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Chair

Mr. David Sweet

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•(0845)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): This is meeting number 28 of the Standing Committee on Industry, Science and Technology where we will be studying Bill C-43.

I received a letter from the Chairman of the Standing Committee on Finance, dated November 4, where he asked us to consider certain portions of Bill C-43 that were germane to the industry department and that's what we're pursuing right now.

I'm going to introduce our witnesses in a second.

Colleagues, if I could just do a bit of business. I will take the opportunity to forward this letter to you, but I wanted to just bring it up at a committee meeting.

We were invited by an organization called Startup Canada to partake in an information breakfast with them with prominent entrepreneurs. One of the hosts will be Sir Terry Matthews, accompanied by Dr. Adam Chowaniec.

I will make sure that this information gets to your offices. I wanted to let you know that it will be on November 25 and you're expressly invited as members of the Standing Committee on Industry, Science and Technology.

Monsieur Côté.

[Translation]

Mr. Raymond Côté (Beauport—Limoilou, NDP): Could we please set aside 10 minutes at the end of the meeting to discuss committee business and witnesses, among other things?

[English]

The Chair: Mr. Côté, we have two panels today, just one hour for each panel. I was already expressing some concern that that always means some members may not get the full portion of questioning.

We'll try to squeeze in as much as we can at the end. I want to respect your request and I want to respect all of the members' capability of questioning. I have no problem with that, but we'll try to keep it as brief as we can.

Also on that point, I wanted to mention that my legislative assistant had called everyone's office to let them know that we need to have all of the witness lists in for the study by next Monday, if we can, so that we'll have a good opportunity to question the material regarding Bill C-43.

If you could do that, our clerk could make the most of his time and make sure that when we come back, panels will be set up, so that we can continue our study. That would be appreciated.

[Translation]

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

I would like to make sure we hear from an optimal number of witnesses. That was one of the reasons why I wanted to set aside 10 minutes. We could also limit that to five minutes, if you agree.

[English]

The Chair: Yes, Mr. Côté, that would be great.

I do note that the parliamentary secretary isn't here today, so we may actually have to reserve some of the back and forth dialogue until we return back. Certainly, I understand you're trying to be efficient and we'll do that.

Are there any other comments in that regard?

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Does this committee operate with a subcommittee on agenda?

The Chair: No, primarily we do our business meetings as a whole, Mr. Wallace, and try to be as consensual as possible. We're a very friendly committee here, actually.

Mr. Mike Wallace: You should come to justice, it's beautiful.

The Chair: Continuing on that beautiful note, may I introduce our witnesses for today?

We have with us, all from the Department of Industry: Lynne Fancy, senior director, spectrum management operations; Amy Jensen, policy analyst, spectrum management operations; and Adam Scott, director of business and regulatory analysis, telecommunications policy branch, strategic policy sector.

From the Department of Canadian Heritage, we have Helen Kennedy, director general, broadcasting and digital communications.

I didn't get an opportunity before the meeting to ask, how many have opening comments? Just Mr. Scott and Ms. Fancy.

Ms. Fancy, please go ahead and if you could try to keep it to five minutes, that would be great.

Ms. Lynne Fancy (Senior Director, Spectrum Management Operations, Department of Industry): I'd like to thank you very much for inviting us here today to discuss the amendments proposed to the Radiocommunication Act. The Radiocommunication Act regulates radio frequency spectrum. This is an important and scarce resource that is used to provide all wireless communication services to Canadians. Spectrum is increasingly a valuable resource as more and more of our communications use wireless devices. We not only use these devices to talk and text but also to access a wide variety of applications on our smart phones, all of which rely on the availability of wireless spectrum.

The wireless sector is also increasingly important to the Canadian economy and our society as it is a growing source of jobs and key to businesses and communities across the country. It is the key part of the tool set for our first responders: the police, the firefighters, and the ambulance. Industry Canada manages spectrum with licensing processes that impose terms and conditions on users. We also regulate radio equipment to ensure it meets the standards and it's safe for Canadians.

The current act provides a number of enforcement mechanisms, which are used by Industry Canada to ensure that the requirements of the licences and the standards are met. But these provisions have not been updated for 25 years and they should be modernized to keep up with the changing spectrum regulatory environment.

The amendments before you today would improve Industry Canada's existing compliance tool kit. We have a continuum from education all the way through to revoking a licence but these amendments introduce new measures. Reflecting the fact that spectrum is being used in new and innovative ways, the amendments would provide enforcement tools that are in the middle of this continuum, tools that are flexible and efficient and that will help us focus on encouraging compliance.

The primary change in the amendments today introduce an administrative monetary penalty or an AMP regime for certain violations of the act. The proposed regime would provide for penalties up to \$10 million for the first violation and \$15 million for a second or subsequent violation. These maximums are consistent with penalties that may be imposed by the Competition Bureau or by the CRTC with respect to the Canadian anti-spam legislation and they're also the same as those that Adam will talk to you about in his opening remarks with regard to the Telecommunications Act.

For individuals—and individuals could be someone, for example, who is using a jammer near an airport—the amounts of the AMP would be much smaller, up to a maximum of \$25,000 for a first violation and \$50,000 for a subsequent violation. But the amounts of any particular penalty would be determined by taking into account a number of factors such as the scope and the nature of the violation as well as the size of the violator. AMPs will not replace the existing enforcement measures available under the act but they add a more robust compliance continuum that will allow the department to apply the most appropriate measure to any given incidence of non-compliance. The first tool that we always try to use is education.

A number of additional measures are included in these amendments that are also focused on improving the compliance regime. First of all, the amendments clarify language in the act to

explicitly prohibit jammers. These are devices that disrupt legitimate wireless communications. Limited exemptions to that prohibition may be made for reasons such as public safety.

Additionally, the amendments will allow Industry Canada to enforce any requirements that have been established for spectrum auctions. Spectrum auctions are a very important part of the release of new spectrum. Additional amendments will also modernize outdated language concerning inspectors' powers and allow the inspectors to gather information from computers instead of just from paper records.

Finally, the amendments would allow Industry Canada to share information with domestic and international agencies for the purpose of regulating radio communications.

• (0850)

For example, if we are trying to stop jammers from coming into Canada, there would be a great benefit to being able to share information with the U.S. border services. But in order to enact this part of the act, there are very strict boundaries with regard to the use of the information and the confidentiality of that information.

Those complete the amendments to the Radiocommunication Act.

Thank you very much for your time.

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

We'll now go to Mr. Scott for five minutes, please.

Mr. Adam Scott (Director, Business and Regulatory Analysis, Telecommunications Branch, Strategic Policy Sector, Department of Industry): Good morning.

It's my pleasure to be here today to explain division 11 of part 4 concerning amendments to the Telecommunications Act, as well as a related amendment to the Broadcasting Act, and to answer your questions.

I would start by noting that this section of the bill supports commitments made under the government's "consumers first" agenda, which is to support and protect Canadian consumers.

I have a number of clauses to go through. I'll tackle them sequentially.

First up is the issue of pay-to-pay, also known as paper billing fees, which is addressed starting at clause 192 and running to clause 194.

The amendment to the Telecommunications Act is a direct response to the government's commitment to end pay-to-pay. The amendment prohibits telecommunications service providers from charging their customers for bills in paper form. A parallel amendment has been put forward for the Broadcasting Act to address providers of television services and subscription radio services.

Together, these two amendments will capture the full suite of services that customers are accustomed to getting from their communications service providers. It covers telephone, wireless, Internet access, and broadcasting services. Providers of these services will be prohibited from charging a fee for the issuance of a paper bill.

The amendment at clause 193 benefits consumers by allowing the CRTC to impose certain conditions—here we're talking about things like a requirement to provide 911 service, or a requirement to provide services to disabled Canadians—on providers of telecommunications services that are not communications carriers. Currently the act allows the CRTC to impose such conditions only on companies that own or operate their own networks. There is another class of service providers, frequently referred to as “resellers”, that the CRTC cannot impose conditions on directly. An example of this would be something like President's Choice Mobile or similarly branded smaller providers of telecommunications services.

The CRTC has only been able to impose conditions indirectly on such companies. They do this through managing the contracts that carriers have with these smaller companies. The amendment extends this power so that consumers will be able to benefit from the same safeguards regardless of which type of service provider they choose.

The set of amendments at clause 195 allow for information-sharing between the CRTC and the Commissioner of Competition in order to facilitate the presentation of more specific, evidence-based interventions before the CRTC, allowing for better decision-making. While the CRTC can currently release confidential information to the Minister of Industry or the chief statistician, it cannot share such information with the Commissioner of Competition. For clarity, I would note that here we're talking about commercially sensitive information. We're not talking about the sharing of private information of Canadians.

At the same time, the CRTC is addressing issues that are increasingly linked to competition and the competitiveness of the telecommunications market. These amendments will allow the CRTC to share information with the Commissioner of Competition so that he can make more informed interventions. Information shared with the Commissioner of Competition would remain confidential, and could only be used in relation to matters before the CRTC for consideration.

The amendments at clauses 196 to 199 deal with certification of telecommunications apparatus. These amendments simplify and streamline the process for demonstrating that telecommunications apparatus meet technical requirements and provide the Minister of Industry with the authority to register apparatus for use in Canada. Here we're talking about equipment that plugs into the phone network—literally a wired telephone, a fax machine, a modem. We're streamlining the process for ensuring that such handsets are certified for Canadian operation.

The amendments at clause 200 modernize language around the CRTC's inspection abilities. This change has been made to support clauses coming at 201 and 208, which provide the CRTC with the authority to impose administrative monetary penalties, or AMPs, on companies that do not comply with its decisions and regulations. As a key commitment under the government's consumer agenda, the

AMP amendments will improve the CRTC's existing compliance tool kit by giving it the ability to impose penalties of up to \$10 million for a first violation for companies that break the rules. For individuals, the amounts are much smaller, up to a maximum of \$25,000 for a first violation. Here I would note that when we refer to individuals, we're not talking about users of services, we're talking about individuals who are providing services, i.e., individuals working for a telecommunications company.

In all cases, the amount of the penalty will need to take into account a list of factors stipulated in the legislation, including the nature and scope of the violation, the ability to pay, and the benefit derived from the violation.

● (0855)

Finally, the last amendment at clause 210 stipulates that the amendments relating to “technical apparatus” will come into force September 30, 2015, to provide an opportunity to communicate with the industry and to make follow-on changes to regulations and procedures. All other amendments will come into force upon royal assent.

Thank you very much.

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

Now we'll move quickly because, again, we have two panels so we have a limited amount of time. For those who are new to the committee, we just go straight across with time. This was a tradition we began some time ago, so we'll just be doing four minutes each until we exhaust the time we have.

Mr. Daniel.

● (0900)

Mr. Joe Daniel (Don Valley East, CPC): Thank you, Chair.

Thank you, witnesses, for being here.

I'm just going to focus on the sale and competition regarding the wireless spectrum. How often does this come up? How often are we selling spectrum?

Ms. Lynne Fancy: Spectrum is licensed on a daily basis. There are different types of spectrum. On a daily basis, someone like a police agency may want to come to get spectrum, and they can do that by making an application. On a larger basis, we also auction off large chunks of spectrum that are used for wireless. That is done—

Mr. Joe Daniel: Yes, that's commercial.

Ms. Lynne Fancy: That's commercial mobile spectrum, correct. That is done less frequently. We just recently released the 700-megahertz spectrum. For 2015, there are two auctions planned for two additional blocks of spectrum.

Mr. Joe Daniel: Typically, how much does this auction cost if somebody's buying a certain bandwidth? How much do they pay for it?

Ms. Lynne Fancy: Dependent on the perceived value, it's at market rates, so the auction determines what would be paid. The maximum that has been gained at auction was the most recent 700-megahertz auction, which was considered to be extremely valuable spectrum. The eight companies that acquired spectrum paid over \$5 billion.

Mr. Joe Daniel: You mentioned that the penalties you were seeking were something like \$10 million and \$15 million.

Ms. Lynne Fancy: Correct.

Mr. Joe Daniel: That seems somewhat low for a bandwidth they're paying \$5 billion for. What's your opinion on that?

Ms. Lynne Fancy: An AMP regime is to encourage compliance. It's not a punitive regime; it's a civil remedy. These amounts are in line with what has been considered appropriate for things like the anti-spam law and the Competition Act.

Mr. Joe Daniel: Why do the minister and the commissioner of the CRTC need administrative and monetary penalties to help enforce our government's wireless policy?

Ms. Lynne Fancy: It allows the compliance continuum to be better filled out. Currently we use a lot of education, suasion to encourage people to meet the rules. On the other end, we can revoke a licence, which is a very heavy hammer to use. The AMP regime provides a tool in the middle that helps to encourage compliance.

Mr. Joe Daniel: Is there an example of something like this that has happened where you would use this?

Ms. Lynne Fancy: You could use it, for example, if somebody repeatedly operates without a licence. There are places in mining communities, where perhaps there are people who feel they don't need a licence, so they put up a tower and they just start broadcasting what they wish to broadcast. This creates interference for the other users and can have dramatic impacts on the economics of their businesses. If this person has done this on repeated occasions, we've tried to educate. Then an AMP would be an appropriate tool in that case.

Mr. Joe Daniel: In terms of enforcement, who's actually going to enforce this? Is it the CRTC? Do they have the resources to enforce any of this?

Ms. Lynne Fancy: With regard to the Radiocommunication Act, it will be Industry Canada. Industry Canada has a strong regional presence and has inspectors in the regions able to enforce.

The Chair: Thank you very much.

Now to Mr. Côté for four minutes.

[Translation]

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

I will begin by denouncing the current process. We are studying parts of a monstrous omnibill. Once again, the government is abusing its majority. We will be unable to amend the parts referred to this committee, which makes the entire process very suspect. This indicates a lack of respect towards the entire Canadian population, and towards the stakeholders concerned, who have placed their trust in their elected officials, and of course, towards the witnesses who appear before us. I insist upon denouncing this situation, which is totally deplorable, because we have seen this farce played out over the last several years, and continue to witness it now.

I would like to thank the witnesses for coming today, even though we will not have the time to amend anything whatsoever, nor propose amendments to the parts of the bill we are currently studying.

Mr. Scott, I would like to come back to your comments and ask you, when it comes to paper billing, whether consultation of the affected businesses was positive in your opinion.

• (0905)

[English]

Mr. Adam Scott: It was certainly positive in the sense that it produced a substantial fact base. The CRTC conducted a fact-finding exercise; they consulted 70 companies, I believe, covering a full range of the largest and a sampling of many of the smaller companies involved. They produced a report, which I would encourage you to read if you have not already. It details which companies charge for paper bills, which companies do not; the full range of rates that are charged as well as things like which companies provide incentives for electronic billing. So yes, in that sense, I would say the consultation was very positive because it gave a good snapshot of what the practices are within the industry.

[Translation]

Mr. Raymond Côté: Very well, thank you.

I would also like to know why you only consulted industry representatives. Would it not have been better to consult the whole population and allow consumers or consumers' interest groups to provide their views on the issue?

[English]

Mr. Adam Scott: I agree that those views are absolutely critical to this and that's very much the group that was the beneficiary of this policy change. I would also direct you to a study that was done by the Public Interest Advocacy Centre, which is a consumer group that appears frequently before the CRTC and is extremely knowledgeable in this area. They've also released a study that has been very much a focal point. They include one of the best estimates I've seen of the expected financial impact of these fees. That's a publicly available resource that was very much considered in the development of this amendment.

[Translation]

Mr. Raymond Côté: All right, but can you explain to us why there were no parallel or complementary public consultations, in addition to consulting businesses?

[English]

Mr. Adam Scott: The consultation process was a CRTC-led process. I'm not able to speak to why they would have chosen the process that they did.

The Chair: Thank you, Mr. Scott.

[Translation]

Thank you, Mr. Côté.

[English]

Now on to the Conservatives, Madam Gallant.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman.

Unlike the opposition, I won't waste my time whining about process.

What sorts of actions or inactions on the parts of telecoms would constitute a violation of spectrum rules or regulations?

Ms. Lynne Fancy: There would be four primary violations. The first is that you would be operating without a licence or in violation of the conditions of licences that are outlined. Second would be that you are operating equipment that does not meet the standards. The third would be that you're operating equipment, like a jammer, that is not allowed. Fourth would be that you would violate the spectrum auction rules.

Mrs. Cheryl Gallant: When one of these rules is violated, how does it come to pass that the regulators, the enforcers, would find out?

Ms. Lynne Fancy: Often for the first three—not the auction rules—anything to do with equipment and operating without a licence or not in agreement with your conditions, generally will come about because there will be some form of interference. Some user will complain that they are getting interference and then we have inspectors who go out and find the source of the interference and we would know about that. We also conduct our own audits to find out whether or not people are operating without a licence.

Mrs. Cheryl Gallant: Are jammers used by telecoms for anti-competition reasons?

Ms. Lynne Fancy: Jammers are typically used for criminal activities. As a very good example, I'm told that chop shops use them. They disable the GPS equipment on your car so you won't be able to find your stolen car while they're busy chopping it up.

• (0910)

Mrs. Cheryl Gallant: Okay.

With respect to certifications, what are the risks in having telecommunications apparatus without the technical specifications and markings?

Ms. Lynne Fancy: It would be interference again, so that your cellphone is not operating properly. Or it could be some form of damage to the network.

Mrs. Cheryl Gallant: Fax machines were mentioned. How would that damage the network or cause interference?

Ms. Lynne Fancy: Fax machines will fall under the provisions of the Telecommunications Act. Adam, would you like to add?

Mr. Adam Scott: Sure.

I should be clear that I'm not an engineer, but the standards are set by Industry Canada and are designed primarily to ensure that the device can operate safely, because we are talking about an electrical device. It's similar to what you'd see for any electrical device. The standard is set to ensure that it will not harm the user, and a plug-in electrical device into a complex network could cause damage, I'm told.

It's not something that we see frequently nowadays. The standards have been in place for a long time and most devices are very much in compliance.

Mrs. Cheryl Gallant: And imported devices are checked for compliance as well, are they not?

Mr. Adam Scott: That's correct. Before any device is distributed or sold within Canada, it is certified to meet the Canadian standard.

Mrs. Cheryl Gallant: So again, enforcement is based on complaint or reported interference. Who reports this? To whom would an individual or a company report this?

Mr. Adam Scott: In most cases the report would go to Industry Canada.

Mrs. Cheryl Gallant: Okay. If telecoms are non-compliant with paper billing, or an individual or company experiences spamming, who do they report to?

Mr. Adam Scott: In that case it would be the CRTC. The CRTC is the regulator that handles the majority of regulations under the Telecommunications Act.

There are a few instances where it's the minister, things like certification of equipment; undersea submarine cable licensing is another one for the minister. The vast majority of the regulation falls under the CRTC and that's who does the enforcement.

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

Now to Mr. McKay.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair.

Under clauses 191 and 192, do you have an estimate of how much these measures would save consumers?

Mr. Adam Scott: The best estimate that I've seen is the one I referenced before and is prepared by PIAC, the Public Interest Advocacy Centre.

Hon. John McKay: Prepared by who?

Mr. Adam Scott: PIAC, the Public Interest Advocacy Centre. Their estimate is that the current fees generate between \$315 million and \$554 million.

Hon. John McKay: So it's not unsubstantial by any means.

Mr. Adam Scott: Yes, it is a substantial amount of money.

Hon. John McKay: What in this legislation prevents Bell or Telus, or anybody else, from switching and making up some other fancy fee to make up for the two bucks they're charging for the paper bill?

Mr. Adam Scott: The legislation prevents a very specific...it's narrow in the sense that it prevents a specific annoyance from occurring in areas where the rates are regulated. There still are some rates that are regulated by the CRTC. Companies would not be able to increase those rates.

In other areas rates are primarily dictated by market forces and it would be a business decision.

Hon. John McKay: So to to kill the two bucks from Bell, I may have some protection, but if I'm getting a bill from Home Depot and they're sending me an additional \$2 charge, I have no protection whatsoever.

Mr. Adam Scott: From Home Depot for telecommunication services?

Hon. John McKay: I'm sorry, that's wrong. Yes, okay. That's not telecommunications.

Mr. Adam Scott: Right. If you are receiving a bill from a telecom service provider whose rates are not regulated, they are not allowed to charge you an increased fee based on your choice or your preference of type of bill.

Yes, they are free to set their non-regulated rates according to the market.

Hon. John McKay: Can you give me an example of that? It's not clear to me.

Mr. Adam Scott: Let's talk about kind of basic home phone service that we all have. You could get that service from Bell and they currently charge you, say, \$30. At present you would probably pay a \$2 fee if you want to receive a paper bill. Once the new legislation is in place, they would no longer be able to charge you the \$2.

If Bell made a business decision that it wanted to increase its rates across the board in non-regulated areas, it could do that.

• (0915)

Hon. John McKay: What would be the non-regulated areas, though, on my phone bill?

Mr. Adam Scott: The vast majority of retail services are not regulated, apart from some small geographic areas where, in the commission's view, there is not enough competition yet to deregulate. Primarily we are talking about smaller communities that haven't seen new companies come to the market. It's really those smaller geographical areas that would—

Hon. John McKay: The smaller communities are the most vulnerable, then, to whatever telecommunications provider switches something from one side of the ledger to the other.

Mr. Adam Scott: And that vulnerability is precisely the reason that those rates remain regulated: so that there is that check in place.

Hon. John McKay: My second question has to do with clauses 193 through 210 and the effect of the amendments on voter contact calling services and provisions in the Fair Elections Act.

How will this effect work?

Mr. Adam Scott: This area makes up a large portion by volume of my section of the bill. The drafting instructions are strictly to ensure that when our portion of the bill comes into effect, it amends the paragraphs that we intended it to amend. The Fair Elections Act has some amendments that, while passed, have not yet come into force and will be modifying the numbering of the corrected bill.

This is just a very technical drafting exercise. It does not have a substantive impact on the Fair Elections Act.

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

Thank you, Mr. McKay.

Now we go on to the Conservatives.

Ms. Bateman.

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

Thank you to all of our witnesses for being here. This is an interesting discussion. I have a couple of questions.

First I want to understand something. According to the Industry Canada website, interference devices are already not permitted. I need clarification from you, Ms. Fancy, about why you are seeking this prohibition against the jamming devices and what is going to be achieved with it.

Ms. Lynne Fancy: Under the current legislation, although they are mentioned, they are mentioned in the context of having the intent to use them for a bad purpose. The modified language is much stronger; there is just an outright prohibition.

There are very few legitimate uses for a jammer, and the stronger wording reflects that.

Ms. Joyce Bateman: Okay.

Is there a reporting mechanism in place that will capture somebody's attempt to use a jammer? You gave an earlier example that was for when one was used for nefarious purposes. Is there a reporting mechanism under your control by means of which you will be able to follow up on an incident, should it occur?

Ms. Lynne Fancy: Primarily, complaints are reported to the regional offices, because we have direct and local presence in communities. People who are experiencing the impacts of such devices would complain directly to our regional offices.

Ms. Joyce Bateman: You as the senior director have an accountability process in place so that you are aware of what's going on in your regional offices, if there is a huge influx of complaints, for example.

Ms. Lynne Fancy: Absolutely.

Ms. Joyce Bateman: What is it your intention to do with that, going forward?

Ms. Lynne Fancy: We would be judging what compliance activity should be taken. There may be, for example, seizure of the jammers. There may be AMPs used as a compliance tool. There may be simple education for somebody who might be a truck driver who was just trying to use a jammer so that his boss didn't know he was taking an extra rest break. We would be able to understand all the cases in which we have taken compliance measures for jammers and understand whether we have any trends that we need to address or enforce more aggressively.

Ms. Joyce Bateman: Your second point on that made reference to AMPs. Could you amplify—I'm sorry—on that, please.

Some hon. members: Oh, oh!

Ms. Lynne Fancy: If the legislation is put in place, AMPs would be a tool that could also be used to encourage compliance against jammers. If somebody were found with a jammer, the first time we might educate. If they were found with jammers a second time, we might—

• (0920)

Ms. Joyce Bateman: AMPs....

Ms. Lynne Fancy: We might AMP. Yes.

Ms. Joyce Bateman: Okay, thank you.

I also want to understand about the bills. Clearly you had an exhaustive process with the industry. But I'm curious. How much have service providers typically charged a consumer for receiving a paper bill?

Mr. Adam Scott: The most typical fee is \$2.

Ms. Joyce Bateman: Two dollars a month—that adds up.

Mr. Adam Scott: Two dollars per month does add up.

The Chair: Thanks, folks. We'll have to end with that typical fee.

Mr. Masse.

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

And thank you to the witnesses for being here.

I, too, am a little bit concerned with the process, especially the fact that we can't make amendments to the bill. Also, I think it's quite likely this will end up in the courts. We're dealing with telecommunication companies that are having specific legislation design that influences their capabilities in the free market, with no recourse aside from, basically, government presentations. That's why we've seen so many court cases. We're talking about billions of dollars here.

Ms. Fancy, I'd like to start with you. You're right. The 700-megahertz auction was quite significant for Canadian history, giving the government over \$5 billion in resources. How much of that actually went back to telecommunication development for the government, in terms of maybe getting wireless out to rural and other small communities?

Ms. Lynne Fancy: I do not have that information. I'm sorry.

Mr. Brian Masse: Okay, I guess I can move to the.... You have two more blocks, you're saying, that are in 2015. What are those estimated values of those blocks to return for the government?

Ms. Lynne Fancy: We do not forecast any particular revenues. It is based on what the market will feel the value of the particular spectrum is.

Mr. Brian Masse: So, there's been no government study or economic evaluation of what those blocks will provide for the taxpayers of Canada?

Ms. Lynne Fancy: No, sir.

Mr. Brian Masse: I'd like to use that venue to move now to Mr. Scott, with regards to the pay-to-pay fees. I guess there has been no evaluation internally about what that will represent to consumers for Canada. You're relying on PIAC as your source of estimated revenue return for consumers in Canada.

Mr. Adam Scott: There's limited publicly available information on this. We have the information that was collected by the CRTC, but with that you have to make a number of assumptions to get a total amount. The assumptions PIAC have made seem quite valid. We could make other assumptions, but it would be....

Mr. Brian Masse: I guess what I'm asking is, has the department done any evaluation as to how this is going to affect consumers?

Mr. Adam Scott: We have not conducted an independent study to calculate the estimated financial impact on consumers, no.

Mr. Brian Masse: Now, aside from telcos, will there be any other banks or other organizations that will be prevented from pay-to-pay charges?

Mr. Adam Scott: The types of companies that are covered by the changes to the telecom act and the Broadcasting Act are the providers of telecommunication services and broadcasting services.

Mr. Brian Masse: Okay.

It worries me a little bit in terms of understanding how this is going to impact consumers in not having the proper research.

I want to move towards the AMP regime for violations. What type of violations have taken place since 2002, and what type of action has taken place? We're increasing the AMP violation fees, so I'm curious as to why they're coming to this point. Also, what instances do we have that this would have actually been beneficial?

Mr. Adam Scott: In this case this is the first time the CRTC will have a broad AMP power. AMPs are currently used for very specific instances. It has a small AMP for enforcement of do-not-call telemarketing provisions. Also, it recently gained a specific AMP under the anti-spam legislation. This is the first time they'll have a broadly applicable AMP tool. It can be applied in cases such as a company that's not complying with the new wireless code, so if it has business practices that are not in compliance with that code....

Mr. Brian Masse: Can you give an example of where we could have used that in the past?

● (0925)

The Chair: I'm sorry. The time's up for that round.

Also, I regret that one member from the Conservatives and one member from the NDP will miss a slot here because of the way we burned the time.

Mr. Wallace.

Mr. Mike Wallace: I thought you were regretting that I was next. I wasn't sure there, Mr. Chair.

Thank you to our officials for being here today.

I was a little surprised by the comments from our colleagues across the way. It sounded as if they were advocating that those poor companies that get to charge that \$2 fee are going to lose some revenue from it. As far as I know, we committed to get rid of paper billing from telecommunications organizations. This change in this implementation budget makes that happen. Is that not correct?

Mr. Adam Scott: That is correct. It is a strict prohibition—

Mr. Mike Wallace: We're following through on what we said we would do, which we're always proud of on our side of the table.

I'm the chair of the justice committee, and we were talking about jammers and so on. They're not illegal, is that correct?

Ms. Lynne Fancy: From a criminal perspective?

Mr. Mike Wallace: That's correct.

Ms. Lynne Fancy: Amy, do you know?

Ms. Amy Jensen (Policy Analyst, Spectrum Management Operations, Department of Industry): There isn't a specific Criminal Code provision against jammers right now. It is a regulatory offence in the Radiocommunication Act, so in that sense they are illegal and that's an offence that could be prosecuted, but it's a regulatory offence, not a criminal offence.

Mr. Mike Wallace: Right. So under the current system you'd get a slap on the hand, a discussion, if you're using one; and there are financial penalties if you continue to use one. Is that correct?

Ms. Amy Jensen: Again, it'll be a clearer offence if you're violating the new prohibition against jammers. That could also be enforced by way of a regulatory offence or the financial penalty, depending on what's appropriate.

Mr. Mike Wallace: So a regulatory offence or a financial penalty.

Are you legally able to manufacture or import them into Canada?

Ms. Amy Jensen: No. Right now, again, it is an offence to import things that are intended to cause interference. I think the issue with that provision, where it's not as strong, is that it deals with the person, because it's an offence provision and that's what offences do; whereas we're going to control those devices with the new prohibition, which is what we want. It's all about the fact that the devices are used.

Mr. Mike Wallace: Has there been any discussion at Industry Canada...? You did give the example of somebody trying to jam the GPS in a sense so that your boss might not know where you are at a particular time. But I think the vast majority likely are using them to provide some sort of criminal service. Has there been any discussion about a criminal offence in addition to the use of a jammer?

Ms. Lynne Fancy: We understand there have been queries about it, but Public Safety Canada or the Department of Justice would deal with that.

Mr. Mike Wallace: On the paper billing piece, assuming this will pass in the House and get royal assent, when will it take effect?

Mr. Adam Scott: It will come into force upon royal assent.

Mr. Mike Wallace: Have there been consultations with businesses that are charging for paper billing, so they will be ready for that change?

Mr. Adam Scott: This item has been very front and centre for some time. We have not had consultations. I would not be surprised to see a regulatory process flowing from this to ensure that compliance can occur.

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

Mr. Wallace, I know that I've been keeping it flowing quite a bit, but to be fair I'm trying to get maximum time for us to get what we need in this study.

Thank you very much to the witnesses.

We're going to suspend for three minutes and have the next panel come up.

• (0925)

(Pause)

• (0930)

The Chair: Let's carry on with our meeting. I wanted to alert members. I know we've had some comments from the opposition on

their concern with the process, but I wanted to make sure that all members knew that whether we're concerned with the process or not we have until.... The finance committee has basically the carriage of this bill. They've asked us to make recommendations. They have said that those recommendations may end up being amendments to the bill. Obviously they have a time limit that they're going to deal with for the bill. They've asked us to get input back to them by November 21. Yes, that is a short period of time. The reason I'm mentioning this now is that all members need to be cognizant of that if there are some concerns with the bill.

Where they would like to recommend an amendment, we need to be dealing with that now as we observe the bill. When we come back we'll have two meetings and then we'll have to make sure that a letter is drafted very quickly. It needs to be in both official languages to go back to the finance committee. That will be the process that we've been asked to work within.

Ms. Gallant, did you have a comment?

• (0935)

Mrs. Cheryl Gallant: Yes, Mr. Chair.

In the past it was the opposition who asked, when we had these budget implementation bills, to have it split up and dealt with individually at committee, so we're doing exactly as was desired. I think we should get on with this and be productive and make any amendments as seen fit.

The Chair: Thanks, Madam Gallant.

We'll begin with introducing our witnesses for the second panel. We have from the Department of Industry, Denis Martel, director, patent policy directorate, marketplace framework policy branch; Agnès Lajoie, assistant commissioner of patents, Canadian intellectual property office; Jenifer Aitken, director general, investment review sector; Paul Halucha, Paul I think is a veteran of this committee, director general, strategic policy branch. From the Business Development Bank of Canada, we have Jean-René Halde, president and chief executive officer; and John Connell, vice-president, government relations.

If I break protocol please forgive me, but it would probably be easiest for me to just go left to right with opening remarks if that's okay folks.

I know Mr. Martel has some opening remarks. Would you go ahead and try and contain them to five minutes, please.

Mr. Denis Martel (Director, Patent Policy Directorate, Marketplace Framework Policy Branch, Department of Industry): Thank you for the opportunity to be here today to talk about the changes to the Patent Act and the Industrial Design Act.

As you know from the study of this committee on the IP regime in Canada, it concluded that Canada's IP's regime is strong. In many areas Canada provides more than the minimal requirement than what is required under our international obligations. As you've heard there were some areas where Canada's system could be strengthened. One area was regarding enforcement, and the government introduced Bill C-8 on combating counterfeit products.

The other area that the committee identified was the need for support for Canadian businesses on the global stage to ensure that the administration of Canada's IP regime is internationally compatible and streamlined. To do so, the committee recommended that the government ratify key international IP agreements, including the Patent Law Treaty and the Hague agreement for industrial design. It is the latter recommendation that brings us here today.

[Translation]

The first step took place in January 2014, when the government tabled five international intellectual property treaties in the House, that had to do with trademarks, patents and industrial designs. This followed up on a recommendation by the Standing Committee on Industry, Science and Technology.

The first phase of the economic action plan contained the necessary amendments to comply with trademark treaties. Now, the second budget bill proposes amendments to the Patent Act and the Industrial Design Act.

[English]

This is to allow Canada to ratify and accede to the remaining two treaties: the PLT and the Geneva Act of the Hague agreement. The purpose of the amendments to the Patent Act and the Industrial Design Act is to give legislative and regulatory powers to accede to the PLT and the Hague agreement. Both treaties deal strictly with administrative matters. They do not consider substantive issues related to either patents or industrial design. Those two treaties are applicant-friendly. They require fewer forms, allow for electronic means of communications, notification of missed deadlines, and longer grace periods before sanctions could be taken.

Just to give a sense of the international agreement in terms of the Hague, it's an international registration system that provides an opportunity to obtain protection for industrial design in several jurisdictions with one single application.

There are many clauses in the bill, but essentially there are four key ones that I would like to highlight. They relate to the content of an application, to simplify what is required to submit; clarification of the rules of design when someone seeks a registration; clarification of the rules regarding requests for priority; and increasing the term of protection from 10 to 15 years.

The major benefits are to protect the designs in several countries by filing one application, which could be done in one language and paying one fee.

With regard to the Patent Law Treaty, it's also a treaty that is administered by the World Intellectual Property Organization, which aims to simplify and harmonize administrative practices among intellectual property offices around the world.

Some of the key amendments in the bill that I would like to highlight are the following: reduce the requirements to obtain a filing date, again, less information that the applicant is required to submit; require that an applicant be notified for a missed due date before action is taken; allow applicants to perform certain administrative tasks themselves; and introduce grace periods before sanctions that affect rights.

Collectively, those amendments and the ratification of the PLT would allow reductions in red tape, simplify filing requirements, reduce risk of errors and loss of rights, and bring lower costs.

Thank you, Mr. Chair.

● (0940)

The Chair: Thank you, Mr. Martel.

If at all possible, I've had a reasonable request that you make reference to the section of the bill that you're speaking to. It would be easier for members who actually have the bill in front of them to get to it right away and deal with it.

Madam Lajoie, do you have some opening remarks?

Ms. Agnès Lajoie (Assistant Commissioner of Patents, Canadian Intellectual Property Office, Department of Industry): No, I don't have opening remarks, but certainly I can provide more detailed information and I'll make sure I make reference to clauses when answering.

The Chair: Madam Aitken.

Ms. Jenifer Aitken (Director General, Investment Review Sector, Department of Industry): Thank you, Mr. Chair.

[Translation]

Hello.

I am the Director General of the Investment Review Division at Industry Canada.

I am here to speak to division 9 which contains amendments to the Investment Canada Act. These changes are found at clauses 186 to 190.

The first amendment in clause 186 removes an exemption from the notification requirements under the Act. It amends paragraph 10 (1)(c) of the Investment Canada Act so that foreign investors will be required to file a notification under the act when they acquire a Canadian business through the realization of security on a loan.

[English]

This requirement applies where the acquisition is not subject to another federal approval. Other approvals could arise under the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act, or the Trust and Loan Companies Act.

Proposed subsection 186(2) provides that part IV of the Investment Canada Act continues not to apply to this type of acquisition. Part IV is the part of the Investment Canada Act that governs reviews of foreign investments on the basis of their likely net benefit to Canada. The effect of these two subclauses, 186(1) and 186(2), is that this type of transaction will now be subject to notification under the act, but will continue to be exempt from net benefit review. This is a long-standing exemption from net benefit review, and is in place so as not to closely affect credit markets.

A notification is a form specified in regulations calling for information about the parties and the transactions. This means that through the administration of the Investment Canada Act, the government will now receive information about transactions in which a foreign investor has granted a loan to a Canadian business, the business has defaulted, and the lender acquires the business by realizing on security. This additional information will contribute to the data about foreign investment that is collected by Industry Canada.

[*Translation*]

The next amendments are provided under clause 187, which contains amendments to the confidentiality provisions in section 36 of the act. Section 36 contains strict confidentiality provisions with certain exemptions that permit limited disclosure of information, for instance in the context of a net benefit review. These amendments in subsections 187(1) and 187(2) will permit disclosure of the notices that are issued at each stage of the national security review process in the act.

● (0945)

[*English*]

Proposed subsection 187(1) lists the notices that can be sent during a national security review process, and permits disclosure of information in these notices. Proposed subsection 187(2) permits disclosure of the effect of a Governor in Council order at the end of a review. Subsection 187(3) provides for protection of information in a Governor in Council order if the disclosure of information would prejudice the investor or the Canadian business.

The effect of these amendments will be to provide discretion for more information to be disclosed about the process of national security reviews, while continuing to protect confidentiality of investors' information or national security information. For example, the government will be able to disclose that a notice has been sent to an investor that an order for review may be made, that no order has been made, or a notice that an order for review has been made, or that an order has been made after a review. These provisions create a discretion, but not an obligation, to make such information public.

Finally, there are some amendments to the Economic Action Plan 2013 Act. These amendments provide authority for amendments to the regulations under the Investment Canada Act to allow flexibility to extend timelines for national security reviews under the act. One of these amendments is being repealed, but the others will remain in place and will be used when the regulations are amended. This is a housekeeping change that is required for the national security review regulations. The authorities remain in the act and the Economic Action Plan 2013 Act, to provide for extensions to the national security review process time periods that were announced in 2013.

These will provide the government with additional flexibility in the time taken to conduct careful and thorough national security reviews.

Thank you.

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

Now on to Mr. Halde.

Mr. Jean-René Halde (President and Chief Executive Officer, Business Development Bank of Canada): Mr. Chairman, distinguished committee members, thanks for the invitation to appear.

The proposed amendments to the Business Development Bank of Canada Act were foreshadowed in a report by the Minister of Industry tabled in Parliament on June 16, 2014. They can be characterized as a fine-tuning of the act and would not change BDC's mandate, nor would they alter our focus on small and medium-sized enterprises. Rather, they would enable us to better fulfill our mandate by authorizing certain activities that BDC is presently unable to perform and that are in the interests of Canadian entrepreneurs.

[*Translation*]

BDC is proud to serve over 30,000 entrepreneurs through about 100 business centres throughout the country.

Our clients employ over 690,000 Canadians and generate revenues of nearly \$200 billion. Of our clients, 16% are exporters and generate export revenue of over \$22 billion.

[*English*]

BDC is a long-term lender and investor, with a greater appetite for risk than regular financial institutions. While we are profitable and pay dividends to the government, our primary focus is serving the needs of Canadian entrepreneurs, and the proposed amendments would allow us to do that better.

Let me elaborate on three amendments, division 12 of the act.

First, BDC would now have the ability to provide financing directly to a foreign subsidiary of a Canadian firm, which is what some entrepreneurs need to grow their business.

Second, there would now be a provision allowing BDC to invest in foreign-registered venture capital funds only when managed by Canadians with an ongoing commitment to invest in Canada.

Third, we would be able to increase our support to entrepreneurs through third-party organizations, which have better access to a certain type of client. It would allow us, for example, to deepen our collaboration with Futurpreneur, formerly known as the Canadian Youth Business Foundation, and reach out to more young entrepreneurs.

The other amendments would introduce additional very modest changes to better position BDC to support entrepreneurs and modernize the bank's governance arrangements.

I'd be happy to respond to any questions that you may have on the amendments, or any of BDC's operations.

• (0950)

The Chair: Thank you very much.

Colleagues, we'll try the four minutes again and try to get some time at the end as Monsieur Côté has asked to talk about business.

Mr. Daniel, are you up first?

Mr. Joe Daniel: Sure. Thank you, Chair.

Thank you, witnesses, for being here.

I'm just going to focus primarily on the patent and industrial design aspect. It's obvious that around the globe our designs are being copied, used, and replicated, etc., and loss of revenue and intellectual property is taking place daily.

My question is, really, by joining these treaties and the Hague agreement, and harmonizing Canada's IP framework, how does this impact the international community?

Mr. Denis Martel: The key benefits of ratifying those treaties are mainly for Canadian businesses, the innovators. They have been developed internationally to develop a system to facilitate...and some administrative provisions, as we indicated. By acceding to those treaties, Canadian businesses and innovators will have, on the administrative side, less burden so it will facilitate their jobs. It's friendlier. We have provisions to reduce some of the paper burden, for example, by having electronic filings. The act still refers to paper documents. Some reductions of costs.... We talked about the grace period. It also can facilitate foreigners if they want to file industrial design in Canada, and the same thing for the patents, because we're talking about national rights so foreigners come to Canada, and it helps to bring inventions from outside to Canadians. It helps both on the innovations and on the use of technology for design.

Mr. Joe Daniel: In Canada most of our businesses are small and medium-sized businesses, and our government is obviously looking to make sure that we can facilitate or assist in making sure that our small and medium-sized businesses can develop and thrive.

How will streamlining these application processes for Canadian small businesses be affected?

Ms. Agnès Lajoie: If I may, I would like to add the notion that ratifying those treaties is adding safety nets for the applicants. By doing that, we minimize the risk of applicants, including, of course, small and medium-sized businesses, to lose rights if, for example, they don't comply fully with the filing requirements. For example, the PLT allows applicants to get a filing date even if the filing fee is not paid. It can be paid later and they can secure a date. Actually you can find another example under clause 137. It's a new notification system for advising the applicants where a fee or an action has to be taken. Instead of saying, "Okay, you should have known," now there's a notification system. By doing so—of course, there are other potential examples—we are making sure that applicants are aware, and it adds certainty for them and also for third parties.

Mr. Joe Daniel: Obviously, there's a cost element to doing these filings. Is it going to be cheaper than filing a patent in the normal process?

Ms. Agnès Lajoie: Presently, we're not planning to reduce the fee to file a patent application but applicants will now be able to do certain actions themselves that they were not allowed to in the past.

For example, now they will be able to pay their maintenance fee themselves. It's a real benefit because right now only the patent agent or authorized correspondent can do this on behalf of the applicant. By doing so, the applicant is fully accountable and responsible to maintain their file and may, potentially, save some legal fees with their agent. There are definitely savings in this specific operation.

• (0955)

The Chair: Thank you very much.

Now on to Mr. Masse, for four minutes.

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

I appreciate your intervention in terms of the process. I was just curious, though, as to whether or not the minister will be responding to any recommendations that we have. The normal process, historically, in this House, has been that each committee has been independent to itself, often then reporting to the House of Commons, and then getting a ministerial report.

What we're doing here is we're going to be sending a shopping list or some recommendations to another committee. In my opinion, we become subservient to the finance committee because we could always give recommendations, that's always an option, and we're being requested to do so, but we can't make amendments. There's a big difference in those two processes. I'm hoping that whatever we do at the end of the day, the minister will directly respond to this committee's recommendations because I think it's important.

I want to continue with the patent question that we have here because it is very important, for manufacturing, where I come from, and also for this country. What countries are we having a particular problem with in terms of patent protection right now? What identified countries are violating Canadian patents?

Mr. Denis Martel: I wouldn't say that we have any problems, like the—

The Chair: Mr. Daniels, on a question of procedure.

Mr. Joe Daniel: Thank you, Chair.

This process has been the regular process that we've done for quite a bit of time. We've done this in the spring where we've actually gone to the finance committee to do all of these things. This is nothing new that we're doing. I'm not sure what these concerns are that are being raised now. We need to continue with our same process.

The Chair: Thank you, Mr. Daniel. It's not a question of procedure, but I stopped the clock.

Go ahead, Mr. Masse.

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

Please, continue.

Mr. Denis Martel: In terms of the other countries, the Canadian rights are patented as Canadian rights, therefore a Canadian can apply for it or a foreigner. It has nothing to do with a Canadian company filing abroad. What we're trying to achieve here, by making those changes to accede to the Patent Law Treaty, is really to make it more friendly to Canadian applicants or foreigners who apply in Canada and make sure we align with other administrative requirements in other jurisdictions, which for companies that file in many jurisdictions are more familiar so it allows us to have a system that is familiar to all.

Mr. Brian Masse: What will that translate to in terms of the Canadian economy? What is the predictable outcome from doing that, if you're moving into that compliance?

Ms. Agnès Lajoie: If I may talk about one of the benefits that we have under the PLT, it's that Canadian patents won't be invalidated on the basis that there have been administrative errors during the prosecution while an application is pending. For example, if a fee or a technicality is missed during the prosecution, this is not grounds for invalidating a patent in Canadian courts for companies that have a Canadian patent. I know it's a small example, but then again the PLT is really, as my colleague has mentioned, to harmonize administrative requirements that we have. I'm not sure that we can answer your questions very specifically, but there are definitely benefits here.

Mr. Brian Masse: That's helpful. I can see in drug patenting, and stuff like that, where that could be particularly germane.

I'm going to move over to the BDC with my limited time that I have left. What type of investment, in terms of investment to other countries, are you missing right now? There's the presentation that you've been effective for Canadians, you've been profitable for Canadians, and you've been successful with Canadians. You're moving into a foreign investment portfolio now. What can Canadians expect to gain out of that foreign investment?

Mr. Jean-René Halde: The one thing that is being permitted under this change, if approved, is the ability for us to invest in a venture capital fund. That's really what we have in mind. It would be headquartered, let's say, and I'll use a very specific example of one that I have in mind, in Toronto. All the managing partners are headquartered in Toronto, but because they're trying to attract U.S. investors, they have chosen to incorporate in Delaware. Technically, at the present time, the only way we can actually invest is ask this fund to create a Canadian fund, have an exchange of shares, which only adds, candidly, to the cost, to the red tape, to the time, and really doesn't provide any more benefit. Obviously, the challenge would be to make sure that Canadians are involved. They're in Canada, they're focused in Canada, but it would enable us to participate in funds where foreigners are also involved.

• (1000)

The Chair: Thank you very much, Mr. Halde and Mr. Massey.

Now over to the Conservative side. Madam Gallant.

Mrs. Cheryl Gallant: Thank you, Mr. Chairman.

I see from the BDC's website that the federal government funds programs to improve the environmental performance of businesses.

Does the BDC provide financing to wind farm companies in Ontario?

Mr. Jean-René Halde: That's a very specific question that, candidly, I wish I could answer, but we've got 30,000 clients and I'm afraid that I don't know if we do that. In terms of the environment generally, I can tell you that we're very careful. Every time we do lending, we'll make sure there's a phase one and a phase two, if we feel that's necessary. In terms of the normal kind of protection of the environment, the bank is very careful about that. I can tell you that I can think of one file that I'm aware of where we're involved in renewable energy in the form of storing electricity for the grid, a new concept in a small town north of Toronto. But whether or not we have lending to wind farms, I don't know. Unless it reaches a pretty big amount, I wouldn't see it.

Mrs. Cheryl Gallant: Okay.

Quite apart from an ongoing study by Health Canada into the relationship between noise pollution from industrial wind turbines and the possible health implications for those living nearby are the financial effects and the impact in Ontario specifically. I'm not referring to any other province. We have these wind farms that are increasing the cost of power generation by 20%. But when a consumer actually gets their bill, by the time the added costs are in there, it's almost double. They call it delivery charges.

I'm particularly concerned at the federal level that we're not countering the efforts we're trying to make in terms of developing small and medium-sized businesses, because this is the greatest hurdle they have to climb right now. Their soaring expenses are as a consequence of hydro. In fact locally we just had a medium-density fibreboard plant open in Pembroke. The reason they had largely closed for over eight years was because they could not afford the electricity rate.

I really want to ensure that the BDC does not fund projects that work counter to the best interests and the viability of small businesses. It's even more important here, Mr. Chair, because one of the very first companies in Ontario to receive a contract for a wind farm was owned at the time by the president of the Liberal Party of Ontario. He received \$475-million contract, and subsequently sold that for a \$100-million profit to, among others, foreign entities.

The reason that's important federally, in addition to the financial devastation and the costs it's going to cause Canadian federal taxpayers, is that the people who were part of that contracting and Green Energy Act, and who took advantage and are costing businesses and individuals dearly in electricity, are now sitting advising the leader of the federal Liberal Party here in Ottawa. I just wanted to ensure that the BDC is not helping that along.

Why are amendments being made to the BDC to help businesses grow beyond the domestic market?

Mr. Jean-René Halde: Basically, as I mentioned earlier, we are really seeking three major amendments. The first one is the ability to lend directly to a subsidiary.

I'll give you a very simple example. Bombardier decides to move their plant to a foreign country. They're asking their Canadian suppliers to follow, which they have to do because if not, Bombardier is not going to keep them as suppliers. So we're trying to help that Canadian company establish in a foreign country.

At the present time, the only way we can lend—

• (1005)

The Chair: Thank you. I'll have to leave it at that one example because our time is so short today. We may get back to you for the other two examples.

Mr. Jean-René Halde: I'm being cut off. Okay.

The Chair: Sorry about that. That's my job.

Mr. McKay.

Hon. John McKay: Chair, you'll be interested in knowing that due to the efforts of the Ontario government, Toronto has not had a smog day in two years, largely attributable to the elimination of coal-fired generation. There are other reasons, but that's one of the reasons. I personally hope you continue to have an environment file.

My question is first to the folks on the Industrial Design Act. There's a section in the act that is a morality clause. You can't register something that's contrary to public morality or order. However, the Patent Act does not have a parallel clause. I wonder how those two concepts are going to be reconciled.

Mr. Denis Martel: In answering this question I want to make sure that we understand what industrial design is. It's the registration of the visual features of a particular object. So it could be the shape of a bottle. It could be on shoes. For example, Nike has registered its design on running shoes. It's on the side, a particular pattern. So it has a visual appeal essentially.

The clause you're referring to in the bill is clause 104. Essentially it's a rework of a requirement that is in the current act, so it's not something that is being added; it's just a repackaging of the current requirements. I want to make clear that we're not doing this.

Hon. John McKay: For my own understanding, if there is something obscene, for want of a better term, I can't make a representation of that obscenity, but I could patent it?

Mr. Denis Martel: That's why I wanted to talk about the visual appealing, because on the patent we're talking about an invention, which in some ways is more abstract. It's not something visual; it's how things work together.

Hon. John McKay: So if it's inventive obscenity, that's good.

Mr. Denis Martel: The Patent Act is not about the use of the invention. You may have other legislation or regulations that would govern something, for example, that is environmentally damaging or things like that.

The Patent Act has requirements for the invention per se. Is it novel? Is it not obvious? Is it useful? Those are essentially used by the examiner to assess whether it's an invention.

You're further down the road to something that would be used by a person.

Hon. John McKay: I'd dearly love to pursue that, because it seems to me that there's a huge contradiction there and I would think

that any member of this committee would be interested in reconciling that contradiction so that we do actually put out a message in both pieces of legislation that matters pertaining to public morality are of serious concern, but the way we're rushed is the way we're rushed.

Ms. Agnès Lajoie: If you'd allow me to mention, up until late 1989 the Patent Act had restrictions. There was restricted patenting of an invention that has an illicit object in view. At the time when we amended the Patent Act in 1989, the legislator decided to remove this requirement, which was, to the best of my knowledge, never used and never challenged in court.

Again, as my colleague was mentioning, the criteria for assessment that the patent office uses really focus on the technical and on the contributions of an invention, which are novelty, obviousness, and of course utility.

Hon. John McKay: It seems contradictory to say that the Patent Act doesn't care about public morality but the Industrial Design Act does care about public morality.

Anyway, I'll leave it there because—

• (1010)

The Chair: I appreciate that.

Now to Ms. Bateman.

Ms. Joyce Bateman: Thank you so much, Mr. Chair. My questions are for BDC.

The third point you mentioned was support to entrepreneurs through third party organizations, and your defence of that point was that this was going to make it possible to reach out to young entrepreneurs. Quite frankly, the last time I spoke to young entrepreneurs, I learned they don't need our help through obfuscation of layers and layers. We could learn something from the young entrepreneurs in this country. I simply don't understand what that extra layer of obfuscation, if you like, is going to achieve to help our young people.

Mr. Jean-René Halde: I'd like to respond to that, if I may. We have an awful lot of young entrepreneurs who need financing to start a business. There are organizations very much capable of doing that and I'm going to refer to what used to be called the Canadian Youth Business Foundation. At the present time the Canadian Youth Business Foundation, now called Futurpreneur but CYBF was their name for a long time, reaches out to young entrepreneurs and is willing to lend to them. At the present time we would love to be able to lend to CYBF so they can on-lend, because they have far-reaching offices to reach the young when it comes to financing.

Ms. Joyce Bateman: But the point I want you to be certain about is that you're not adding another layer of bureaucracy. The money has to go to the young entrepreneurs, not to a middle layer or one more thick layer of bureaucracy that can skim the money from where it should be going.

Mr. Jean-René Halde: I am absolutely with you on that. What we're trying to remove is ourselves, because at the present time the law is such that they do the work and then they have to come to us, because we're not allowed to lend through them. As BDC, we actually then have to meet with every entrepreneur.

Ms. Joyce Bateman: What's your percentage on the transaction?

Mr. Jean-René Halde: We literally do this for, honestly, the greater good of the country, because they are small transactions. The costs involved....That's why we want to remove ourselves.

Ms. Joyce Bateman: My point is that I would need to be very comfortable that the money is going to the entrepreneurs.

Mr. Jean-René Halde: I assure you, it does.

Ms. Joyce Bateman: Okay.

Now, going directly to foreign subsidiaries, you said that this is another piece you're focused on. Can you give me an example of how that would work? I think you started with my colleague, but can you pick up where you left off?

Mr. Jean-René Halde: I will pick that up very quickly, so as not to be cut off.

A supplier would then move to another country. Right now, in order to help that Canadian entrepreneur, what we have to do is lend to the Canadian company and that entrepreneur then moves the money down, let's say, to the foreign country where his new plant is located. The problem that creates is that it puts a lot of debt in the Canadian corporation. Many entrepreneurs have asked us, "Please, just lend to my subsidiary, don't put the loan on my balance sheet in Canada. Deal directly with my subsidiary." It's a request that many have made.

I was speaking to one entrepreneur yesterday who was making that exact request. It would simplify things. Right now we do it.

Ms. Joyce Bateman: Do you analyze that with a lens on the creation of jobs, economic growth, and long-term prosperity in Canada, or where the foreign subsidiary is?

Mr. Jean-René Halde: We are trying to make sure our role is to make our Canadian companies more and more competitive, and in some cases in a globalized environment, some of them, in order to keep growing, may have to go and establish a plant elsewhere. Our concern is to make sure that that Canadian entrepreneur can keep growing and keep following the large order-givers and so on. So it is not about creating jobs elsewhere, it's about making that company stronger.

Ms. Joyce Bateman: It's about cleaning off the balance sheet in Canada, which isn't always in the best interests of Canadian prosperity.

Mr. Jean-René Halde: It is about reducing the level of debt on the Canadian balance sheet, so that that Canadian entrepreneur has more room to borrow in Canada for the Canadian business.

The Chair: Thank you very much. That was a robust round. Thank you, Mr. Halde.

Now to Mr. Côté, for four minutes.

[*Translation*]

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

It is regrettable that Ms. Gallant continues to try to make a silk purse out of a sow's ear; however, this is her usual contemptuous attitude. No one can seriously believe that splitting this bill so that the various parts can be studied separately in committee is the same

thing as reviewing these parts without any possibility of bringing amendments.

That being said, I would like to thank the witnesses for being here. I have far too many questions for the amount of time I am given; however, I will start right away with the issue of patents and industrial design.

Previously, when we studied the issue of intellectual property here in committee, no witnesses mentioned the fact that there was a connection between what was proposed at the time and the government's recommendations regarding our compliance with treaties. What connections can be made there, in your opinion? Did the government proceed unilaterally, of its own volition? Otherwise, is there really a link to be made with treaties that were signed, such as the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs?

• (1015)

Mr. Denis Martel: Thank you for your question.

Over the years, many consultations were held, particularly by your committee. Moreover, we, as public servants for the government, hear much about consistency at the international level when we discuss the issue with businesses. There are national systems, but companies do business around the world. They want an administrative system that is standardized and consistent with what exists internationally. That is one of the things we hear most often from businesses.

The treaties are very technical and businesses are not very familiar with them, but patent agents are. Consultations were launched in 2003 and the positive comments we hear most often are those regarding adhesion to these treaties or their ratification.

Mr. Raymond Côté: Could you give us an idea of the stakeholders who were consulted?

Mr. Denis Martel: Often, it is the Intellectual Property Institute of Canada.

This organization represents patent and industrial design agents. Consultations are conducted on an individual basis. We sometimes speak with patent agents or directly to representatives from the association. These are the people who know this field best.

Mr. Raymond Côté: Thank you.

Unfortunately, I have very little time. I must now move on to questions regarding the Investment Canada Act.

Some aspects of the act can prevent information from being disclosed if the investor in question can convince the minister that it could be prejudicial. Could you give us an example of a convincing argument? I find this worrisome.

[*English*]

Ms. Jenifer Aitken: The provision in the act to which you're referring is related to the disclosure of information in a Governor in Council order. At the end of the national security review process, the Governor in Council can make an order. The act provides for a variety of different types of things that could be contained in that order. It could prohibit an investment, permit an investment, or it could permit it with conditions.

Then, the provision allowing the minister to disclose information in the order says that the minister shall not disclose the information, if the investor satisfies the minister without delay that the communication would prejudice them.

It's a similar structure to the exceptions for disclosure of information under the net benefit process, which already exists in the act; it requires that the minister be satisfied. We're talking about businesses' investments, commercially sensitive information, the disclosure of which could be prejudicial.

The Chair: Thank you very much.

Thank you, Mr. Côté.

Mr. Falk.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman.

Ms. Aitken, I'd like to start with you.

We are providing amendments to the Investment Canada Act that will put more teeth into the act and strengthen it. Can you tell me how big a problem is caused by Canadian companies having foreign financing, defaulting on it, and then surrendering their ownership or shares to the control of the foreign entity? Is that a big problem?

Ms. Jenifer Aitken: Right now there's no notification for it under the act. These changes would provide for a notification and then we would start to get information and have a sense of the scope of those transactions. We know that is a manner in which a Canadian business can be acquired. I can't say exactly how many of those transactions there are now but once we start collecting that data, we will have more information.

• (1020)

Mr. Ted Falk: Are you suspecting this an intentional default or an unintentional default? What kind of activities are you thinking there may be?

Ms. Jenifer Aitken: I don't think the act deals with intentional or unintentional. This is a method by which a business could be acquired.

Mr. Ted Falk: Then it says "the Governor in Council can take measures for national security". What kind of measures could they take?

Ms. Jenifer Aitken: The national security review process goes through the Governor in Council at two stages. First, to order a review if the Minister of Industry makes a recommendation based on consultation with the Minister of Public Safety. Second, if there is a review, the Governor in Council has the authority to make any order it considers necessary to protect the national security of Canada.

Mr. Ted Falk: That's including the realization of assets by a foreign entity

Ms. Jenifer Aitken: It could be an order to divest what a foreign entity had acquired, yes.

Mr. Ted Falk: Thank you.

Mr. Halde, BDC, I want to recognize the good work you're doing providing creative solutions—

Mr. Jean-René Halde: Thank you.

Mr. Ted Falk:—for family succession, often of Canadian-owned businesses. I want to recognize also that 80% of our employment is created by SMEs. I want to encourage you to fulfill the role of non-traditional lending that the banks and credit unions provide for SMEs.

Could you expand a little on how your organization is doing that?

Mr. Jean-René Halde: Sure.

Generally our risk appetite is higher than that of the banks. We tend to take a layer of risk that is not something they're comfortable with. We will charge, we will price for that risk. We also are trying very hard to do what's called a hybrid instrument like quasi-equity to do exactly what you've just discussed, which is to enable a management team to purchase the business from the owner so the business can continue in Canada. We're very focused on trying to come up with new, novel ways of helping Canadian entrepreneurs and yet at the same time remain profitable.

Mr. Ted Falk: Are you experiencing success with that?

Mr. Jean-René Halde: We've been very proud of our track record. We're helping an awful lot of entrepreneurs every year. There's not a single client event that I go to where people won't say they're glad we were there because when the going was tough, we stayed with them, helped them during the recession. We increased our lending by 53% that year simply because some of our colleague chartered banks were a bit more careful than usual. We had to step in and be somewhat counter-cyclical.

Mr. Ted Falk: Do you cross over into agriculture?

Mr. Jean-René Halde: No, we don't. Agriculture is handled by a farm credit. That's their bailiwick.

Mr. Ted Falk: How much time do I have?

The Chair: You have 20 seconds.

That's almost expired too, Mr. Falk.

Why don't I go over to Mr. Côté?

[*Translation*]

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

I would like to focus again on the issue of patents and industrial design.

Another aspect often brought up by witnesses during our study of the clauses related to intellectual property is the implementation date, which is set by order in council. Witnesses were very concerned by the fact that it can sometimes take a fairly long time for the clauses to be implemented.

I of course cannot ask you to give us an implementation date, but for the benefit of the public, could we get an idea? Would it be a time frame that can be counted in years?

Ms. Agnès Lajoie: We will have to work on regulations that will support and complete the act. At the same time, we are working to modify our computer systems, improve our processes and document our practices. Internally, we already have a very rigorous action plan in place.

Obviously, we are not working alone. With the ratification of treaties, we must submit instruments to Geneva. There as well, we have already developed relationships with the World Intellectual Property Organization and, it goes without saying, with our colleagues from Foreign Affairs, Trade and Development. The table has been set, and the action plan is solid. However, we cannot control everything.

• (1025)

Mr. Raymond Côté: I am aware of that. Everyone understands the scope of the work, but does the current process provide sufficient reassurance to the industry stakeholders?

Ms. Agnès Lajoie: in 2001, Canada signed the Patent Law Treaty. These additional safety nets and that flexibility are most definitely desirable. We have never been so close to the goal. We are definitely being supported. Everyone is confident—and I would like to emphasize once again that we are working with our partners—that we will achieve our aims.

Mr. Raymond Côté: Very well, thank you.

I would now like to come back to the Investment Canada Act, and, more specifically, to convincing the minister not to disclose certain information that might be prejudicial for an investor.

Is there currently a process to find out what arguments are made to the minister? In other words, is there a process that makes the minister accountable for what took place and for what allowed him to avoid disclosing information?

[English]

Ms. Jenifer Aitken: There is nothing in the act that requires the minister to disclose information about the information that wasn't disclosed. It's not part of the act. There is a requirement for an annual report under the act, but it doesn't include the national security provisions.

[Translation]

Mr. Raymond Côté: I will make no secret of the fact that as an MP for Beauport—Limoilou, I am dealing with a case of impunity related to the Port of Quebec. Indeed, I wish to remind committee members that donations totalling over \$19,000 were made to the Conservative Party by executives from a company called Arrimage Québec. From what I gather, the minister may find himself dealing with a similar case when it comes to investors. He would hear arguments, but no one would know about it. There would be no accountability in this process.

[English]

Ms. Jenifer Aitken: I'm not sure. This is about prejudice to business in an order issued by the Governor in Council. The minister has the decision to make to be satisfied that it would be prejudicial and shouldn't be disclosed. It's not the investor or the Canadian business that decides. They have an obligation without delay, so right away, to explain to the minister what their concerns are and then the decision in the act is with the minister.

The Chair: Mr. Wallace.

Mr. Mike Wallace: Thank you, Mr. Chair.

I will focus my questions very quickly on BDC.

First of all, you have a mandate to return a profit to the taxpayers of Canada. Is that correct?

Mr. Jean-René Halde: It is correct. We are being asked to ensure that our return on equity is greater than our long-term cost of capital, which we've always done.

Mr. Mike Wallace: Are you ever in first position as a lender? How often are you in first position over a bank or credit union?

Mr. Jean-René Halde: It's important to understand that we only do term lending, which is like project financing of a long-term nature on the lending side, which is the bulk of our activity. Every entrepreneur in this country deals with a bank in terms of operating line and chequing account, and so on. We are just there to do the term lending.

Mr. Mike Wallace: You are responsible for making a return. Your risk profile, which you talked about.... You have a higher risk profile that you'll accept, but that doesn't mean you'll accept all risk. Is that not correct?

Mr. Jean-René Halde: That is correct. We are a development bank, but we do expect to be repaid, so we will take a layer of risk higher than chartered banks, usually, but we will also price for risk which enables us, obviously, to end up with a positive number at the end of the year.

Mr. Mike Wallace: So the decision that has been made by government about the role of BDC, its legislation, is not your decision. It's been decided by the Parliament of Canada that you're a profit-making organization to return money to the taxpayer.

• (1030)

Mr. Jean-René Halde: That is correct.

I'm not sure, candidly, if it was in the original BDC act of 1995 or it was a Treasury Board guideline issued at the same time. But certainly, since 1995, the thinking of the bank and the request of the shareholders—and I'm not sure in which piece of paper it was—is that in all cases we should earn a rate of equity greater than our cost of capital.

Mr. Mike Wallace: With respect to the issue in front of us today, which Ms. Bateman brought up, I want to be clear on something for my own understanding. The young entrepreneur organization does due diligence on who they'll lend to currently.

Mr. Jean-René Halde: That's correct.

Mr. Mike Wallace: If they came to BDC currently, you would have to also do due diligence on whether to lend to that young entrepreneur.

Under the new system, the due diligence, or the bureaucracy required to get the cash, would be reduced somewhat, in that you are relying on the due diligence of the young entrepreneur organization. Because you've lent money directly to them, based on their due diligence they will turn over that money to the actual entrepreneur.

Is that correct?

Mr. Jean-René Halde: That's exactly right.

What we're trying to do is eliminate one layer of paperwork. We will issue one loan to Futurpreneur Canada. They will then on-lend, and we will trust their due diligence. We will train them, if they have to be trained, to do it properly. Right now, as you say, there's a double effort that is unnecessary.

Mr. Mike Wallace: You are expected to have a return.

Have you worked out what your return will be from the young entrepreneurs organization?

Mr. Jean-René Halde: We are expected to have a return, on average, over the whole portfolio.

At the present time the portfolio is about \$19 billion. Young start-ups are a bit of a difficult environment to be in, so I don't expect much of a return on that particular part of the portfolio.

Mr. Mike Wallace: From the bank's perspective, this is an investment that you're making in youth. It may not return a huge amount to the taxpayer, but it will over time due to employment growth and manufacturing growth, growth in the business community in general.

Mr. Jean-René Halde: That is exactly right.

These young entrepreneurs are building businesses that over the course of time will hopefully grow bigger businesses and will be good for the country. That's the reason we are focusing on helping young entrepreneurs.

Mr. Mike Wallace: Thank you very much.

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

I want to say thank you very much to our witnesses. I appreciate your testimony.

We're going to suspend before we go in camera for a short period of business. I'll ask everybody to say their goodbyes very quickly so that we can empty the room to go in camera.

We will suspended for three minutes.

[Proceedings continue in camera]

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