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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (1535)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good afternoon, ladies and gentlemen. Welcome to the 20th meeting of the Standing Committee on Industry, Science and Technology.

We are here today pursuant to Standing Order 108(2), the study of the subject matter of clauses 175 to 192, the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation; clauses 239 to 241, Telecommunications Act; clauses 317 to 368, amendments relating to international treaties on trademarks; etc.

We have before us two witnesses. We have two panels today, ladies and gentlemen.

Because we've gone to a straight timing with no first or second round, we will have five-minute slots for everybody, for all nine members of the committee, after Ms. Miller gives her opening remarks. Then we will go to a second panel after this one. The second panel will be from the Department of Industry.

Before us right now we have Pamela Miller, director general, telecommunications policy branch; and we have Christopher Johnstone, senior director, industry framework policy.

Ms. Miller, perhaps you could ahead with your opening remarks, and then we'll go to our routine rounds of questioning.

Ms. Pamela Miller (Director General, Telecommunications Policy Branch, Department of Industry): Thank you very much, Chair.

[*Translation*]

We're pleased to be here this afternoon to explain section 16 concerning wireless roaming rates and to respond to your questions.

[*English*]

To start, I would like to explain what is meant by roaming rates in this amendment. This amendment addresses wholesale roaming rates, that is, the rates that are charged among companies to use each others' networks. So that their customers have access to services outside of their network footprint, wireless companies must enter into roaming agreements with other wireless service providers. This is particularly important for new competitors entering the market, because as you can appreciate, they would not have as extensive a network and they would need to roam on other providers' networks.

This section would amend the Telecommunications Act to prohibit Canadian carriers from charging their Canadian competitors wireless roaming rates that are higher than what they charge their own customers. Industry Canada does mandate that carriers offer roaming services to other carriers, but it does not regulate the price of that access.

We understand that the roaming rates that Canada's largest wireless companies are charging other domestic providers are significantly above the rates they charge their own customers; that is, they have wholesale prices that are higher than retail prices. These high wireless roaming costs negatively impact competition, as new entrants must either pay these costs themselves or pass them on to the consumer. In a submission to the current CRTC proceedings, the Competition Bureau indicated that incumbents have retail market power and therefore have an incentive to ensure that new entrants are not fully effective competitors.

The amendments set out the wholesale mobile roaming services that would be capped—wireless voice, text, and data services—and include a formula for the cap based on a carrier's average retail rate for the service. Regarding how this measure relates to CRTC regulatory processes, the CRTC will be responsible for enforcing the roaming cap. The CRTC has launched two proceedings to examine wholesale wireless roaming, and the government has indicated this measure will be in place until the CRTC makes a decision on roaming rates. The amendments provide that a wholesale roaming rate established by the CRTC would take priority over the legislated rate.

To summarize, these amendments provide a cap on the rates charged among companies to roam on each other's networks. Capping domestic rates will help Canadian consumers benefit from more competition in the wireless market.

Thank you very much, and we welcome your questions.

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

Colleagues, I'm going to ask you to forgive me in advance because we have two panels, so I have to stay really tight to the time, and accordingly, with the witnesses as well.

Ms. Gallant.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Mr. Chairman, do we have the speaking notes for our presenters in English and French so that we can read them?

The Chair: No, we don't, Madam Gallant.

Mrs. Cheryl Gallant: Thank you.

The Chair: I apologize. We weren't able to get them translated quickly enough.

On to the first five minutes. Ms. Bateman.

Ms. Joyce Bateman (Winnipeg South Centre, CPC): Thank you very much, Ms. Miller and Mr. Johnstone.

I just want you to take half a minute to define the impact, because my perspective is that a reduction in roaming charges is going to be very helpful for businesses, and it's going to be very helpful for families. Certainly anybody with teenagers, such as me, is going to notice the change.

Perhaps you could define exactly what the impact is going to be from the industry's perspective, if you'd be so kind.

Mr. Christopher Johnstone (Senior Director, Industry Framework Policy, Department of Industry): In terms of the roaming rates as they stand now between carriers, as Ms. Miller stated, the carriers right now are charging other carriers a rate that is much higher than what they currently charge their own customers on average.

Ms. Joyce Bateman: When company A comes to province B and uses supplier C, they are charged more than if they were just living in that province and were dealing directly with supplier C.

Mr. Christopher Johnstone: That is correct.

On average when the government announced its intention to move forward with this measure in December it was stated that the roaming rates that Canada's largest wireless companies are charging for the customers of new entrants can in some cases be more than 10 times higher than those they charge their own customers.

Ms. Joyce Bateman: Ten times higher.

If I were the company doing that—I'll let you finish first. It strikes me that this is a lucrative pool of revenue for them. While we view it as negative to business and negative for families, this is going to meet with some resistance.

Mr. Christopher Johnstone: Right.

I would reiterate again, as Ms. Miller said, for clients of that new entrant, for example, when those customers roam outside of that provider's network when their provider is being charged those high roaming rates by the other provider, they either need to absorb those costs or pass those costs on to the consumer. That obviously impacts either the consumer or that company's ability to be competitive in the marketplace and offer—

● (1540)

Ms. Joyce Bateman: What are the incremental costs to the provider? In using the example, we have the business person with company A and he's now in a province that's only serviced by company C.

What are the costs to company C? What are the incremental costs to company C to provide that service?

Mr. Christopher Johnstone: We don't have data on the incremental costs of—

Ms. Joyce Bateman: On what basis do the companies that feed into you calculate the amount that they're billing their client? It must be on something.

Mr. Christopher Johnstone: Do you mean in terms of the amount that they're billing the other company or their own clients?

Ms. Joyce Bateman: Absolutely.

Maybe I'm being a little bit old-fashioned here, but it would be nice if it was based on actual costs. Are they just pulling the number out of the air and saying they can charge people 10 times more? I don't quite understand.

Mr. Christopher Johnstone: In terms of what they charge their own customers, obviously that's a function of competitive dynamics in the marketplace. In terms of what they charge other companies, that's also a function of—

Ms. Joyce Bateman: A captive market?

Mr. Christopher Johnstone: As Pam said, the Competition Bureau indicated in their submission to the CRTC that—I'll read you exactly what they said because it's relevant to your question.

Ms. Joyce Bateman: Thank you.

Mr. Christopher Johnstone: In their submission to the CRTC the bureau stated:

> The terms of such roaming agreements—

—that is, what they're charging the other company for their customers to be there in that area—

> —are a strategic tool that incumbents can use to protect their market power.

Furthermore, they stated:

> In the Bureau's view mobile wireless markets in Canada are characterized by high concentration and very high barriers to entry and expansion.

Later, they say:

> Given these factors the Bureau's view is that the incumbent service providers have market power in Canadian retail mobile wireless services.

The Chair: Thank you, Mr. Johnstone.

Thank you, Madam Bateman. That's all the time we have.

We'll move on to Ms. Nash now for five minutes.

Ms. Peggy Nash (Parkdale—High Park, NDP): Welcome to the officials. We appreciate your being here.

This is a difficult process for us, because what we're discussing here are elements of the omnibus budget implementation act, which are really before the finance committee, and we don't have the ability here to vote on any of these proposals. So we're going through an odd process here, to review these changes in the bill, but we have no power to amend or to vote on the outcome of any of this.

Nevertheless, we do have some questions for you. We want to take advantage of your being here, and appreciate your time today.

In the NDP we've felt for some time that we should crack down on these wholesale roaming fees. These have been agreements the companies have negotiated between each other. Do you think this has been a barrier for smaller carriers entering into the Canadian market, that this is something that's been wholly in the control of the telecoms?

Mr. Christopher Johnstone: In terms of the impact on new market entrants, new market entrants have stated through consultations that have been conducted that these wholesale roaming rates are a significant factor in their ability to provide competitive services to Canadians.

Ms. Peggy Nash: Do you think the fact that this has dragged on for so long and there has been inaction for such a long period of time has hindered new entrants from coming into our market? Do you think it has damaged the Canadian brand as a telecom market that new carriers see that we have these barriers and this may have prevented them from getting in previously?

Ms. Pamela Miller: The government has taken action on a number of occasions to address this issue. It first took action in 2008, when it required that carriers provide roaming to other companies. Then in 2013 the government extended those policies indefinitely. Now the government is taking further action. So there has been a course of consistent action on this issue.

● (1545)

Ms. Peggy Nash: But essentially up until now, including now, the companies have basically negotiated these agreements between themselves and, as you said, the roaming rates are incredibly high. You said they're a barrier to new entrants, so probably this delay has had an impact on consumers.

I see in this legislation there's nothing that grants the CRTC or Industry Canada the power to impose any administrative or monetary penalties on companies that overcharge for wireless roaming.

How important do you think it is to be able to enforce this legislation that there be monetary penalties when there's a breach of this law, assuming it becomes law?

Mr. Christopher Johnstone: In terms of the enforcement, first of all, the section adds this new cap that's in the section, to subsection 27(3) of the Telecommunications Act. This section gives the CRTC the power to enforce the section, as well as other sections. Subsection 27(3), right now, applies to other sections of the act, and it states, “The Commission may determine in any case, as a question of fact, whether a Canadian carrier has complied” with the section or with any other decision made under this section. The section in the bill adds this new section to that section. Effectively, what it is saying is that the commission could determine in any case as a question of fact whether a Canadian carrier has complied with that.

Ms. Peggy Nash: Dealing with monetary penalties.

Mr. Christopher Johnstone: I'll let Pam speak.

Ms. Pamela Miller: Yes, on the monetary penalties, there has been a significant action taken in that regard. In December 2013 Minister Moore announced new enforcement measures that will increase consumer protection in the telecom sector, and they will provide candidates—

Ms. Peggy Nash: This will be enforced with monetary penalties. Is that what you're saying?

Ms. Pamela Miller: This has been announced through the budget in the upcoming period that there will be action taken to bring into effect amendments to the Telecommunications Act to put into place administrative monetary penalties.

The Chair: Thank you, Ms. Miller. We appreciate it, Ms. Nash.

Now onto Madam Gallant, for five minutes.

Mrs. Cheryl Gallant: Thank you, Mr. Chairman, and through you, to the witnesses.

How will the formula for the cap be arrived at on the part of the legislation?

Mr. Christopher Johnstone: The formula is a metric of the average retail rate of the providing company. It's a function of the revenues that the provider gets from the services. The three services that are covered by this section are: wireless voice, wireless data, and wireless text services.

For a company that is providing the wireless roaming service to another company, the formula looks at what the total revenues are that the company gets, for example, from its wireless voice services, and it provides a specific definition on that divided by the number of minutes it provides. It's a metric of the average rate; the average revenue per minute, or per megabyte in the case of data, or per text in the case of text the carrier generates in revenue from that particular service.

Mrs. Cheryl Gallant: What we're talking about then is a cap for other carriers, people who are buying the use of the infrastructure from the incumbent telecoms.

Is there no cap for consumers?

We all have heard horror stories about consumers who go on vacation and didn't realize the roaming feature on their iPad was on until they got their bill in the mail. Is this legislation not going to address that issue?

● (1550)

Mr. Christopher Johnstone: You may have heard about the CRTC's wireless code. In December of last year, the CRTC implemented a mandatory code of conduct for wireless services. In that code, providers must suspend national and international data roaming charges and services when these reach $100 per month, unless the customer expressly consents otherwise. The CRTC has included a measure with respect to that issue in the wireless code.

Mrs. Cheryl Gallant: How is the government or the CRTC, whoever is policing this legislation, going to know if the telecoms are abiding by the legislation? What sort of reporting method is involved?

Mr. Christopher Johnstone: In that case, because these are company-to-company arrangements, we talked about the example of a client of company A roaming in an area of company B. Those two companies have an agreement with respect to what company A will charge company B for the customer being there. The legislation caps what that company can charge. If the second carrier feels that's not being abided by, that carrier can raise the issue with the CRTC. A section has been added to a clause that gives the CRTC the ability to determine if the carrier is complying with the clause.

Mrs. Cheryl Gallant: If the consumer feels there is a discrepancy —they may have two phones they're carrying along, one with an incumbent and one with a secondary, and they notice the fees for roaming are higher on one phone—how would the consumer be able to determine whether or not he or she was being gouged? What protocol would they follow in order to determine this?

Mr. Christopher Johnstone: The legislation addresses the wholesale roaming rates between carriers. It doesn't address retail roaming rates.

The Chair: Thank you very much, Mr. Johnstone and Madam Gallant.

Madam Sgro, you have five minutes.

Hon. Judy Sgro (York West, Lib.): I'd like to thank you both very much for coming.

This is certainly an issue that all Canadians, including all of us sitting around this table or in this room, care about when it comes to the whole issue of what can be done about the quite expensive roaming charges that Canadians are continuing to face. The bigger issue, though, is about building a network that covers off a lot of other communities so that they'll have less of an issue with roaming due to having a larger network. Is the department looking at how it could encourage that?

I don't see how these changes will accomplish that larger network. This will deal strictly with the wholesale rates and what one can charge over another. At the end of the day, it won't do anything about the bigger problem, which is how to expand a network into the smaller communities rather than just our six largest cities in Canada.

Ms. Pamela Miller: In terms of coverage of our wireless networks, I think we do have very, very good coverage of wireless networks in Canada. We have what are called HSPA+ networks, which are at 99%, and what are called the LTE networks, which are the high-speed data networks. We're actually doing very well internationally on that. We're at 72%. So we do have excellent coverage, I think, in terms of wireless networks.

This measure is specifically aimed at a competition issue. We're trying to attract more competition. To do that, when new entrants come into the market they need to have access to the larger networks of the incumbents in order to offer national service. Otherwise, once their customers go outside of their own region, they won't have service.

This is one of the important elements in terms of increasing competition.

● (1555)

Hon. Judy Sgro: Where does the CRTC come into this, then? Which overrides which? Will the CRTC abide by this, or will the legislation trump it?

Mr. Christopher Johnstone: In terms of the interaction with the CRTC, the government's announcement in December and the budget plan indicated that the measure will be in place until the CRTC, which is now investigating the issue of roaming rates, makes a decision on roaming rates.

The section has a clause that states that the GIC can repeal the clause. It also includes a clause that states that an amount established by the CRTC prevails over the cap in the clause to the extent of the inconsistency. There are two areas there that deal with the interaction.

Hon. Judy Sgro: Do you think these changes will ensure that, at the end of the day, the consumer will be the beneficiary of this?

Mr. Christopher Johnstone: I would point back to the measure that we pointed to earlier in terms of the 10 times factor. This will have a significant impact on wholesale roaming rates, and that will support competition.

Hon. Judy Sgro: Again, what kind of mechanisms will be in place to make sure this happens and any savings are actually passed on to the consumer?

Mr. Christopher Johnstone: The measure relates to wholesale roaming rates. It doesn't relate to retail roaming rates. As was said in some of the earlier comments, the factor of wholesale roaming rates has been quoted by new entrants as being a significant factor in their ability to provide Canadians with competitive services. Obviously prices and services in the market are a function of that competition.

Hon. Judy Sgro: The wholesale rates also currently have a big impact on our smaller providers. I would imagine it would be quite a significant impediment for many of them that are currently in the market. They still have to pay an awful lot more because of the wholesale rates.

Mr. Christopher Johnstone: That's what the legislation does address. The legislation would cap those wholesale roaming rates.

So in terms of—

The Chair: Thank you, Mr. Johnstone. I'm sorry, but you'll have to go with that much of an answer.

Mr. Van Kesteren, for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you for coming here this afternoon.

I have a quick question. Before this legislation unfolds, what will happen to the existing contracts?

Mr. Christopher Johnstone: The legislation imposes a cap. It says in the legislation that this clause would come into force on royal assent. As of that date, that would be the amount that would be the cap under law.

Mr. Dave Van Kesteren: Would the change happen once the act became law?

Mr. Christopher Johnstone: Once it receives royal asset, that cap would be in place.

Mr. Dave Van Kesteren: Okay, thanks.

I want to talk about the review by the CRTC. What triggered the whole process of the review by the CRTC?

Mr. Christopher Johnstone: What triggered this, or the CRTC's review?

Mr. Dave Van Kesteren: The CRTC review.

Ms. Pamela Miller: The CRTC often do fact-findings to establish the evidence base. In mid-2013 they did a fact-finding on the issue. On the basis of that, they decided to go ahead with a proceeding. Their first proceeding is on unjust discrimination, undue preference, and their second proceeding is a review of wholesale mobile wireless services.

● (1600)

Mr. Dave Van Kesteren: The review has been going on since 2013. Is that correct?

Ms. Pamela Miller: They started with a fact-finding, and then on December 12, 2013, they launched their process, which is called CRTC 2013-685. That is their process on unjust discrimination, undue preference.

Then in February of this year they started the second process, which is 2014-76, the review of wholesale mobile services.

Mr. Dave Van Kesteren: Could you clarify those issues again? What are the things that the fact-finding will focus on? Just give those to me. I think you gave me three.

Ms. Pamela Miller: The first one is a fact-finding.

The second is a procedure that looks at whether there is unjust discrimination and undue preference. It's looking at a specific part of the Telecommunications Act, section 27.

Then they're going to have a broad review, a review in general, of wholesale mobile wireless services. The second review is a broader review.

Mr. Dave Van Kesteren: Did it take place in February of this year?

Ms. Pamela Miller: It was launched in February 2014. The date for submissions is May 15. There has been a notice of hearing established of September 29, 2014.

Mr. Dave Van Kesteren: Okay.

Will this review complement what's happening in the act at all? Are there other ramifications?

Mr. Christopher Johnstone: The act is a first step. Again, in terms of what the government has stated, the government announced in December 2013 and the budget plan indicated that the measure in the budget legislation will be in place until the CRTC makes its decision on roaming rates. It completely envisions that the CRTC is looking into the matter and will make a decision.

Mr. Dave Van Kesteren: Thanks, Chair.

The Chair: You're welcome, Mr. Van Kesteren.

[*Translation*]

Ms. Quach, you have the floor. You have five minutes.

Ms. Anne Minh-Thu Quach (Beauharnois—Salaberry, NDP): Thank you, Mr. Chair.

I'd like to thank the witnesses for being here today.

Like my colleague, Peggy Nash, I feel that this process isn't overly legitimate. Given that Bill C-31 is an omnibus bill, any of the amendments we propose won't even be voted on in committee because the Standing Committee on Finance will pass the entire bill. There's a real lack of transparency and democracy there.

That said, I do have some questions for you.

You and my colleague discussed the fact that these changes will allow the CRTC to impose monetary penalties on companies that don't adhere to wholesale roaming rates. Which provisions would allow the CRTC to impose such penalties? Are there currently any measures that are imposed on companies that break the rules?

[*English*]

Mr. Christopher Johnstone: Thanks for that question.

In terms of what I mentioned before, subsection 27(3) of the Telecommunications Act would give the commission the power to determine in any case, as a question of fact, whether a Canadian carrier has complied with the section.

I'm not sure if that answers your question.

[*Translation*]

Ms. Anne Minh-Thu Quach: Yes.

Once the CRTC determines that a company has broken the rules, penalties can be imposed, but has the CRTC ever imposed those penalties?

[*English*]

Ms. Pamela Miller: The CRTC currently has its normal enforcement measures, but in addition, the government is introducing administrative monetary penalties. As I mentioned previously, this was announced by our minister in December and it also was announced in the budget. There will be further action in terms of the introduction of administrative monetary penalties.

[*Translation*]

Ms. Anne Minh-Thu Quach: The CRTC will impose penalties in the future, but right now nothing is being done.

● (1605)

[*English*]

Ms. Pamela Miller: The CRTC has its normal enforcement procedures, and this will strengthen what the CRTC has.

[*Translation*]

Ms. Anne Minh-Thu Quach: I understand.

Earlier, you said that approximately 60% of rural areas have coverage. However, there are at least 10 municipalities in my riding, Beauharnois—Salaberry, where young people, workers or doctors in hospitals, for example, don't have access to high-speed Internet. As soon as the wind starts to blow or it starts to rain, Internet access gets cuts off. There is no network. The government has yet to pass regulations to ensure that companies offer this service in rural areas.

Do the proposed changes include regulations that would improve the network and help lower service prices for people in rural areas?

[*English*]

Ms. Pamela Miller: Thank you for that question.

In terms of service availability for rural areas, I think you would be looking at both wireless, as we've mentioned, and also broadband availability. A program has been announced in the budget, and the government will be going ahead with investments for rural broadband. In terms of the timing of that, it has already been announced in the budget; it has been confirmed. It is a total of quite a considerable sum of money, over $300 million. That would bring service of up to five megabits to Canadians throughout Canada. The details will be introduced shortly.

[*Translation*]

Ms. Anne Minh-Thu Quach: The budget figures that you just shared don't include much for next year. The funding will be available after 2017.

What measures could be taken, in the short- and medium-term, to make it easier for small companies to enter the market? Despite the bidding on the 700 megahertz spectrum, there aren't many wireless companies in Canada. It didn't really make it easier for small companies to enter the market. That's the case for rural areas as well.

How does the government think the proposed changes will improve the situation for communities?

[*English*]

The Chair: Sorry, we have to leave that question; we're way over time. Hopefully you can squeeze an answer maybe in some other round where it's germane.

We'll move on to Mr. Braid for five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you to Ms. Miller and Mr. Johnstone for being here today and for helping with our understanding of the elements of the budget implementation act that apply to the telecommunications industry generally, and our efforts to cap roaming rates specifically.

Mr. Johnstone, you've explained that these measures would cap wholesale rates that one company charges another, and that the cap essentially would mean that a company cannot charge another company a higher roaming rate than what it charges its own customers.

Who do you anticipate will benefit from these measures?

Mr. Christopher Johnstone: In terms of the benefits, I would go back to the statement that the roaming rates that Canada's largest wireless companies are charging other domestic providers could be more than 10 times what they charge their own customers for those specific services.

Those companies and their customers are affected by that, given that either the carrier needs to absorb this cost and try to be more competitive or pass those costs on to their customers.

A number of new wireless entrants have entered the market since 2008, when the government first set aside spectrum for new entrants to enter the market. Those are companies, for example, that would benefit from this reduction in wholesale roaming rates.

● (1610)

Mr. Peter Braid: Do you have any idea what the incremental roaming rates being charged in Canada currently represent in dollar terms? Is there a dollar figure?

Mr. Christopher Johnstone: There is no public dollar figure on the volumes between companies. These are obviously company-specific and company confidential volumes and prices, so there's no specific figure that I could quote.

Mr. Peter Braid: Is it not a desired outcome that at the end of the day consumers would benefit from this because there will no longer be a requirement for the company to pass those higher roaming charges along?

Mr. Christopher Johnstone: Exactly. Overall, the intent of this measure is to improve competition, and obviously wireless prices and services in Canada for consumers are a function of competition.

Mr. Peter Braid: To pick up on that point, you have also mentioned that these high roaming rates—one of the reasons we're taking this initiative—are a barrier preventing new entrants from entering the marketplace. Take that a step further: how are they a barrier currently?

Mr. Christopher Johnstone: They are, given that the prices being charged can be 10 or more times higher for those roaming services. When the customers of these companies roam outside of the company's network, their company is charged those high rates, which are higher than the retail rates, as we discussed earlier. A client of the roaming provider would pay rates that are less by that factor.

Again, the carrier then needs to—

Mr. Peter Braid: I want to ask one final question, and I think it's a simple one. As a government, why do we want to remove barriers to new entrants in the marketplace?

Mr. Christopher Johnstone: As the Competition Bureau stated, this is an industry that faces high barriers to entry. Obviously, industries that have high barriers to entry are more susceptible to lower levels of competition. Lower barriers to entry allow people to enter the market and provide services to consumers.

The Chair: Thank you very much, Mr. Johnstone and Mr. Braid.

We'll move on to Mr. Côté.

[*Translation*]

You have five minutes.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you very much, Mr. Chair.

It's unfortunate that our committee is having to defend the government's interests today instead of the interests of Canadians. However, time is running out for this government, which continues to impose its will on the House and various committees. Despite that, we will still examine the relevant clauses in this massive omnibus bill.

I'm not really familiar with wireless service delivery, but I'm interested in one particular aspect. There's a lot of talk about cost, about contracts with incredible fees. If a small company wants to access one of the big national provider's wireless networks to then provide wireless services to its own customers, how easy is it to get access to those services? Can the big three refuse to allow a small company to use their networks for that purpose?

Mr. Christopher Johnstone: No, that is not possible. There are provisions within Industry Canada's spectrum policies.

[*English*]

Under the current roaming policies, under spectrum conditions of licence, it's a requirement that the carriers provide roaming to other carriers. They cannot be refused.

That was put in place in 2008. In 2013 the government extended those provisions indefinitely. In 2008 they were set for a period of time; in 2013 they were extended indefinitely.

So, no. It is a requirement under those conditions of licence.

● (1615)

[*Translation*]

Mr. Raymond Côté: Okay. Thank you.

When the Commissioner of Competition appeared before the CRTC, he quoted from the Church and Wilkins report. He said:

> 11.The analysis contained in the C-W Report has two significant limitations that should be noted. First, the profitability analysis that forms the centerpiece of the report
>
> (1) examines only one service provider,
>
> (2) does not actually measure that service provider's cost of capital, and
>
> (3) when properly interpreted, does not support the conclusions contained in the report.

The major providers are now required to offer service. I remember a couple of decades ago when Canada's long-distance market opened up, we were told that there would be huge savings. However, that was only true for frequent long-distance users.

As for the daily services that are provided to all users, meaning customers from both large and small companies, has it been determined what kind of effect that requirement—to charge roaming fees that are no higher than regular rates—will have?

[*English*]

Mr. Christopher Johnstone: The clause does cap the amount that a company can charge another company for wireless roaming services, so that—

[*Translation*]

Mr. Raymond Côté: I wasn't talking about roaming contracts, but service costs in general and the effect it could have. Given the limitations that the major providers are facing—and I am in no way defending them, quite the opposite—there could be a downside, some unintended consequences. Small companies might find a way to enter the market and use the networks. The major companies could then react to that by charging their customers more, even just a few dollars a month, for their services. There was already a $5 increase for smart phone services.

[*English*]

Mr. Christopher Johnstone: The only other thing I can point to is the CRTC's wireless code, which places a cap on the amount a carrier can charge in any given month before the customer needs to provide an agreement that they can go through that cap. This was imposed in the wireless code in December 2013.

The Chair: Thank you very much, Mr. Johnstone and Monsieur Côté.

Now we go to our final questioner, Mr. Warawa, for five minutes.

Mr. Mark Warawa (Langley, CPC): Thank you, Chair.

As a government, we've taken a number of steps to increase competition in the wireless sector. We know now that we've actually reduced those costs by over 20%, and we are continuing to take steps to lower costs to Canadian consumers.

As Ms. Quach pointed out, the major investments into the broadband coverage for rural and northern communities are over $300 million, and we are very proud of that. We've invested more than $11 billion in resources since 2006 to support science and technology innovation to help companies open new frontiers for Canadians.

Now, making sure that wireless is as affordable as possible, we expect an auction, along with the other step that was announced in the budget.

With all of this good news, I would fully expect the opposition members to support the budget. How could anybody vote against this?

My question has to do with the competition. This will obviously provide additional competition and additional lowering of prices for Canadians. I was shocked to hear that, formerly, up to 10 times the cost of the service was being charged to the customers. Of course, that would have to be passed on with additional roaming charges.

I just renewed a contract for a phone, which of course is not just a phone now; it's a mini computer that does so many different things. The new contract that I have has free roaming in Canada because they're fully expecting this to be passed. We aren't going to have the roaming charges. The wholesale prices are going to be capped at what the cost is for that service.

That definitely will be passed on to consumers. We're seeing that already in contracts, just like the one I just signed a couple of days ago. Also, there is the 14-day cooling-off period, so you can return the phone if you find it's not what you expected. There are so many good things for Canadian consumers.

How long was the consultation and what were you hearing? Could you elaborate on the consultation phase?

● (1620)

Ms. Pamela Miller: In terms of the actions to date, Industry Canada has consulted on roaming extensively in the past. There have been a number of consultations on that in terms of mandating roaming, and the improvements that we also made in 2013.

As I mentioned previously, the CRTC will be continuing an even more in-depth examination concerning the review of wholesale mobile wireless services, as well as superseding unjust discrimination, undue preference. In general, there has been a lot of consultation that has occurred on this subject.

Mr. Mark Warawa: The organizations are providers that were charging extremely high rates. You gave the example of 10 times the rate for that service normally. Are they agreeing that things have to improve, that the charges have to be realistic, and putting a cap on that? Are they agreeing with that? I would imagine Canadians support that. How about the service providers that were previously charging these extremely high rates?

Mr. Christopher Johnstone: In terms of our previous consultations, in general, larger carriers have opposed any sort of caps on wholesale roaming rates. With respect to the particular legislation, I don't believe we've received public statements with respect to their position on the cap per se.

Mr. Mark Warawa: Do you feel that this will provide increased competition within the industry?

Mr. Christopher Johnstone: Would that change wholesale domestic roaming rates? Again, that 10 times factor, this will have a major impact on wholesale roaming rates. That will allow new entrants into the market to access much lower rates and that will support competition.

Mr. Mark Warawa: Clearly, this is good news for Canadians.

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

Thank you very much, Ms. Miller and Mr. Johnstone, for your testimony.

We're going to suspend for four or five minutes while our witnesses leave and we get a new panel.

● (1620)

(Pause)

● (1625)

The Chair: Ladies and gentlemen, *chers collègues*, we're back now.

Before us now, from the Department of Industry, we have Darlene Carreau, the chairperson of the Trade-marks Opposition Board, and Paul Halucha, who's been here quite a number of times, and who is the director general of the marketplace framework policy branch.

Welcome to both of you.

Do you both have opening remarks? There's just one.

Mr. Halucha, go ahead, please.

Mr. Paul Halucha (Director General, Marketplace Framework Policy Branch, Department of Industry): Thank you very much.

In January, the government tabled in Parliament five international treaties that were developed by the World Intellectual Property Office: the Madrid Protocol, the Singapore Treaty, the Nice Agreement, the Hague Agreement, and the Patent Law Treaty. The changes to the Trade-marks Act that are proposed in division 25 of part 6 of Bill C-31 will allow Canada to implement the Madrid Protocol, the Singapore Treaty, and the Nice Agreement.

By joining these treaties, Canadian businesses will have access to a trademark regime that is aligned with best practices, that reduces costs and red tape, and that attracts foreign investment to Canada.

[*Translation*]

Let me briefly describe each of the treaties.

The Madrid Protocol aims to simplify the international filing of trademarks.

[*English*]

Ninety-one countries have joined the Madrid Protocol.

[*Translation*]

The Singapore Treaty simplifies and standardizes formalities and administrative procedures of government trademark offices.

[*English*]

Thirty-five countries are parties to the Singapore Treaty.

[*Translation*]

The Nice Agreement governs a standardized classification system for trademarks that is used by 150 IP offices to categorize goods and services to make it easier to search and compare trademarks.

● (1630)

[*English*]

The government decided to implement these treaties for several reasons. The changes are a part of a series of changes to modernize Canada's international IP, intellectual property, regime in order to adapt to the reality of globalization and keep a competitive environment for Canadians. These treaties will benefit both businesses and consumers. They will help Canadian companies compete globally and protect their valuable intellectual property in Canada and abroad, and they will reduce the cost and complexity of IP administration.

For example, the International Trademark Association calculated 62% savings in total fees for a business wishing to register a trademark in the U.S. and 10 other countries, through the Madrid Protocol, when compared to costs for filing in each country individually. Maintaining and renewing an international portfolio of trademarks will also be much simpler and more cost-effective for businesses, as it will be done at the same time through a single application.

From a global perspective, the vast majority of Canada's trading partners have already joined Madrid and Singapore. The world is moving towards these treaties, and in general, harmonizing around best practices. For our trademark system, this means eliminating administrative activities that are unique to Canada, especially those that increase red tape for Canadian businesses but not for foreign businesses applying in Canada.

Over the past 10 years, the Canadian Intellectual Property Office has held three consultations regarding Singapore and Madrid. Two formal consultations took place in 2005 and 2010, and in the fall of 2013, targeted consultations were undertaken with Canadian IP experts. The results of these consultations were mixed. While the vast majority supported Canada's accession to Madrid and Singapore, views differed in the legal IP community with regard to the various options for implementation.

Canada's trademark system has stayed relatively unchanged since the 1950s. In this context, we appreciate that the proposed changes in Bill C-31 will require adjustments in the current practices of the legal IP community. Some have expressed concerns with regard to these changes.

Industry Canada and the Canadian Intellectual Property Office are committed to working with all stakeholders to ensure an effective implementation of these treaties and the best possible outcome for the Canadian economy.

[*Translation*]

In addition, division 26 of part 6 amends the Trade-marks Act in order to do away with the power to appoint a Registrar of Trade-marks. The proposed changes mean that the Governor in Council would appoint the same person to serve as both the Commissioner of Patents and the Registrar of Trade-marks. Since 1967, these two positions have, for the most part, been filled by the same person. These changes will not affect activities or costs.

[*English*]

I will end my remarks here.

Madame Carreau and I would welcome questions from the honourable members of the committee.

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

We'll continue on with the same rotation we had last time.

Now to Ms. Bateman for five minutes.

Ms. Joyce Bateman: Thank you, Mr. Halucha, for your comments.

I want to find out about stakeholders, because stakeholders matter. I want to find out how the stakeholders have received this. I've seen some opposition from the legal community in Canada, so I want to find out first and foremost what the stakeholders are saying.

My understanding is that our intention as a government is to ensure businesses are more competitive globally, and we want to reduce their cost of IP administration. Those are two key things. You're running a business: bring your costs down and be more competitive.

I'm very curious what kind of feedback you have received from stakeholders in the community.

Mr. Paul Halucha: Thank you very much for the question.

I would agree that the two objectives you outlined, making sure Canadian companies were more competitive and ensuring costs were brought down, were the two policy objectives of the decision the government took to move forward with these treaties.

Stakeholders have been supportive of parts of the provisions. The committee will note that elements of this bill are also contained in Bill C-8, the anti-counterfeiting bill that was debated extensively here in the fall.

For example, they're supportive of elements like the expansion of trademark registration to more modern forms of trademarks. These non-traditional marks that were discussed at the time have received support.

There are procedures like allowing applicants to split their applications. For example, if they are in a process and they have a portion of the application that is controversial that may be the subject of opposition, but another component that isn't, they can split them off and proceed with the one where there is no controversy so they can acquire and protect that IP as quickly as possible. That also has received support.

I think it's fair to say that in general, everyone is supportive of the accession to the Madrid Protocol and the Singapore Treaty. There has been some discussion on whether or not the benefits will accrue equally. There's clear observation that internationally, multinational companies have a preponderance of the types of marks, and therefore they will benefit more than potentially small businesses that don't need the Canadian market or are present in only a small number of countries.

It depends a bit on whom you are talking about in terms of who will benefit.

One issue that has come up, which has been raised certainly with us in a number of pieces of correspondence, is the issue of use. That has been a decision that was taken in terms of how to administer this protocol to the benefit of Canadians. A form in particular has been eliminated, or the proposal is to eliminate it as part of this. There's a compliance cost to businesses to filling out this form, and it doesn't exist in other jurisdictions outside of Canada that are party to the protocol, with the exception, I believe, of the Philippines.

● (1635)

Ms. Joyce Bateman: This is all so good from what you're saying. Why is the legal community opposing this?

Mr. Paul Halucha: It's a complicated question.

I would say that there are two reasons.

I think many of them have grown accustomed to a certain way of doing business, and the declaration of use form was a cornerstone of their interactions with their clients both in Canada and internationally. As I noted in my remarks at the beginning, there hasn't been a lot of change in the trademark system for a very long time, so this represents a significant change.

The second component of that is, if you're reducing compliance costs on business, then at the same time those compliance costs are the revenues of certain segments of the trademark community. There's a clear reality that they are losing a portion of their business.

Ms. Joyce Bateman: They are losing some billable revenue as a result of this change, which is good news for our businesses. That's wonderful to hear actually. It's very nice to hear that.

I think I interrupted you when you were going through the various stakeholders' comments. If you could continue that, why are the stakeholders supportive of this bill? Or were you finished?

Mr. Paul Halucha: I think I had gone to the end. I was going to recapitulate the points you raised at the beginning. We need a lot in our business dealing with intellectual property with companies. Across the board I have never had a company say it's not complicated enough or they don't feel like there's enough paperwork in their administration process. Their main focus is on getting their products to market and having their IP protected in whatever jurisdictions they want.

The Chair: Thank you, Mr. Halucha, That's where we have to end.

Mr. Paul Halucha: Okay, sorry.

The Chair: Five minutes goes by very fast.

Now onto Ms. Nash, for five minutes.

Ms. Peggy Nash: Thank you to the witnesses for being here today.

Mr. Halucha, you said that this change represents a significant change in trademark law and the practice of trademarks in Canada.

I want to reiterate that this is a part of an omnibus budget implementation act which is actually before the finance committee. We are getting a very quick rapid run-through of this section of the budget implementation act, and of course, the members of the industry committee don't have the ability to amend or to vote on any potential changes to this act.

Ms. Joyce Bateman: Mr. Chair, I have a point of order.

I restrained myself the last time the honourable member said she didn't have the right to vote, but this is the second time we've heard that she doesn't have the right to vote. She is a member of Parliament. She has the right to vote on this.

The Chair: Thank you, Ms. Bateman.

It's not a point of order, but your point is taken.

Ms. Peggy Nash: Let me just clarify on the point of order that's not a point of order.

Actually, we don't have the right to vote on this at the committee stage. Any amendments and the actual adoption at the committee stage is before the finance committee, not before the industry committee.

The Chair: We'll leave that debate there.

We've stopped the clock for Ms. Nash, so please go ahead, Ms. Nash, with your questions.

Ms. Peggy Nash: Thank you, Mr. Chair.

Mr. Halucha, since the Trade-marks Act dates back to 1953, as you say, and this represents a significant change, why are there no public consultations on this significant change so that Canadian businesses across the country can have input on this significant change?

● (1640)

Mr. Paul Halucha: Just to clarify, when I'm speaking of it as a significant change, it's significant in the context of administrative changes. We're not changing the rights fundamentally the way they were done under the Copyright Act, or the counterfeiting bill that was debated.

Ms. Peggy Nash: I'm using your words.

Mr. Paul Halucha: Yes. I just want to modify my own words.

In terms of consultations, the government consulted on Madrid and Singapore in both 2005 and 2010, and most recently in 2013. I would point out that these are not new treaties. The Singapore Treaty was adopted in 2006—

Ms. Peggy Nash: If I could just interrupt you for one minute, I'm wondering, through you, Mr. Chair, would it be possible to find out who was part of these consultations? For example, in 2013, I'm wondering if the officials could make the committee aware of who was part of, say, the 2013 IP consultations.

The Chair: We could certainly request that.

Mr. Paul Halucha: We can happily do that. Actually, the 2010 consultations are all still available on CIPO's website, including the submissions that were made.

I was just in the course of saying that the treaties are not brand new. The Madrid Protocol dates from June 1989. The Singapore Treaty dates from 2006—

Ms. Peggy Nash: Sorry, I'm so limited in time, I have to interrupt you.

I'm concerned about the declaration of use provision. As my colleague across the way has said, the legal community has raised this as a concern. Why make this change if it's not essential to these treaties? Our understanding is that experts agree that trademark use is one of the basic principles of the Trade-marks Act, and that rights ensue from the use of a trademark.

We have a Supreme Court of Canada ruling on this, the Masterpiece ruling.

If Bill C-31 becomes law, in your view, could it become a constitutional challenge by the provinces?

Mr. Paul Halucha: You had a number of questions in there.

To go back to the first point, the declaration of use form does not signify all of the elements of use that are in the Trade-marks Act. Therefore, getting rid of a single form does not mean that use is not part of the act anymore.

For example, section 30(1) of the act, clause 339 of the bill, says:

> A person may file with the Registrar an application for the registration of a trademark in respect of goods or services if they are using or propose to use, and are entitled to use....

It is the core grounds of use.

In terms of opposition, which is the point at which people can challenge the granting of a new trademark, the applicant can bring forward a challenge, an application on the grounds that it's not being used and that there's no intention to use. This is in clause 343 of the bill.

Ms. Peggy Nash: If I could just pursue that, couldn't someone keep flooding the marketplace with unused trademarks, and if it's challenged, it takes time to go through the process, and then they could apply once again? We've seen situations like this in the U.S. where there are—what are they called—trolls that are flooding the marketplace.

Is there no concern on the part of the government that this could be a result of this change?

The Chair: We're over time but if you can answer that briefly, go ahead.

Ms. Darlene Carreau (Chairperson, Trade-marks Opposition Board, Department of Industry): The trademarks office is aware of that and we're not concerned. There are already bad faith provisions in the Trade-marks Act that prevent businesses from filing and obtaining trademark rights on that basis. Why would a business do that? Who would be in the business of filing trademarks for which they have no business professed?

Ms. Peggy Nash: Well, they're doing that now.

The Chair: We're way over time, but I thought it was a very important question to get answered.

Now on to Madam Gallant for five minutes.

● (1645)

Mrs. Cheryl Gallant: Thank you, Mr. Chairman, and through you to our witnesses.

This is Bill C-31, Canada's economic action plan. I think you outlined the benefits and how our economy will grow as a consequence of businesses being able to focus more on marketing and sales, and not having to re-qualify for all the trademarks with these different countries involved in the treaties. Thank you for clarifying why it's part of Canada's economic action plan.

Going through this, I know we did study Bill C-8, and I believe, Mr. Halucha, you were here. Would you refresh our memories on the difference between a certification mark and a trademark?

Ms. Darlene Carreau: A certification mark is used as a designation of a particular standard, such as that of the Canadian Standards Association. It has to do with making products to a certain standard.

Mrs. Cheryl Gallant: Okay. Would you be able to give an example as to how a registration would be likely to unreasonably limit the development of any art or industry? I believe that is outlined in clause 331, and it would add the proposed section to the TMA, which stated that it does exactly that.

Ms. Darlene Carreau: It's generally around functionality, so if a product...you're entitled to trademark protection but not to the extent that it is something that all businesses in that industry would be able to use and market.

Mrs. Cheryl Gallant: Could you give us an example?

Ms. Darlene Carreau: Lego blocks. Lego tried, and there's a Supreme Court case on that. The functionality of the knobs on the Lego blocks were claimed as a trademark. It was held that those were functional in nature and therefore, Lego couldn't obtain trademark protection on those knobs.

Mrs. Cheryl Gallant: Further down in clause 332, proposed subsection 20(1.1) reads:

> (1.1) The registration of a trademark does not prevent a person from using any utilitarian feature embodied in the trademark.

Would that be a star, for example, inside a circle, or some other feature? Are you saying that the star itself is not a trademark, but all these symbols together in the way they're arranged would be the trademark?

I just want to understand what you mean by “utilitarian feature embodied in the trademark“.

Ms. Darlene Carreau: If you have a trademark, but part of that trademark claim relates to a functional element within that trademark, you would not be able to claim trademark rights over that functional element.

Mrs. Cheryl Gallant: Again, I will have to ask you for an example so I can understand this better.

Mr. Paul Halucha: The one we used last fall was an example of a bottle that had an indentation on each side so you could hold onto it. That couldn't be trademarked as part of the trademark. It's a functional design to be able to lift the bottle.

Mrs. Cheryl Gallant: Okay, so—

Ms. Darlene Carreau: The shape of the bottle would be the trademark, but how you hold it would be the functional element.

Mrs. Cheryl Gallant: If we talk about beer bottles, remember they used to be those stubby bottles, and then they went to a different shape. Could that shape not be trademarked?

Ms. Darlene Carreau: A shape of a bottle can be a trademark.

Mrs. Cheryl Gallant: Like Pepsi or Coke?

Ms. Darlene Carreau: In particular, Coke has trademarked their bottle.

Mrs. Cheryl Gallant: The utilitarian feature is the handle that it would have on it or...?

Ms. Darlene Carreau: Yes, if it served a purpose that other businesses would also like to avail themselves of, so that you're not giving proprietary interest in a functional element.

Mrs. Cheryl Gallant: Okay.

Again, bearing in mind that this is Canada's economic action plan, so it's going to save businesses time and money, enabling them to sell more and create more jobs, if we go to section 46 of the TMA, we see that registration of a trademark is currently valid for 15 years. Clause 350 would reduce this to 10 years. How would that benefit a company?

Mr. Paul Halucha: This really points to the benefits of being part of an international system. On its own, moving Canadians from 15 years to 10 years means that they have to apply five years earlier. On the face of it, it doesn't look like a benefit. However, if you're maintaining a portfolio of trademarks in many jurisdictions, you want them all to come up at the same time, so there are benefits in being able to manage a portfolio without having trademarks coming up for extensions at different points in different jurisdictions.

The norm internationally is 10 years. We couldn't move the world to 15 years, so we had to move to the international norm of 10 years. It's from that portfolio basis that the benefit and the efficiencies come.

The Chair: Thank you very much.

Madam Sgro, for five minutes, please.

● (1650)

Hon. Judy Sgro: Welcome again. I didn't expect to see you back quite so soon, but I'm glad to see you here.

I'll go to some of the changes. Under part 6 on division 25, those are completely new suggestions, according to the CBA. Why have you not opted to have public consultations on the changes that are proposed here by the government in the economic action plan?

Mr. Paul Halucha: Consultations were undertaken. As I noted, the treaties are not new. The decision for Canada to ratify and accede to the treaties is new.

Consultations were undertaken by the Canadian Intellectual Property Office in 2005 on Madrid and Singapore, and in 2010, and then most recently last fall. When the government was looking at potentially moving forward with a decision to undertake ratification, consultations were undertaken with IP expert groups in order to obtain their views, so on the consultations, I think we're very satisfied that they were undertaken.

Hon. Judy Sgro: How much time was put into consultations?

Mr. Paul Halucha: Over the entire period? I don't know the originals....

Ms. Darlene Carreau: Yes, we could endeavour to get that to you, but—

Hon. Judy Sgro: Quite specifically, though, to part 6, division 25, it is suggested that there were no consultations, and that's completely new. The government always says that it has consultations. If it's four weeks of consultations versus 40 weeks of consultations, there is a big difference as to whom you consult with and what your results would be.

Mr. Paul Halucha: The consultations last fall were, I would say, abbreviated. They were done over a month, a month and a half—

Hon. Judy Sgro: Right. That's typical. It's the same way we do everything else here.

Mr. Paul Halucha: However, looking at the earlier consultation periods, the remarks and the comments that came forward were very indicative. I don't think we saw that there had been a big change in terms of what the responses were.

Hon. Judy Sgro: There has been some significant concern raised by the U.S. on the changes that Canada is looking at doing with this use issue. Does that not concern you?

Mr. Paul Halucha: I'm not aware of any concerns raised by the U.S. I'm sorry.

Ms. Darlene Carreau: Nor am I.

Hon. Judy Sgro: It certainly is clear in the documentation that came out of the CBA recently that the U.S. is very concerned. The American Bar Association members were shocked to hear these kinds of changes based on use that Canada was considering.

Mr. Paul Halucha: Are you aware of anything?

Ms. Darlene Carreau: No. I'm not aware of anything.

Hon. Judy Sgro: So you're not aware of any of those concerns?

Ms. Darlene Carreau: Yes, and I find that surprising, because the United States does not require use of all of its trademark applicants. The United States has adopted a dual system, whereby those foreigners filing in the United States are not required to provide a declaration of use, but domestic filers in the United States are required to provide a declaration of use.

Hon. Judy Sgro: We all want to see a reduction of red tape, and we all want to see businesses in our country succeed; there's no question about that. It doesn't matter which party you're talking about. This is about our own country being successful.

What impacts are the proposed changes going to have on the number of trademark registrations in Canada by foreign companies?

Mr. Paul Halucha: The expectation, and what we've seen in other countries when they've proceeded to Madrid, is that the number of foreign applications does increase. By virtue of the fact that you're plugging into an international system with many dozen countries, there is certainly going to be an increase in the number of applications coming forward in Canada.

That does have certain benefits. First off, you can't plug into an international system that is that much bigger than Canada and not expect there to be more trademark applications coming into Canada. However, the benefit is that Canadian businesses get access to that global market. It's much easier for them to protect their IP, their trademarks, in every one of those countries. So it's a commensurate benefit.

Second, for consumers who are looking to have the latest products come onto the market, it's very positive that international and multinational corporations and companies that sell the types of products that Canadians wants to buy will have a much easier way of getting the protection to bring those products to the market in Canada. So we see there is a benefit for both businesses and consumers on that side.

Hon. Judy Sgro: There certainly would be a reduction; as far as internal efficiencies, it would be far more efficient with what you're saying would happen. There would be a lot of efficiencies gained, which is why—

● (1655)

Mr. Paul Halucha: Efficiency, absolutely. The efficiency gains will happen, especially with companies that want to enter other marketplaces. For example, right now if a Canadian company wants to sell products in, say, three other countries in Europe, they need to get lawyers in those countries. If they want to sell in South America, they have to get lawyers in South America. They have to know what the language is. They need to complete their registration package in that language, and they need to hire a lawyer in each of those jurisdictions.

By virtue of the fact that we've joined the Madrid Protocol, there will be a single stop in Canada or in any other country in the Madrid Protocol: one application, one fee, one language, and the ability to seek protection wherever the Canadian business wants to do business.

The Chair: Thank you, Mr. Halucha.

Thank you, Madam Sgro.

On to Mr. Van Kesteren.

Mr. Dave Van Kesteren: This Madrid agreement or system has been around a long time, since the 1800s, and it's somewhat confusing. I read that there was a perceived flaw. This is the reason the United States, Canada, and Japan haven't been signatories to this. Has there been any work done to if the home registration was based under a central attack, something along those lines? Have they addressed those issues, or has Canada felt at this time that these were not sufficient things to worry about?

Ms. Darlene Carreau: Those issues were addressed in the new agreement in 1989, and the United States and Japan are both signatories.

Mr. Dave Van Kesteren: Okay, so my information is a little old.

Ms. Darlene Carreau: There were issues, and the U.S. led some of the negotiations to have the agreement changed to allow for that.

Mr. Dave Van Kesteren: Now, is the move to sign these three agreements part of our Canada-Europe free trade agreement?

Mr. Paul Halucha: It's not part of the Canada-Europe free trade agreement, although when we were preparing advice and advising the government on this, we certainly felt there was a strong convergence. With the fact that a trade deal had just been done with Europe and there were huge opportunities for Canadian companies to access those markets, greater than before, IP administration was a natural thing to also bring into alignment.

There's not a specific requirement; there's not an international obligation. In fact, arguably the only benefits to joining are for Canadian businesses. There's no real lever that any country would have to try to entice us or push us to join. As you noted, it has been around for a number of years. Just to build on what Darlene had said, I think we are close to being one of the last developed countries to join. One of my staff likes to use the phrase that we have a late-mover advantage on this. All of the problems have been worked out, and effectively it's a highly functioning regime that's more and more productive every year.

Mr. Dave Van Kesteren: In fact, we're a late mover on all three agreements. It's curious. I just wonder why the United States would lag on that and yet they are part of the Singapore Treaty. Is there a reason behind why the United States would have waited so long to join the one and yet they were a signatory on the Singapore?

Ms. Darlene Carreau: I think you had it right when you started. Their concern was around, I think, pending applications. Previously you were required to have a registered mark before you could file using Madrid. There were also concerns around what you mentioned as a central attack, where if your international registration falls, that you lose those applications or registrations in the foreign countries. Those have now been worked out, and the U.S. is a member of the Madrid system.

Mr. Dave Van Kesteren: I guess the question begs to be asked as well: why did Canada lag so long?

You're smiling.

It's almost as though we invited the pirates to our shores. Would it attract more business if we did? Maybe it's the type of business we don't want to have. It seems to be the right thing to do. Why did we take so long to do this?

Mr. Paul Halucha: I think the easiest answer is around how much national debate and parliamentary debate took place around the Copyright Act. Had that act been done more quickly, I think people would have looked at other international agreements. That was such a difficult journey for Canada to get through that some things were delayed, and this was one of them.

● (1700)

Mr. Dave Van Kesteren: So, the move by the government to put these agreements in place will put us in a position to be a much better trading partner, right?

Mr. Paul Halucha: Absolutely, and you're right. Often, when we travel internationally one of the complaints that's brought forward points around how well Canada's IP regime has evolved. We hadn't up to this point signed on to the three treaties that are recognized and have been implemented by all of our trading partners.

It was viewed as an indication that we didn't get IP as much as we should have, and it's important in terms of international business.

Mr. Dave Van Kesteren: We had tremendous struggles in the past to get these things done. I know there has been quite a lot of fervour around some of the things that we've done in our omnibus bills, but these things were necessary in order to enact these laws, so that we could be in a position to be better trading partners and to move our—

The Chair: We're locked in an affirmation and not a question, Mr. Van Kesteren. We're way over again.

Mr. Dave Van Kesteren: Can I just get a yes or no?

It's yes. Thank you.

The Chair: Now on to Madame Quach.

[*Translation*]

You have five minutes.

Ms. Anne Minh-Thu Quach: Thank you very much, Mr. Chair.

I'd like to thank you for being here, Mr. Halucha.

You spoke about the fact that people were consulted and that some small businesses had concerns. You also questioned whether the benefits will accrue equally, if this will be fair for small and medium-sized businesses.

Did the government take the concerns of small and medium-sized businesses into account? How will these amendments to the Trade-marks Act affect small and medium-sized businesses as well as large companies?

[*English*]

Mr. Paul Halucha: I'll start, and I'll allow Darlene to add onto it.

Generally, for large corporations, the advantages to them will be immediate, to the extent that you have companies right now that are protecting their trademark in many jurisdictions, and then do that through the Madrid Protocol, and then are required to do a special process for Canada. They will no longer have to do that. They can just do it as part of their regular Madrid Protocol applications.

In terms of the benefits for small businesses and medium-sized businesses, I think you have to take a step back in terms of looking at what export markets those companies are going into. Everyone would agree that in Canada we need to grow our businesses better; that's the cornerstone of our innovation policy. To the extent that you're facilitating and making it easier for those companies to make the decision to not only sell in Canada, but to sell abroad, being a party to this system can only encourage them and benefit them in doing that.

It makes it easier for them. It simplifies it. There was a great part of the parliamentary debate that took place on April 7, before the committee. Madam Rempel was talking, and she quoted an IP agent who was part of our 2010 consultations. He talked about what he's doing. He has exclusively small businesses as his clients, and they would inevitably come in and talk about, after they protected their IP in Canada, how they would do it internationally. The quote was, "When I advise that we cannot do so without use of a local agent, the cost for which can be quite substantial, many of them decline."

The fact is that often the difficulty of seeking and acquiring protection abroad is enough of a disincentive that a company may decide that it's not worth it, and stay in Canada.

I'll turn it over to Darlene to talk to you on the reduction of the paper burden, which is obviously a cornerstone of these treaties.

Ms. Darlene Carreau: In addition to the savings that a company may achieve by using Madrid—and we do know that small and medium-size industries do use Madrid in other jurisdictions—there's also some streamlining and harmonizing being done in the Canadian trademark office. Even if a company is not using Madrid, but simply wants to file only in Canada, we have streamlined and harmonized the process with other jurisdictions.

The Singapore law treaty is really about creating minimum requirements in Canadian trademark offices so that businesses don't have excessive red-tape burdens to comply with. For example, if you were filing in Canada and you had foreign registration, you'd have to file a certified copy, and there would be a government charge around that. As well, if you were represented by a lawyer, the lawyer would charge for filing that.

Another example we've already talked about is the declaration of use, a form that has to be prepared by businesses. There is a compliance cost to that and there are government fees for it. You might also file for extensions of time, for which there are government fees. In addition, you might pay a lawyer to prepare the declaration of use and prepare extensions of time to file that declaration of use. Those are some of the costs we're talking about taking out of the system.

● (1705)

[*Translation*]

Ms. Anne Minh-Thu Quach: Thank you.

My next question is also about small businesses. In my riding, Beauharnois—Salaberry, it is primarily the small businesses that are creating jobs and stimulating the economy.

From what I understand, trademark holders will now have to pay for each classification. Does the government intend to offer financial assistance to small businesses that will have to pay the required classification costs for all of their products?

I'd like to ask another question right away, so that you can answer both of them at the same time.

I'd like to hear about the use of those rights. There is talk of eliminating the requirement for companies to prove that their trademark is being used. If companies no longer have to provide that proof, can we expect that there will be an increase in legal disputes, as was the case in Europe, for example?

Please answer both of those questions.

[*English*]

The Chair: We're way over time on that one, so we'll see how we make out at the end. If we have some time at the end, maybe you can cover those questions off.

We are moving on to Mr. Braid, for five minutes,.

Mr. Peter Braid: Thank you to our department officials for being here today.

I want to start with a question about the Madrid Protocol. I want your confirmation on this. A company would want to register a trademark in another country other than Canada because they're interested in selling their product in that market, is that essentially the bottom line?

Mr. Paul Halucha: Yes, that's correct.

Mr. Peter Braid: Through the Madrid Protocol, the fact that companies can apply for various trademark protections in various countries through a single application must be extremely beneficial. This is where the streamlining comes in, where the reduced costs come in, in terms of application fees, legal fees. Is that correct?

Mr. Paul Halucha: Yes.

Mr. Peter Braid: In a riding like mine, I have a lot of high-tech start-ups. I would see this as being particularly beneficial for Canadian high-tech start-up companies who want to devote their financial and talent resources to the development of their technologies and not to paperwork and red tape.

Mr. Paul Halucha: I would absolutely agree with that. Actually, there are very few ICT companies that can survive in only the Canadian marketplace. Certainly everyone I meet with has an export strategy. That's a key part of their growth plan because they very quickly hit the limits in Canada.

Mr. Peter Braid: Great.

What would the consequences be if Canada did not implement the measures under these various protocols?

Mr. Mark Warawa: That is a good question.

Mr. Peter Braid: Thank you, Mark.

Mr. Paul Halucha: Well, the consequences would be the exact reverse of all the benefits we've talked about. The compliance cost savings we're talking about would not materialize. The easy access and the ability to register in foreign jurisdictions with one filing and one language and paying one fee would not materialize. The benefits in maintaining their portfolio abroad would not materialize.

I'd also add that we did a series of round-table meetings with ICT companies over January and February, and the biggest concern we heard from them was not trademarks. I don't remember anyone raising that as an issue. They're very much focused on patenting and their ability to protect their innovations, so to the extent that they're investing in IP, I think their money is better spent there.

Mr. Peter Braid: Absolutely. That's a great point.

If we don't implement any of the measures of these protocols, would Canada be offside from a WIPO perspective?

Mr. Paul Halucha: We don't have strict international obligations to implement the protocols. The way the process is sequenced is that we would only accede to the treaties; that is, we would only agree to implement them legally in Canada, at the point when we had undertaken the administrative regulatory and legislative changes to be in a position to join the system.

● (1710)

Mr. Peter Braid: Okay.

The key reasons we want these three protocols implemented is the benefits they will have to Canadian companies, and to Canadian companies that want to register their trademarks not only in Canada but around the world. Is that correct?

Mr. Paul Halucha: Yes, that's the motivation.

Mr. Peter Braid: Which of the three protocols is the U.S. currently a full signatory to? Have they implemented the measures of these three protocols?

Mr. Paul Halucha: Yes, the United States is a party to all three.

Mr. Peter Braid: They're our largest trading partner. It would seem to be a slam dunk that Canada would want to do the same and have a level playing field for our companies that do business across the border.

Mr. Paul Halucha: I can't disagree with that. I agree.

Mr. Peter Braid: Okay.

A couple of years ago, this committee did some great work through a study of intellectual property. Did any of the work of that committee's report or the recommendations lead to any of these suggested changes?

Mr. Paul Halucha: Yes. The committee undertook eight excellent sessions and heard from a variety of witnesses. One of the recommendations was actually that Canada ratify all of the treaties that were listed in the budget, the first three of which are in the BIA.

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

Mr. Peter Braid: That was a shameless plug to claim some credit, because it was my motion that triggered that study.

Voices: Oh, oh!

An hon. member: Way to go, Peter.

An hon. member: Well done.

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

[*Translation*]

Mr. Côté, you have five minutes.

Mr. Raymond Côté: Thank you, Mr. Chair.

I find it shocking that we have only one hour to study dozens of clauses in this omnibus bill. These clauses should have been an entirely separate bill. That would have allowed us to thoroughly study them in a reasoned, intelligent manner. However, we will not be able to do that.

I have a lot of questions.

One thing you mentioned was the cost associated with registering a trademark. It is true that costs are high for more than 99% of companies. This process is used to register a whole host of trademarks that these companies, quite frankly, will never use. There are, however, some companies that easily have the means to flood the market. For example, when the Internet was first starting up, people registered domain names.

The approach you are talking about seems very naive to me. You said that this won't open the door, that it won't harm a significant number of our companies. However, I'm not entirely convinced that is true.

[*English*]

Mr. Paul Halucha: The point you're raising is that we could see an increase in or an expansion of the number of trademark registrations from abroad that are broad in scope. That's the normal concept of a troll. Instead of identifying just one product or number of products that I'll bring to market, I'll just try to seek to protect the full scope of the marketplace for that product.

I would note that we already have checks and balances in the current system. There's actually nothing to prevent somebody from trying to do that now, other than the examination process that exists and an opposition process that is run by the Canadian Intellectual Property Office. As well, businesses can come forward and complain about the scope of an application, in particular if it's infringing on a trademark that they are already using in the marketplace or for which they have protection.

The risk already exists. It actually hasn't materialized. There's not a flood of trademark trolls; we're hearing now about trolling in copyright as well as patents, so it seems to be an IP phenomenon. In this bill, other than the fact that we are joining the global community in terms of trademarks, there's nothing to suggest that there will be an increase. In fact, we are maintaining the mechanisms to protect, reduce the scope, and deal with it.

● (1715)

[*Translation*]

Mr. Raymond Côté: One second, Mr. Halucha. I appreciate your answer, but I am a bit curious about something.

In his book, titled *Intellectual Property Law*, Professor David Vaver states that a trademark has no value if it's not being used. I can't understand why continued use of a trademark is contrary to the international agreements we have signed. That is perfectly acceptable. I see no issue there. I don't think that you have demonstrated that continued use of a trademark—to ensure that it is not monopolized or being used inappropriately—is contrary to those agreements.

[*English*]

Mr. Paul Halucha: I'll just note that this bill does not actually eliminate the concept of use. It eliminates the administrative requirement that trademark applicants have to include in their paperwork a statement indicating that they have used their trademark in Canada. So use is still in the system.

For example, applicants still have to show use or propose to use in order to apply for protection in Canada. It's the sole grounds. Applications can also be opposed by third parties on the grounds that the applicant did not use or intend to use the trademark, so it's still grounds to oppose a trademark. If use can't be substantiated, then the trademark cannot proceed.

Consistent with current practice, registered and third parties have the ability to challenge a business for non-use of a trademark before the Trade-marks Opposition Board, so use is still at the core of the trademark system.

[*Translation*]

The Chair: You have two seconds.

Mr. Raymond Côté: Thank you.

[*English*]

The Chair: Mr. Warawa, for five minutes.

Mr. Mark Warawa: This has been a very interesting day and a very good day. When we hear this kind of testimony, how obvious it is that Canada move forward in this direction, and that we've been considering this for over 25 years, it brings back a Liberal leader, not that long ago, who said, “Why didn't we get it done?” I look back on nothing happening, not moving forward on the obvious things that would help Canada and the Canadian economy and jobs.

Now I look at what our government has accomplished in the eight years since we became government. Since we became government, Canada has free trade agreements in force with more than 10 countries, which provides a competitive advantage across a wide spectrum. We've been negotiating with more than 60 countries, including some of the world's key markets. We're moving forward to align with international standards, to eliminate red tape, to reduce the paper burden, to streamline and harmonize with other jurisdictions, and to get in line by adopting best practice standards. It will help the Canadian economy. It will remove some government fees. This has been discussed for over 25 years.

I think back to 2006 when we first became government. The Sydney tar ponds was known in Canada as the dirtiest, most contaminated site in Canada, and it had been studied and studied and studied. Within a couple of months, we committed the funding to fix that horrific environmental disaster and it's solved. It's a beautiful sight now. It's our government that moved forward and got things done.

I'm not going to ask any questions because it's obvious this is the direction in which we need to move. I'm proud that this government is going to move forward. I don't agree with some who would suggest that we study this further. It has been studied with adequate research.

It's obvious that what Canada needs is to move forward in this way, aligned with the international standards. I really thank the witnesses for being here today.

The Chair: Thank you, colleagues.

We have the unusual luxury now, Mr. Halucha or Ms. Carreau, if you have some closing remarks, if there are any points you'd like to make in finality, you can do that.

Mr. Paul Halucha: There were a couple of points that came up during discussion that we saved to the end. Are you okay if we just answer them? We'll do it between the two of us.

One of the issues raised was whether or not the legislation was unconstitutional. I'd just like to put on the record that it's not unconstitutional. That's point one.

I'll turn it over to Darlene.

● (1720)

Ms. Darlene Carreau: A concern was raised with respect to the Nice classification and its impact on small businesses. A full examination of fee impact will be undertaken before we move forward and consideration is being given to not charge a fee per class, so there would not be such a big impact on small and medium-sized enterprises.

The Chair: Thank you very much. Your testimony has been very valuable.

Colleagues, thank you very much.

This concludes our meeting. I'll see you in two days.