try to determine what the facts are around that. I appreciate your input into that from your own factual information.

I'm not sure if my colleagues have anything to add.

**Mr. Morgan Currie (Acting Assistant Deputy Commissioner of Competition, Mergers Branch, Competition Bureau):** When we heard about it, as Mr. Fanaki explained, we did go back to the industry as part of our continuing monitoring of the effects of that transaction. The more significant part of it to date, I can tell you, has been our look at MCOOL and our concern about what's going on with MCOOL. But when the plant closed we did go back and receive that explanation.

We understand that cull cattle is still moving south, along with fed cattle.

**Mr. Alex Atamanenko:** Are there any other comments?

I'm just concerned that there is this monitoring and it's taking place. What if you see a tendency for this less aggressive bidding and lower cattle prices? What steps are you prepared to take as the Competition Bureau?

**Mr. Adam Fanaki:** In terms of the steps that are available to us, we have a period of time following the closing of the transaction where we're able to seek a remedy in respect of any transaction that has the result of substantially lessening or preventing competition. What my colleague is referring to is that we are in a mode of continuing to look at that issue and to monitor and understand what the implications are.

Predominantly, I think what we're telling you is that we're watching to see whether or not the MCOOL has an impact on the incentives of U.S. packers to continue to purchase cattle, or an impact on their ability to continue to purchase Canadian cattle, and whether that would result in a significant depression in the price level for fed or cull cattle.

Certainly what's available to us is to continue to seek remedies in respect of the transaction for a period of time following the closing of that transaction, should our assessment reveal that there is a substantial lessening or prevention of competition.

**Mr. Alex Atamanenko:** Thank you.

I'm okay.

**The Chair:** You're okay.

Mr. Hoback, for seven minutes.

**Mr. Randy Hoback:** Thank you, Mr. Chair. I just want to let you know that I will share my time with Mr. Shipley.

Unfortunately, seven minutes isn't enough to ask all the questions I want to ask you guys. We could talk about the fertilizer industry, we could talk about the packing plants, we could talk about grocery stores. It seems like whatever we talk about, you don't have big enough fangs to tackle it properly. I'm always concerned that the person who pays is the farmer. I get really concerned when I listen to things like what Mr. Bellavance was talking about, where we're trying to get stuff into the grocery stores and the grocery stores are starting to charge for shelf space. I just wonder how in the world that's allowed to go on. Or there's the case of an independent grocery, and when they want to go shop around for a local supplier, their wholesaler comes up and says, if you buy locally we're going to penalize you and make sure you don't have supply when local supply isn't available.

What tools do you have available to address those issues? The person getting penalized here is the farmer and the independent grocer.

**Mr. Adam Fanaki:** Let me just talk for a moment again on the issue of the grocery stores. I'm not sure if there's a broader point if you're asking about “fangs”, if that was the word you used—

**Mr. Randy Hoback:** I guess you're there to protect competition within the industry, and I know in the Wheat Board situation I don't have competition, and that's the way it is. But in the situation of a grocery store—and I'll just use the example of an independent grocer—he uses one wholesale supplier, and that wholesale supplier has been very blunt, and—we've had testimony in front of us to this effect—has told him that if he even thinks of using somebody else to supply similar products, they'll penalize him: the trucks won't show up on time; his volume bonus will be cut—there are many different avenues that the wholesaler will use to penalize that retailer. Why can't you get in there and do something about that?

● (1205)

**Mr. Adam Fanaki:** Really your question raises issues that relate to the abuse of dominance provisions of the Competition Act. Let me speak about the “fangs” for a moment. Recently, as I mentioned, Bill C-10 enacted a change to that provision to allow the tribunal to award administrative and monetary penalties of up to $10 million. That's designed to promote greater compliance with the abuse of dominance provisions of the act.

The rest of your question, though, really raises two other issues, and one of them has to do with what we call slotting fees or listing allowances or other restrictions on shelf space in grocery stores. Then the second part is what I would call fidelity rebates or exclusivity perks. Let me just talk for one minute about how the act addresses those, again in a broad context, without talking about any specific companies or specific issues. This will be in the guidelines, so if there's more explanation required, it's also laid out in there.

Where a firm or a group of firms holds a dominant position in respect of the market for a product, the guidelines state that the imposition of fees in exchange for shelf space—and the fact that shelf space is limited—means that such arrangements could have an exclusionary effect on some competitors or classes of competitors. Where a dominant firm does that, the bureau would be concerned that the payment of a slotting allowance is being used by that dominant firm in order to acquire exclusivity or to tie up enough of the available shelf space to preclude other competitors from entering or expanding in the market. That issue is described in further detail in the guidelines themselves.

Now on the issue of exclusivity—and I hate to sound like a broken record—that's something that is discussed in a fair bit of detail. What the guidelines say is that where you have these fidelity rebates, loyalty rebates, or exclusive dealing arrangements, the concern is that they may tie up the market or otherwise prevent competitors from being able to compete in the marketplace, or make it much more difficult for competitors to be able to enter into the market. In cases where those are engaged in by a dominant firm with the intent to exclude competition and with a significant anti-competitive effect, that conduct can be subject to proceedings from the tribunal.

Essentially, that's the kind of—

**Mr. Randy Hoback:** So does somebody have to complain before you investigate those types of situations?

**Mr. Adam Fanaki:** Those types of situations come to us in a number of different ways. It can be through complaints. It can be from our own review of industries. It can be based on our own knowledge of that. An example would be back to the Canada Pipe case I was discussing earlier, which really dealt with an exclusivity program, if you will, and the impact of that program on the ability of competitors to be able to enter the market or to continue to participate in the markets. Those kinds of cases are being brought forward and are being addressed and can be addressed under the act where those conditions are made out.

Maybe time doesn't allow us to do it now, but I'd certainly be happy to talk to you further about what those specific conditions are.

**The Chair:** Bev, did you want a word?

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

I have two quick things. One, on the Better Beef and the Cargill merger, you interviewed and obtained information from feedlot owners, farmers, industry, and cattle brokers. Could you first just quickly tell me how that happens in terms of their response, their support in moving ahead in conjunction with all the other investors or stakeholders?

And second, on the XL-Lakeside transaction, you say there were some issues and that you're concerned about the MCOOL and a number of those unknowns. You put it through, and then you said at the end, "I can assure the members of this Committee that the Bureau will not hesitate to take appropriate remedial action...."

I don't know what that actually means, because once it's through, you can't disseminate it and put them back out there. You're going to give them a fine of $10 million or whatever. They make enough money to pay the fine, and then they continue to make the industry uncompetitive beyond their own best value.

Do you have any comments on those?

**Mr. Adam Fanaki:** The second question addresses what remedies are available under the merger provisions of the Competition Act. I don't want to leave you with a misimpression. The $10 million administrative monetary penalty we're talking about is in relation to abuse of dominance, not merger.

Our remedies with respect to mergers under the current act are that within one year of the closing of the transaction, we may seek a remedy from the tribunal in respect of that merger, which can include divestitures of assets, shares, and a full unwinding of the transaction, post-closing.

● (1210)

**Mr. Bev Shipley:** Back to where they were?

**Mr. Adam Fanaki:** It's post-closing. That is among the available remedies that exist under the merger provisions of the act, not abuse of dominance.

The first question is a good one, about how we gather this information and do these sorts of things. In the XL-Lakeside transaction, as we mentioned, we spoke to about 50 different industry participants. When we get a merger into our office, we generally have some knowledge about the industry, depending on whether we've seen previous transactions. Among the very first things we do is to go out to the marketplace, talk to farmers and other people in the industry, and understand what impact this transaction will have on them. We often get somewhat conflicting or differing views, depending on who you ask. We sift through that to try to understand what the true impact of this is going to be and what factual information and evidence we're receiving from the marketplace. It's very common for us in respect of any merger to go out and make these contacts with customers, suppliers, competitors, and other people who are knowledgeable in the industry to try to understand fully the potential implications of that transaction.

**The Chair:** Thank you. You are out of time.

We'll go to Mr. Valeriote for five minutes.

**Mr. Francis Valeriote (Guelph, Lib.):** Mr. Fanaki, thank you so much for attending today.

We have received testimony from a number of witnesses, particularly smaller farmers who feel they are controlled to a certain degree by dominance, either from those who control the inputs into their farming, or, on the other end, processing and distribution.

One example was the dominance where some of the processors and distributors, possibly Cargill and other large ones that have their own feedlots and supply their own cattle, manage to get so big that the result is, as Mr. Easter often refers to, the closing of 3,500 to 3,600 farms a year.

When you look at these mergers, do you consider the possible activity of these larger distributors and processors after the fact?

You may have already alluded to this somewhat in your answer to Mr. Hoback's question, but are you able to put aggressive, possibly invasive, conditions on these mergers to prohibit them from engaging in certain conduct later, so that the small guys aren't left out and aren't hurt?

**Mr. Adam Fanaki:** That raises an interesting issue, and perhaps just interesting to competition policy folks like myself, but when you're thinking about the civil provisions of our act, getting away from the criminal cartel stuff that we were talking about before, you really have, in a sense, two different ways of addressing issues. You have the merger provisions, which are directed at preventing mergers that substantially lessen competition; and you have the abuse provisions that deal with dominant firms that are engaging in practices of anti-competitive acts.

One of our goals in reviewing mergers is to obtain structural remedies such as divestiture of assets, divestiture of plants, and blocking transactions, in order to prevent firms from being able to get into a position where they can exercise dominance. If you can imagine a firm that grows without a merger, for example, or becomes dominant through some other means and exercises anti-competitive acts, that's addressed in the abuse of dominance.

So, yes, we can engage in orders that impose what I call "behavioural remedies", remedies that would say, "Following the merger you will not do this". But our very strong preference is to have structural remedies so that we don't have to rely upon behavioural conduct to address it.

**Mr. Francis Valeriote:** When I fall asleep at night I often think, if I only had the ability to do this, or if I only had the ability to do that, so much more could be done, given the stories I hear every day. You must find yourself in circumstances where you either said something is wrong or you know something is wrong, but you don't have the legislative ability to do anything about it.

Can you tell me some of those late-night thoughts you have where you actually wish there were certain changes to the legislation? Could you tell me what those changes would be to put the fangs in that Mr. Hoback is talking about?

● (1215)

**Mr. Adam Fanaki:** You know, I have a lot of late-night thoughts. Not many of them are on competition policy, though, I have to say. I think you are referring more to my daytime thoughts, to be honest.

**Mr. Francis Valeriote:** Daytime thoughts are fine.

**Mr. Adam Fanaki:** To be honest with you on that question, we've just had a very significant reform of our legislation about six weeks ago. And that's probably the most significant reform that has happened in the past 20 years. In my view, it has made some very significant improvements to the Competition Act to address those late-night thoughts, if you will, that I would have had in respect of potential shortfalls and deficiencies in our legislation.

I think right now the focus has to be on the implementation of those amendments, on enacting and addressing and enforcing those in the manner in which they were intended by Parliament to provide us with those tools to address that type of conduct.

I don't think I could sit here and tell you there is this legislative reform solution or additional legislative reform that we're looking for, given the recent changes that we've just had happen.

**The Chair:** There are just eight seconds, so your time is up.

Mr. Lemieux, for five minutes.

**Mr. Pierre Lemieux:** Thank you very much, Chair.

What you're hearing from committee members is that there is a real concern here. Farmers are on the receiving end of a lot of things that are going on, things that affect their input prices and things that affect their sales. They're the ones who lose in all of this. You're hearing it in different shapes and forms, touching on different subjects.

I want to come back to potash, because I've just heard grave concerns from farmers about potash prices, supply and demand.

Mr. Doyle, the president and CEO of PotashCorp, made some comments. You're probably already aware of them, but I want to get your comments on them. For example, he talked about matching potash production to demand as necessary. He talked about capturing value, which basically means keeping the price set, keeping it high, and about ensuring a secure supply for the future. He makes a comment that these are difficult times and they don't want to drive full speed off the edge of a cliff. And I understand that. No one wants a company to be flat out on production, where they do drive off a cliff. People and companies have to adapt.

But I think there's a zone where people start feeling they are getting gouged, that the price is too high for what's going on, and that it's actually having a very detrimental impact on their farming operations. And I think we're well into that zone, just given the feedback that we've heard here on committee, that I've heard myself. I know it's a hard thing to dissect, because companies are allowed to regulate their production. They are allowed to set their prices. There are market conditions. However, as I said, there comes a time where people start asking what's going on here, why is it the way it is, and it shouldn't be that way.

What we see here is that they have basically turned down the dial on production to keep the price high, and it's having such an impact that there's a very real concern that farmers will not buy potash or will not buy a lot of potash in this coming season. In fact, I've seen the articles in the farmers' magazines that are encouraging farmers, saying, “Don't cut back on your potash. If you're thinking about doing it, don't do it. Because it's going to affect your yield. It's going to affect quality of product.” That's a very real concern, and it's a natural consequence of what's happening.

I want to ask two simple, straightforward questions. What do you think about this approach by PotashCorp and these comments by PotashCorp's CEO? What are your thoughts on what he said and on what they're doing?

**Mr. Adam Fanaki:** Sorry, did you say you had two questions?

**Mr. Pierre Lemieux:** Yes, the second question is, what are you going to do?

**Mr. Adam Fanaki:** I always like to know the second question, so I don't trap myself with the first one.

**Mr. Pierre Lemieux:** I can understand, yes. I'd like to know your thoughts, and I want to know what you are going to do about it.

**Mr. Adam Fanaki:** To be honest with you, I can't speak to the specific circumstances around those comments or potash. I didn't come here today to talk about specific matters and specific companies, because then I'll get a phone call shortly thereafter from them on these topics.

It is important for this committee to understand that the Competition Act isn't a vehicle for price regulation. I know you recognize that, and you said that in your question.

● (1220)

**Mr. Pierre Lemieux:** Yes. I'm not advocating that.

**Mr. Adam Fanaki:** But metering supply to demand or charging the highest price you can obtain from the market can be looked at in a number of different ways. It can be looked at as firms seeking to maximize returns or it can be looked at as some form of inappropriate pricing. But the Competition Act is not a vehicle for price regulation and it doesn't make it unlawful for firms to charge high prices. I say that with all recognition that high prices have a very significant effect on Canadian farmers, and on Canadians generally, whereas, as I mentioned earlier, it's a different situation if those high prices are a result of the contravention of the act, such as a conspiracy to fix prices or other anti-competitive forms of agreement, an agreement to reduce output, for example.

**Mr. Pierre Lemieux:** Yes, but if these companies have a strong position in the marketplace, they have tremendous influence. We're not talking about collusion amongst five major companies. We're talking about a company that has a good chunk of the market share, and when they make these internal decisions, it has huge, huge impacts. It's not just a small player making a decision that affects only their operations. It's a big industry held by a few companies, and when they make decisions, there are very few other places to turn, quite frankly.

That's the problem. Where do farmers turn then? Where is there an alternative in the competitive marketplace for products?

**Mr. Adam Fanaki:** Unfortunately, I—

**Mr. Pierre Lemieux:** No, no, it's a rhetorical question, but I'm trying to express to you their frustration with "Well, you know, it's an open marketplace, so shop elsewhere". Well, shop where, and buy from whom? The market share is held by a few companies, and they are throwing their weight around, and it's to the detriment to farmers.

As I said, I think a lot of Canadians are reasonable, and we are, too, so we realize there's a zone in which companies operate, but when it crosses a line, the flags start going up, and they start going up across the landscape. It's not just one farmer who says, "You know, I'm being hurt by this, and I want it fixed." No. It's coming from all different types of agricultural sectors or commodity sectors, and it's coming from across Canada. This discontent is everywhere. That's how I feel we know they're in a zone that they shouldn't be in.

**The Chair:** Thank you.

Do you want to respond?

**Mr. Adam Fanaki:** I think the only response I can really give you on that issue is that I understand the concern with respect to high prices. We're not debating each other on these issues at all. I'm really trying to lay out for you what the vehicle is under the act, what the scope of the act is, and what provisions could be potentially applicable to that conduct. I don't want to reiterate the point again. High prices in and of themselves are not conduct that is unlawful under the act, but if those high prices are the result of some form of contravention of the act, then we are empowered to take action.

**The Chair:** Thank you.

Ms. Bonsant, for five minutes.

[*Translation*]

**Ms. France Bonsant (Compton—Stanstead, BQ):** I thought you had asked for the meeting to finish at 12:10 p.m.

[*English*]

**The Chair:** The witnesses we have after this are from DFAIT, for a briefing. I misread the agenda and thought they were going to be here at one o'clock. I'm making a call here as chair, and I hope I can report.... I think having the Competition Bureau here is key to our competitiveness study. My plans are to take you and one more from government. Then I'm going to end the debate, if that's okay.

[*Translation*]

**Ms. France Bonsant:** It was not a criticism, Mr. Chair. I was just surprised that the meeting was continuing.

[*English*]

**The Chair:** No. I wasn't taking it as one.

[*Translation*]

**Ms. France Bonsant:** Okay. Thank you.

I am having difficulty understanding something. You are the Competition Bureau and you say that you accept mergers. How can you accept the merger of large companies and say that there will be competition? When large companies merge, you end up with a monopoly. How can the owner of a small company compete with companies in a monopoly position, like Kraft, Del Monte and so on?

● (1225)

[*English*]

**Mr. Adam Fanaki:** I think that's an excellent question. It gives me a good opportunity to try to clarify on that point. I think you have to draw a distinction between big companies and monopolies. Maybe that will help to understand my perspective on this. We would be very concerned about a merger to a monopoly, just to put it bluntly. If we had two companies that were the only competitors in the relevant market, and they were seeking to combine together to become the only competitor, we're under no illusions in thinking that there's going to be competition thereafter.

But what we do is look at the relevant market, both the product market and the geographic market, to identify the full scope of competition that's available. We examine the market share and a number of other factors that indicate to us whether there's going to be significant competition following the merger, or whether the merger is going to significantly impair competition.

Just to give you an example, in our merger enforcement guidelines, what we state is that the bureau generally is not concerned with mergers where the combined market share of the merging parties is less than 35%. You're talking about a merger where the combined market share of the parties would be 100%, a merger-to-monopoly scenario, and obviously that would be of significant concern to us.

[*Translation*]

**Ms. France Bonsant:** I mention this, Mr. Parliamentary Secretary, because you are speaking out of both sides of your mouth. In the House, you say that agriculture is just fine whereas, here, you are saying that farmers are having a hard time. This is why, with competition, it is difficult, because the farmers' income does not increase. But the processor, who is between the two, sees his profits go up.

Do you look at processors, to see if there is competition between them, or is that not in your mandate at all?

[*English*]

**Mr. Adam Fanaki:** I'm sorry, I'm not sure I fully understand your question, but if you're asking whether or not we have a say as to how a company would decide to allocate its profits then clearly that's not the issue.

But I think you're really asking if you have a situation where as a result of a merger the combined entity would be able to significantly depress the prices it pays to its suppliers, whether they be cattle suppliers or other types of suppliers, to shift, if you will, the margin that's available in respect of that product, more to themselves than away, to the point where the price gets depressed significantly below the competitive level.

That very issue was the focus in both the Better Beef-Cargill and XL-Lakeside transactions. We spent quite a bit of time looking at that issue, and what we heard from farmers and from other participants in the industry is that packers that were located in the midwestern and northwestern United States were competitive alternatives for the supply of cattle. So when you're looking at the relevant geographic market, you can't just confine it to western Canada; you also have to include these other competitive alternatives. Obviously MCOOL may have an impact upon that possibility, but that was the information. We also saw significant cattle flows south of the border.

[*Translation*]

**Ms. France Bonsant:** With M-COOL, what will happen with cattle from Canada or Quebec? Do you think that the system is going to penalize us as shippers of beef or pork or whatever?

[*English*]

**Mr. Adam Fanaki:** Obviously it's very difficult for me to speak to that issue. I know you have some witnesses who are coming from the Department of Foreign Affairs and International Trade this afternoon, who I'm sure will be in a much better position than I am to understand how it's being done. It's similar to what I think we were talking about earlier on the legislation. It will depend to some degree on how that's being implemented and enforced.

[*Translation*]

**Ms. France Bonsant:** I think that Mr. Currie wants to answer that. I would like a short answer from him.

[*English*]

**The Chair:** That's fine, Mr. Currie, you can respond.

**Mr. Morgan Currie:** I just wanted to add that indeed the uncertainty over MCOOL is the reason we're continuing to monitor the XL-Lakeside transaction.

**The Chair:** Thank you, Madame Bonsant and Mr. Currie.

Mr. Hoback.

**Mr. Randy Hoback:** I appreciate the extra time. Again I will go back to my list of questions.

You made a comment on C-10. What is in Bill C-10 that is going to give you a few more fangs or power to do your job?

● (1230)

**Mr. Adam Fanaki:** Just as an overview of the reforms in Bill C-10, I'll give you a quick list of what the changes are and tell you how I think that impacts on enforcement.

The first change, which actually doesn't come into force until a year or so from now, is the change to the cartel, the conspiracy provision of the Competition Act, to create a more effective enforcement regime for the most egregious forms of cartel agreements: agreements among competitors of fixed prices, allocated markets, or reduced output, while not discouraging firms from entering into potentially beneficial strategic alliances, collaborations, and joint ventures.

The decriminalization of the pricing provisions will allow firms to have greater flexibility to provide innovative discounting and pricing strategies. The addition of the administrative monetary penalties to abuse of dominance, which was consistent with the recommendation of this committee, will promote greater compliance with that provision.

In the merger round we have a new merger review process that I outlined as well, which provides a more effective means for gathering information from the merging parties and reduces the number of transactions that need to be pre-notified to the Competition Bureau.

Generally speaking, there are increased penalties for the criminal provisions of the act to promote greater compliance with those provisions.

**Mr. Randy Hoback:** Okay. Again, Mr. Chair, I'd just like to point out that of course it was the Conservative Party and the Liberal Party that supported this bill, and the two other opposition parties found some reason not to support this bill. I guess I wonder why that is.

Continuing with my questions, on cartels or price areas, does that not also affect government organizations or government arm's-length organizations—for example, the Canadian Wheat Board? Why am I as a farmer forced to sell my product to one entity in western Canada when the rest of Canada isn't? Is that not anti-competitive?

**Mr. Adam Fanaki:** I think from the Competition Bureau's perspective, or at least from my own perspective, we take the laws as they are. The Canadian Wheat Board is a creature of statute, and we take that as it is.

**Mr. Randy Hoback:** So you would never investigate something that was a creature of statute.

**Mr. Adam Fanaki:** Well, I think if it is an organization that is developed or authorized by regulation—by appropriate regulation, if you will, lawfully passed regulation or statute—there is a concept in our law referred to as the regulated conduct defence, which I won't bore you with. It essentially is a common-law-developed doctrine, which essentially provides a defence to parties where their actions are specifically authorized pursuant to lawfully passed regulations or laws.

**The Chair:** On a point of order, Mr. Easter.

**Hon. Wayne Easter:** On a point of order, Mr. Chair, I would just point out that the court system has twice found this government wrongfully trying to undermine the Canadian Wheat Board. They've been stopped by the courts twice, so the courts have stood up for the Canadian Wheat Board. These guys may not like it. And farmers have stood by the Canadian Wheat Board by electing eight out of ten directors pro-board.

**Mr. Randy Hoback:** Again, Mr. Chair, I get that question a lot. I was just looking for an answer from them so I could provide an answer to my farmers on why this situation exists the way it is.

**Mr. Pierre Lemieux:** We hear quite a bit from Wayne, but not from farmers.

**Mr. Randy Hoback:** On that part, yes.

Let's look outside at gas prices. There's another example of "How can that go on?" How can gas all of a sudden mysteriously change throughout the city of Prince Albert within 30 seconds? Again, it doesn't pass the smell test, yet last May long weekend, all of sudden, gas prices just went up 4¢ a litre, bang, right across the riding. Does this give you more tools to deal with that?

**Mr. Adam Fanaki:** Let me speak for a moment about that issue. On gas pricing, you may know that criminal charges were laid against a number of individuals and companies that were accused of fixing the price for gasoline in certain communities in Quebec: Victoriaville, Thetford Mines, and Sherbrooke. We've had eight individuals and five companies plead guilty in those cases, with the fines totalling more than $2.7 million. So where gas pricing is being affected by unlawful agreements between competitors, the bureau has taken action and will continue to take action in respect of that conduct.

Gasoline is a good example of this. The way the changes to the legislation would impact upon that is, even though the allegation here is that there was a price-fixing agreement among competitors, which I'm sure you and I would generally agree is something that should be unlawful outright, the law that's enforced now because the new one hasn't come into effect—the unamended law, if you will—required us to prove, even in respect of those agreements, that it was likely to have the effect of unduly lessening competition in a relevant market. What that introduces now is an economic test, if you will. In the context of a criminal proceeding to the standard of beyond a reasonable doubt, you have to establish that this price-fixing agreement had the effect of impairing competition.

It's a hard thing for a criminal court to wrestle with because they're not used to hearing about downward sloping demand curves and cross-elasticities of supply and those types of economic concepts. It's very difficult to establish those beyond a reasonable doubt. The new law that will come into force in March 2010 removes that undueness test and narrows the criminal provision to apply directly to these most egregious forms of criminal conduct.

It is going to make enforcement, in respect of these types of price-fixing cartels, more effective and more efficient. In addition to that, the penalties were significantly increased, so there's greater deterrence and greater compliance with the provisions.

● (1235)

**The Chair:** Thank you.

Before we wrap up, gentlemen, there have been a lot of things mentioned today that I have concerns about. Having you here is key to some of the suggestions and recommendations that come out in this committee's report. I hear a common theme and support by most of the committee.

What I'd like to know is the legislative or regulatory powers you need to increase competition in the four areas that most affect agriculture—the fuel industry, the fertilizer industry, the packing industry, and the ownership of cattle. Ownership of cattle is not illegal, as we all know, but it effectively gives slaughter plants the power to fix the market price, whether intentionally or not. We need some changes to deal with that. We know there's—I'll be gentle—extra price-taking in the fertilizer industry. We've had fertilizer officials here who have all but admitted it. I call it price-gouging. We need some rules.

Grocery stores represent another element that affects not just farmers but also the consumer. I want to know what powers you need to eliminate the ability of grocery stores to charge for shelf space. I relate this to the old days when one of the local mobsters would go around to each of the little stores in town and demand protection. My opinion is that this is legalized extortion. I'm hoping I'll have the support of the committee today. What I want is a recommendation to the government on how we can restrict this practice.

Finally, does Bill C-10 give you the power you need in all these cases? I suspect maybe it doesn't, but it certainly goes a long ways towards it. If it doesn't give you the power, what extra do you need to deal with some of these issues? I'd like you to tell us what you think today, and to respond to us in the next week or 10 days in writing, so we can include it in our report.

**Mr. Adam Fanaki:** We're of course happy to provide any information you might require.

I think we're coming round to a common theme in some of the discussions that we've had so far this morning. I want to make sure that people understand what the role of the Competition Act is. It is to protect a competitive process. It's not about protecting individual competitors or protecting competitors from the impact of what might be legitimate competition. I'm not saying that's what you think; I just want to define some of the bounds here.

● (1240)

**The Chair:** Mr. Fanaki, I want to say to you that I think I know what powers you have and don't have. I don't like what's happening. It's one of two things: either the Competition Bureau isn't doing what it can do, and I'm not suggesting that's the case, or we don't have the regulations to allow you to do what you can do. It's one or the other, and it has to be fixed. I think there's a consensus around the table here. There may be differences of opinion on how we fix it, but I think everybody agrees it's not working in the long term. I wanted to clarify that with you.

**Mr. Adam Fanaki:** I want to react to that if I can.

Talking about late-night thoughts, I was having this conversation with my wife last night, and she was telling me that the yard was a mess—

**Mr. Francis Valeriote:** So you do!

**Some hon. members:** Oh, oh!

**Mr. Adam Fanaki:** She said, "The yard's a mess, the lawn furniture's not put together", and I said to her, "You know, I do a lot of things around here that just seem to go unrecognized." I might get a similar reaction from this committee as I did from her last night. But I can point to several examples where the bureau has taken action to protect or promote competition in the agricultural industry or otherwise benefit Canadian farmers and other participants in the sector.

I think it's important for me to put that on the table, so you're not left with this impression that there's been ineffective enforcement in the area. For example, in a mergers context, we engaged in significant litigation and devoted significant resources to secure a series of remedies that were to maintain and promote competition in the grain handling industry in western Canada. That included the divestiture of a grain handling terminal in the port of Vancouver and 17 inland grain elevators in order to protect competition for western Canadian farmers.

In the criminal context, we've taken action to stop price fixing on important inputs into agriculture operations like chemicals that are used in animal feed. So I think we're happy to talk about ways in which we can improve enforcement, and we're very open to having those kinds of discussions. But I want to make sure that you understand our perspective, that there are a lot of steps being taken by the Competition Bureau in order to protect and promote competition in the agriculture sector. There are a lot of tools that exist under the act that we use as part of our day-to-day enforcement activities.

**The Chair:** Before I go to Mr. Valeriote, I just want to be clear. I don't want—what would you call it?—philosophical ideas, yours or anybody else's in the Competition Bureau, to get in the way here. I would still like you to come forth with recommendations for us, as I said, in the next week or 10 days, if possible, so we can include them in our report as to how we can deal with some of the legislative things that address things. Then we can discuss as a committee how we want to accept or pass it on, or whatever.

Mr. Valeriote.

**Mr. Francis Valeriote:** What I'm hearing Chair Miller say is not about changes to improve enforcement. I think he's talking about broadening your powers and your authority to deal with the issues that he's talking about, that everybody has raised.

**The Chair:** That's exactly right, Mr. Valeriote.

Okay. We've extended this beyond the time, but I think it's been very, very fruitful. I want to thank all of you for coming here today, and we look forward to receiving more information.

**Mr. Adam Fanaki:** Thank you for this opportunity. We appreciate it.

**The Chair:** It was great to have you.

We'll suspend for a few minutes until DFAIT officials—

**An hon. member:** Suspend or adjourn?

● (1250)

**The Chair:** We have a little change in plans. I didn't think of this before. The briefing we're about to receive is in connection with our trip to Washington from June 3 to June 5, next Wednesday to Friday. We have to go in camera, and it will be just for the members of the committee.

I apologize for that.

[*Proceedings continue in camera*]

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