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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (0845)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. Welcome to meeting number 29 of the Standing Committee on Industry, Science and Technology.

We have quite a selection of witnesses before us this morning and we have two panels.

I'm going to go very quickly: from Bereskin and Parr, Amrita Singh and Scott MacKendrick; from the Canadian Bar Association, Omar Wakil, who is the chair of the foreign investment review committee; from the Intellectual Property Institute of Canada, David Schwartz and Stephen Perry; and from the United Steelworkers, Mark Rowlinson.

I take it that everybody's been briefed about five minutes for opening comments, is that correct? So we'll begin with Bereskin and Parr.

Ms. Amrita Singh (Associate, Bereskin and Parr LLP): Good morning. My name is Amrita Singh and I, along with my colleague, Scott MacKendrick, am here on behalf of Bereskin and Parr LLP to provide feedback about the proposed amendments to the Patent Act and Industrial Design Act as set out in part 4, clauses 104 through 142 of Bill C-43, and to answer any questions you might have about those amendments.

Bereskin and Parr is a leading Canadian intellectual property law firm. The firm's practice is comprehensive, encompassing all aspects of intellectual property law, including patents, industrial designs, and IP litigation. A number of the firm's practitioners are consistently ranked as leading practitioners in IP law in Canada and around the world.

We're pleased to have been invited to provide comments on the proposed amendments, many of which provide welcome updates to Canadian patent and industrial design law. Thank you for this opportunity.

I'll begin by addressing the amendments proposed to the Patent Act. The changes to the Patent Act are designed to implement the patent law treaty, the objective of which is to streamline and harmonize formal requirements set by various countries for the filing of patent applications and the maintenance in force of patents, as well as certain additional patent and patent applications requirements related to the communication with applicants or their patent agents, representation and recording assignments, and the like.

The treaty is intended to provide filing date requirements and procedures to avoid loss of filing dates, mechanisms to avoid the unintentional loss of rights arising from a failure to comply with time limits, an internationally standardized set of formal requirements consistent with the patent cooperation treaty requirements, standardized forms, and simplified procedures.

The majority of the amendments will require clarification by the yet to be made public, and presumably not yet drafted, patent rules. Until the rules are made public, it remains to be seen what the full impact of changes to Bill C-43 will mean for Canadian patent law.

I will highlight two things that are of particular interest to us. Intervening rights is the first thing I'm going to speak about.

Presently, there's no provision in the Patent Act for so-called third party intervening rights for someone who takes actions during the time that a patent application might be deemed abandoned, but is later reinstated, where the actions would otherwise be found to infringe the patent as issued. All that the act currently provides is that if a patent is issued, the patent owner may obtain reasonable compensation for the otherwise infringing actions during the deemed abandoned period.

Bill C-43 appears to change this, allowing for innocent infringement as long as the actions are taken in good faith and during the timeframe to be set out in the patent rules. There is no requirement for such a term in the patent law treaty, and what “good faith” means will, most likely, have to be determined by judges. This injects some uncertainty into the patent regime and such uncertainty is almost certain to result in litigation before the Federal Court.

Furthermore, this is a removal of rights already present in the Patent Act and will adversely affect patentees regardless of the reasons why applications were deemed abandoned or for which fees were unpaid at some time.

The second point I will address is reinstatement of applications. Currently, an application is deemed abandoned if a required action is not taken. Once abandoned, the applicant has 12 months to reinstate the application by requesting reinstatement, paying a late fee, and taking the required action.

Under the amendments, however, there are certain circumstances where the applicant must show to the commissioner of patents that the failure to take the required action was notwithstanding the applicant taking due care. The treaty only requires unintentional delay as the basis for reinstatement and this basis has been adopted by the U.S. patent office, among others. Due care is a more onerous standard than the Patent Act currently provides and is likely to result in litigation before the Federal Court as well.

● (0850)

Mr. Scott MacKendrick (Partner, Bereskin and Parr LLP): Industrial design is an ornamental or aesthetic aspect of an article. It can be either in three dimensions or two dimensions. Examples include Apple's iPhone, the much-litigated industrial designs related to the shaping of that phone.

Another example is Bodum, which has a double-wall glass. This is the case litigated in Canada in 2012. The introduction of the Hague system into Canada will provide a mechanism for registering an industrial design in several countries by means of a single application filed in one language and with one set of fees. Unfortunately the amendment is introducing an issue with respect to design novelty. There is a requirement that a design be new to be registerable. This is something where the devil is going to be in the details of the regulations that are going to come out eventually.

As is apparent from our comments much remains to be done in and through amendments to the patent rules and the industrial design regulations. We recommend consultation on the rules and regulations be broad and that all interested parties be provided with sufficient time to fully consider and work through the details of the proposed changes and avoid unintended outcomes.

On behalf of Ms. Singh, thank you.

The Chair: Thank you very much.

We will now move to Mr. Wakil.

Mr. Omar Wakil (Chair, Foreign Investment Review Committee, Competition Law Section, Canadian Bar Association): Thank you very much.

Good morning, Mr. Chair, members of the committee.

I am pleased to appear before you today on behalf of the Canadian Bar Association in response to division 9 of part 4 of Bill C-43 amending the Investment Canada Act.

The Canadian Bar Association is an association representing 37,000 members of the legal profession. Our primary objectives include improvement in the law and in the administration of justice. It is through that lens that we have examined this portion of the bill.

The submission before you has been prepared by the Foreign Investment Review Committee of the Canadian Bar Association's competition law section. This CBA section is composed of lawyers whose practices embrace all aspects of competition law and foreign investment review including direct experiences with transactions and other investments that are subject to review under the Investment Canada Act.

In 2009 the Investment Canada Act was amended to permit the review of virtually any foreign investment into Canada on the basis that it might be injurious to Canada's national security. We have previously expressed concerns about those amendments because of their broad potential application and because of the lack of guidance as to what sorts of investments would be reviewed. Without transparency and guidance it is difficult to advise foreign investors or Canadian businesses on the likelihood of a review or the potential outcome of a review. This creates a risk of chilling foreign investment into Canada.

We're making our comments today against the backdrop of those concerns. The amendments to the Investment Canada Act that are currently proposed would primarily make two changes to the law. First, the list of investments subject to notification requirements would be expanded. That may give rise to an increased number of national security reviews. The CBA section believes it would be helpful for the government to provide an explanation as to why these changes are thought necessary or desirable.

Second, the government would have greater discretion to disclose publicly information about the status and outcome of a national security review unless the Minister of Industry is satisfied that communication or disclosure of that information would be prejudicial either to the foreign investor or the Canadian business.

We fully support efforts to increase transparency and welcome this proposed amendment. However, we think the legislation would benefit from a specific qualification that no disclosure about the national security review process should be made in the context of a specific investment when the fact of that investment has not been publicly disclosed by the parties. Such unwanted disclosure could have the effect of deterring investors from approaching Industry Canada to address national security issues proactively and confidentially, thereby weakening the effectiveness of the process.

We also believe that the government should provide more disclosure about the frequency of national security reviews and the outcomes of those reviews. This would provide the Canadian public, the business community, and investors with better information about how the broad powers to conduct national security reviews are being exercised. In particular it would be helpful for foreign investors and Canadian businesses to have basic information about reviews in general. For example, how many reviews have there been since 2009? What were the countries of origin of the foreign investors? What business segments do the Canadian businesses operate? How many investments have been blocked? How many have been conditionally approved? We don't have access to any of that information. Industry Canada could make this information available in its annual report similar to what the committee on foreign investment in the United States does in that country.

In our view providing aggregate data on national security reviews would not itself be prejudicial to national security. We would encourage the minister to include such information in his annual report. We hope that the government would continue its efforts to increase transparency by considering amending the ICA and, further, require the annual reports to include aggregated data on national security reviews.

Thank you for your attention. I would be pleased to answer any questions later this morning.

● (0855)

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

Now we'll have Mr. Schwartz from the Intellectual Property Institute.

Mr. David Schwartz (President, Intellectual Property Institute of Canada): Good morning. Thank you.

I'm not going to read my prepared remarks with the illusion that they're different from what you've already heard, because it's exactly the same talk that Amrita Singh provided, so I'll keep it brief.

I'm David Schwartz. I'm a partner at Smart and Biggar. I'm the president of the Intellectual Property Institute of Canada. I'll speak a little about the Patent Law Treaty and how it's handled under C-43. My colleague Steve Perry is going to speak about industrial design, essentially the same thing you've heard, round two.

[*Translation*]

Thank you for the invitation to appear today.

[*English*]

IPIC is the professional body in Canada, the association of patent agents, trademark agents, and lawyers practising in all areas of IP.

We're very pleased to speak to you today, and we are very supportive of the government's work on PLT. It's a good treaty that helps prevent minor mistakes from resulting in loss of rights in patents.

I'll emphasize a couple of quick details. Much of the key stuff is left to the regulations; we know that and we want to emphasize the same two points you've heard.

First, this business about reinstatement of deadlines. Currently under the law, as we've heard, you have an absolute right, you pay a fee, and you revive an application if a deadline is missed. This happens routinely. The way the PLT is being implemented, there's a due care standard. Has the applicant, the patentee, exercised all the due care required by the circumstances? We're hopeful that in the regulations there is going to be a period where this isn't going to be required, and that you'll be able to revive the case as a right, pay your fee, and carry on. We don't know what “due care” means. The patent office is going to have to assess due care. Later on the Federal Court can review due care to see if it's been properly exercised.

It creates a lot of uncertainty, and I expect there's going to be a good opportunity in the regulations to fix a case without due care, and this opportunity will be added later. But certainly we're of the view that putting this in the mix early on is problematic and creates a lot of uncertainty.

Second, as we heard, intervening rights are new to the patent law. We've never had a situation where, during a temporary period of abandonment, someone else could start practising the invention, thinking there will be no patent; and then later on the patent is revived. The law is going to require that these intervening rights involve a good faith use. There's language in here about having made serious and effective preparations to commit the infringing act.

These are all things the courts are going to have to explain to us in detail. It creates a lot of uncertainty. Again, we're hopeful that at the regulation-making step, there's going to be an opportunity to revive an application or reinstate it and cure the missed deadline before there's a possibility of intervening rights. It will provide certainty, and it's a reasonable thing to do. I expect that's what we'll see when the regulations are promulgated, and we look forward to working on that.

Third and last, we're very pleased the government is taking an interest in IP. That's a great thing. IPIC is doing backflips over that. We're very happy to see the government working on this. There's more to be done. We've made proposals about the protection of confidential communications between agents and their clients. There's a law of double patenting, and we look forward to working with you on these things in the future, if the opportunity arises.

I'll turn the floor over to Steve, and thank you.

● (0900)

The Chair: Mr. Perry, very briefly, please, because the time's just about expired....

Mr. Stephen Perry (Chair, Industrial Design Committee, Intellectual Property Institute of Canada): Yes, Mr. Chair.

[*Translation*]

Good morning.

[*English*]

Thank you very much. I'm Steve Perry, the chair of the design committee for the institute.

As David mentioned, a number of the issues we wished to raise have been presented quite ably by our friends at Bereskin and Parr. Mindful of the valuable time of the committee members, I won't dwell on them.

Suffice it to say, as Scott mentioned, the devil is in the details. Some very important provisions are being moved from the act into the regulations, and it's uncertain how those may end up getting implemented; it's important that there be as much consultation at that phase as possible. Abandonment and reinstatement is one. The issue of possible self-collision, where a designer files a design application for the overall shape of a device and then perhaps a day later, when the new drawings are prepared, files a second application for the keyboard. Under the proposed legislation it is possible that the first application will destroy the novelty of the second application. Similar provision in the Patent Act applies to different applicants, so it's a race to the patent office.

As I said, I will leave it at that. Further details can be found in our submission. We welcome your questions.

[*Translation*]

Thank you once again for inviting David and me to speak about intellectual property.

[*English*]

The Chair: *Merci.*

Now on to Mr. Rowlinson.

Mr. Mark Rowlinson (Executive Assistant to the National Director, United Steelworkers): Thank you very much, Mr. Chair.

My name is Mark Rowlinson. I'm the executive assistant to the Canadian director of the United Steelworkers Union. I'm here to comment on the amendments to the Investment Canada Act found in part 4, division 9 of Bill C-43. The United Steelworkers represents more than 200,000 workers across Canada, including many thousands of employees employed by the former Inco, the former Alcan, and the former steel company of Canada, Stelco.

Under the Investment Canada Act, successive federal governments have allowed foreign investors to take over these iconic Canadian companies and then attack the livelihoods of Canadian employees. Based on these and other experiences, our union has long believed that the Investment Canada Act and its enforcement mechanisms must be strengthened to ensure that foreign investments in Canada are truly beneficial for our members and for all Canadians. Our recent experiences with these corporations add even more urgency to the need to strengthen the Investment Canada Act.

I'll just give you one quick example and that's the example of Stelco and U.S. Steel.

After receiving approval to take over Stelco in 2007, U.S. Steel shut down Canada's largest steel blast furnace in Hamilton in 2010. The company also sought to eliminate its defined benefit pension plan by locking out workers in Hamilton in 2010 and 2011 as well as in Nanticoke, Ontario, in 2009 and again in 2013. The Government of Canada filed a lawsuit against U.S. Steel for breaking its Investment Canada Act commitments but then settled that lawsuit in December of 2011 based on the company promising additional investment in its Canadian facilities. U.S. Steel has since announced the end of steel and coke production in Hamilton. Moreover, on September 16, 2014, just two months ago, U.S. Steel placed its Canadian subsidiary into CCAA protection. It is clear that the company will never live up to its Investment Canada Act commitments and there are now considerable fears in the community of Hamilton that U.S. Steel is going to try to walk away from a pension liability that now exceeds $800 million, leaving thousands and thousands of Canadian workers with substantial cuts to their pension benefits.

Finally, a few days ago 13,000 workers in the telecommunications sector joined our union, employees mostly of Telus and Shaw cable systems. I can tell you that these workers are also very concerned that if foreign companies like Verizon attempt to push their way into the Canadian telecom market, the Investment Canada Act will not provide adequate protections to ensure that such investments provide a net benefit to Canadian workers.

We believe that the Investment Canada Act amendments in Bill C-43 are insufficient to prevent the pattern that we see at Stelco. Bill C-43 would require notification when a foreign investor acquires a Canadian enterprise because that enterprise has defaulted on foreign financing. Requiring such notifications is certainly an improvement over the current state of affairs in which the government does not even know how many Canadian enterprises fall under foreign control in this manner. However, such acquisitions will continue to be exempt from a full review.

The other notable Investment Canada Act amendment in C-43 is to allow the minister to disclose why a proposed takeover was accepted or rejected following a national security review. Again, this provides the same limited transparency for national security reviews as currently exist for net benefit reviews. The minister is allowed, but not required, to provide information to the public. While we accept that the minister may need some discretion for national security reviews, net benefit reviews should, in our submission, be more transparent. The great obstacle to enforcing Investment Canada Act commitments is that they are kept secret. We still do not know precisely what Vale, Rio Tinto, or U.S. Steel promised to the Government of Canada to gain approval for their takeovers. Simply disclosing decisions is insufficient if net benefit reviews continue to be conducted behind closed doors. Surely the best way to determine whether a foreign acquisition will be of net benefit to Canada is to hear from the Canadian employees, suppliers, and communities that will be affected. The review process should be open to the public with opportunities for workers, their organizations, and other stakeholders to comment on proposed takeovers.

In summary, Bill C-43 sheds a small amount of light on two aspects of the Investment Canada Act that are now completely in the dark: foreign acquisitions through the realization of security for loans and national security reviews. But Bill C-43 fails to address the glaring lack of transparency and other significant flaws in the net benefit review process. The United Steelworkers believes that the government can and must do more to make the Investment Canada Act work for Canadian workers.

Thank you and I look forward to your questions.

● (0905)

The Chair: Thank you, Mr. Rowlinson.

We'll be going at four minutes right across the board for each member in order for everybody to get an opportunity.

We'll begin with Mr. Lake.

Hon. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

I'm going to start with Mr. Wakil. I'll throw the ball to you if you want to comment on Mr. Rowlinson's views on the net benefit test and disclosure of the net benefit test. I'm just curious about the CBA's opinion on that amount of information and the way that it would be released.

Mr. Omar Wakil: Sure, I'm happy to. I should begin by saying that Mr. Rowlinson's comments go beyond the scope of the issues that we considered as part of our committee when looking at the proposed amendments to the Investment Canada Act in Bill C-43. I would observe, however, that there is a need to balance the protection of confidential commercial information with the need for transparency and openness. That's often a difficult balance to strike. We are generally supportive of a move toward increased transparency in the Investment Canada Act, both in the context of net benefit reviews and in the context of national security reviews, as I said in my remarks. What we would be particularly interested in seeing is more disclosure about national security reviews, not necessarily the outcomes of particular reviews, which is what the proposed amendments are focused on, but information of a general nature about all reviews that are happening under the act. At the moment, it's very difficult for us to advise foreign investors or Canadian businesses. It's just as relevant to Canadian businesses as it is to foreign investors seeking to enter into Canada to assess risk, to determine whether or not a transaction is going to be reviewed at all, to determine whether or not there are going to be conditions, and to determine the timeframe of a review.

I've certainly seen in my practice situations where Canadian businesses are skeptical about accepting an offer from a foreign investor, or a foreign investor is skeptical about proceeding with a transaction because of uncertainty in the process, and transparency helps increase certainty.

● (0910)

Hon. Mike Lake: I'm struck that most of the testimony today is just about moving forward; not even so much about what we see before us, but about what comes next, both in this regard and from the other witnesses on the patent law.

I guess I could go to any of the other witnesses in terms of talking about the patent law and talking about the regulations moving forward. Maybe I'll get anyone who wants to weigh in to talk about the consultation process: what you want to see in that; what you think the most important information is that government needs to know as we move forward in the future. It was brought up by just about everybody.

Mr. David Schwartz: Thank you. I'll tackle that.

I think you have a good process for consulting on this. There's a prescribed procedure for doing it. We would just welcome the opportunity to get in early, work with the department, look at the regulations, and have a reasonable time to respond. There were some consultations some time ago on what this will look like; we're very pleased to have had them. It is really, in my mind, just a practical question of having some cooperation and being offered sufficient time to be involved. The areas that we've already mentioned are really the key points in terms of how this is implemented. I appreciate we've come here talking about the future, but it's really setting the stage for what we were hoping to see in the regulations. So you've heard it, that the mechanics avoid these problems with intervening rights and the due care standard. That's our position.

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

[*Translation*]

Mr. Côté, you have four minutes.

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

I am really sorry for our witnesses, because they did not have sufficient time to examine the amendments to all the bills that we are studying. I would also like to point out to our witnesses that, at a previous meeting, one of the committee members tried to suggest that our current way of working amounted to splitting this monstrous omnibus bill in order to be able to examine the various parts separately. However, that is absolutely not the case.

Mr. Schwartz, my question is for you.

Since the omnibus bill itself has 40 clauses that amend the Industrial Design Act alone, do you think it should have been examined separately? That way, the government would have had to address the opposition's requests. Should the bill be split to conduct a separate review and address the concerns that you have expressed this morning?

[*English*]

Mr. David Schwartz: Thank you, Mr. Côté.

I do apologize that I can't respond to you in French; I'm embarrassed that I can't do that.

In this instance, we are implementing the Patent Law Treaty and the Hague treaty, two international treaties. Ideally, everything would get its own day in the sun and be debated extensively, but I appreciate that the government is very busy. There is a lot that has to be accomplished. We are not happy to not have the opportunity for a separate debate, but I do appreciate the need to advance matters, and these are two international treaties that are welcome additions to our law.

● (0915)

[*Translation*]

Mr. Raymond Côté: Thank you very much, Mr. Schwartz.

You have no reason at all to apologize for not answering in French. Three years ago, I would not have been able to ask you a single question in English. Thank you for your thoughtfulness.

You talked about the uncertainty facing people in the industry who, because of the amendments, must wait until the regulations come into force . That is a very important factor, which can actually have a significant impact on the development of projects. It also has to do with the potential financial impacts.

Would you have instead preferred to see the government retain less regulatory power to make the legislation more specific or to at least ensure that the legislation more directly deals with industrial designs and patents?

[*English*]

Mr. David Schwartz: It is difficult that so much is left to the regulations, but I expect that's the case with many statutes. I do have a great deal of confidence in the people we work with at the patent office and Industry Canada to set up a system where these kinds of uncertainties won't arise. It can go either way, but I have faith in that group executing that well.

However, we came here today because we do think it's important for the proper measures to be in place. We don't want to get into the situation with the intervening rights and due care. As I put in our written submissions, it's like the old adage that you want a fence at the top of the cliff, not an ambulance waiting at the bottom. That's what we are looking for.

I think it's going to work out.

The Chair: We'll finish with that statement.

Ms. Bateman, you have four minutes.

Ms. Joyce Bateman (Winnipeg South Centre, CPC): Thank you very much, Mr. Chair, and thank you to all of our witnesses. It's very interesting, and it's lovely to see the congruence of all of us working together to make things less cumbersome and more effective for the end user. We are reducing red tape. We are making sure that our businesses are going to be competitive, and a lot of the focus of these changes is really making sure that our businesses can compete internationally and have the same playing field as others. It is a global world, and we want them to be competitive.

I just want to boil this down. I know that all the changes and outcomes will be subject to Federal Court review and that's how things will be fine-tuned, but right now I have a question for Mr. Schwartz. I represent Winnipeg South Centre, so when I boil this down for the business people in my riding, how does this reduce their red tape? How does this perhaps reduce their cost, and how does it increase their effectiveness in the world?

Mr. David Schwartz: The intellectual property protection system does not by itself create the economy and jobs. It's a tool that helps innovators protect the investment that they've made. It doesn't drive it but assists in it. What you're getting today is a series of—

Ms. Joyce Bateman: How does this help? I totally agree with you; this is a tool in the tool kit, but how do these changes help?

Mr. David Schwartz: It helps by not having rights defeated by formal errors or little slips. Things will be decided on the merits of the value of a technology. You'll go to court debating whether an invention is new and non-obvious, whether a patent is infringed, not whether rights have been lost because you've missed a fee payment. It's a good international system that helps avoid problems and improves the stability of our IP system as a whole. A good, sensible, reasonable system that is focused on substance, not form, is good for Canadians. It avoids red tape and creates a good, certain business climate.

If you're innovating in Canada, the PLT is largely good news.

● (0920)

Ms. Joyce Bateman: Thank you.

I'm just curious. I have read a number of things on this, and one of the recurring themes—and perhaps this is also coming from the Canadian Bar Association—is that people want the same form, and this is a common factor when there's change. People tend to resist it. I understand that you're living in a billable-hours world, and I understand that when there's a form you were always able to charge for, it's hard to let go of that. But in terms of the efficiencies, how does that change support our ability to make sure Canadians compete in the global market effectively and efficiently?

Mr. David Schwartz: You've hit a sensitive point. Of course, anything that simplifies the work that agents and lawyers do means we are focused more on the hard work, the substantial work, which is as it should be. These will simplify procedures and the use of government time. They will cut red tape. You see a reduced need for early translations. You see a simplified, global procedure. You're focusing more quickly and effectively on getting to assessing the rights rather than on doing the upfront paperwork.

Ms. Joyce Bateman: With those changes—

The Chair: I'm sorry, but you're over time right now.

We have Mr. Chan now for four minutes.

Mr. Arnold Chan (Scarborough—Agincourt, Lib.): Thank you, Mr. Chair.

I want to thank the witnesses for summarizing a series of complex issues in such quick time.

My questions are mostly related to the Investment Canada Act, and are particularly for Mr. Wakil.

As you recall, in 2010 the government at the time stopped the takeover of Potash Corporation and committed to making changes to the Investment Canada Act. At that time, the Prime Minister indicated they would provide greater guidance regarding the definition of “net benefit”.

Then in 2012, Minister Paradis announced that Canada would move the threshold from $300 million to $1 billion as the basis for review. The current standard is set at $334 million today.

My question for you, sir, is this. Would it not have been more useful for the investment community if Canada, the Prime Minister, and the Minister of Industry had made these changes through proper study instead of trying to do things on the fly? Do you have any particular comment with respect to this particular instance?

Mr. Omar Wakil: That is a bit of a loaded question the way you posed it. I'm never going to say that it's inappropriate to carry out a proper study. What I can say to you—our substantive point—is that in practice I think there is sufficient understanding of the net benefit standard to allow us to advise clients on a day-to-day basis. I appreciate that the threshold change from $300 million to $1 billion has not yet been implemented. I think, as a practical matter, that is due to challenges in coming up with some defined terms and regulations that the government and, frankly, the private sector have been struggling with and trying to identify.

Those are certainly issues that need further reflection and consideration, but they're not having a chilling effect in the way that people may believe they could have. What we're saying today is that there ought to be more transparency with respect to national security reviews in the form of aggregated data. We welcome the government's move to increase transparency with respect to the outcome of individual transactions, and we think that's a good and positive step. We think that could be supplemented, however, by more statistical data about the number of national security reviews that have happened to allow us to provide greater guidance to our clients.

We understand that it's early days in the national security review process and that the administrators are going to go through teething issues that have to be worked through, but we do believe that the time has come for that increased transparency and disclosure of data.

● (0925)

Mr. Arnold Chan: As you pivoted and talked about the national security review process, you provided a sort of checklist of issues that would be of concern, I guess, ultimately to your clients. Would there be anything that you would want to add to that list of issues you indicated, such as the number of reviews, countries of origin, types of sectors, an indication of how many were approved or not approved, etc.? Is there anything else that you think would be helpful to your clients, particularly your foreign investment clients, that would assist them in getting clarity on the investment process within Canada?

Mr. Omar Wakil: I'd be happy with that sort of information, at this stage. I think it could be an incremental process. We have very little information for the time being, so the information I indicated in my opening remarks and which you just summarized would, I think, be a helpful start. If we get information about that, I'd be pleased for the time being, and we could see over time whether more information could be disclosed. That would be a useful first start.

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

Thank you, Mr. Chan.

Now we go over to Ms. Gallant.

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

My question goes to Mr. Wakil.

You made reference to the raising of the threshold from $300 million to $1 billion for assessment of net benefit to Canada. However, we also look at the national security element, and there are transactions that occur that fall well below the $300-million threshold. An example that is in the news is the purchase of rare earth elements mining and properties; those have already been sold to foreign entities.

In your experience, did these smaller transactions, the transactions involving rare earth element mining stakes, which are strategic to Canada and are potentially matters of national defence and security, undergo any national security scrutiny?

Mr. Omar Wakil: This is part of the problem. I know the national security reviews that I have been involved in, but I don't know the national security reviews that others have been involved in. One can read media reports, one can speculate about reviews, but there's not a great data source about the number of reviews that have happened, what sort of process there was, who the foreign investor was, or what the subject matter of the investment was. That's precisely the sort of information that would be helpful to have.

We're not here today suggesting that it's inappropriate to have a national security review; quite the contrary, it is appropriate to have a review of foreign investments on the basis that they could be injurious to national security. Many other countries around the world have similar tests. What we are suggesting is that it would be helpful to have more disclosure about the types of reviews, the nature of reviews, etc., so that we can advise our clients and be aware of them.

That said, anecdotally—I can speak from my own experience—reviews are happening, and it seems that they're happening more frequently than we believe they are or than the public is aware that they are happening. There is a scrutiny of foreign investment on the basis of national security, including the review of very small transactions.

So we believe that those sorts of reviews are happening, but we would welcome increased transparency to be able to better understand.

Mrs. Cheryl Gallant: What is the trigger for a review of these smaller transactions that you referred to? Does someone have to complain? How does it come to the attention of the review committee?

Mr. Omar Wakil: There is a variety of ways. It could come to the attention of the investment review division of Industry Canada. The parties themselves can submit a notification form or an application for review to the government, and that would trigger a review. If, for example, there were a desire to go through a review process in order to have certainty on the outcome, as opposed to having completed an acquisition only to find, after the fact, that there is going to be a review and a potential remedy, buyers who are risk-averse would certainly prefer to go through the review up front to make sure that they know what the outcome of a review is going to be.

Otherwise, it would be the government monitoring the media, receiving complaints, etc. We've had experience of the government proactively contacting us and saying: we read about this transaction in the media and we understand it's happening; can you provide us more information?

But there is no threshold for “review for national security” transactions—the $300 million that you referred to—and so there is no mandatory upfront review process that investors have to go through, as they do for assessing net benefit.

● (0930)

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

Thank you very much, Madam Gallant.

Now we go on to Mr. Masse.

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

This national security review is bringing up some good memories of the original case, China Minmetals, when we had non-democratic communist governments buying Canadian companies. That is what emerged in terms of the discussion back in 2003 at industry committee, when we reviewed this.

Part of the problem we have right now is that we have six bills with 40 amendments that are being looked at in terms of this omnibus bill. This process has really basically usurped the authority of the industry committee to that of the finance committee. We've become a junior committee. Because we can't pose amendments, we can't really affect the course of legislation. We don't study things. We don't bring in the proper witnesses in the full course of discourse. That's happening.

Some of the language used by witnesses today, in some of the testimony we've heard, I think is important to repeat. None of this is from the United Steelworkers, so I'm not being biased here, but here's what we've heard, and I quote: “full impact” remains to be seen; “appears”; “good faith”; “devil in the details”; “lack of guidance”; real “risk”; “chilling”; “key stuff is left to the regulations”; “putting this in the mix early on is problematic”; courts will have to explain “in detail”; again, “the devil is in the details”; “uncertain” how they might be implemented; “destroy”; “insufficient”; “very difficult...to advise”; “Canadian businesses” are susceptible; “go to court”.

So I ask the witnesses today, and I will start with the United Steelworkers, going right to left, why do you accept that we will basically put these amendments, and these changes to law, to regulations and the courts? That is not an efficient way to deal with business, in my opinion. It is not predictable. It leads to longer delays.

If you disagree with that, please prove to me why regulations and courts would be the best way to change Canadian laws.

Mr. Mark Rowlinson: Let me just offer the following. I don't disagree, actually, with my colleague from the CBA that clearly there needs to be a balance in the Investment Canada process between preserving, for example, the confidentiality of business information whilst at the same time providing transparency to workers in communities who are affected by Investment Canada Act transactions.

In our view, what's really required in respect of the Investment Canada Act component of Bill C-43 is a much more substantial review of the statute itself and the process by which investments are made in Canada. I don't think that amending the statute in a piecemeal way, as part of omnibus legislation, is actually an effective way of ensuring that there is adequate transparency and that the entire Investment Canada process and the manner in which Canadian interests are protected economically...and also through a national security review. It actually has to be considered more globally, in a study preferably by this committee, and by Parliament more generally, so that we can truly have a better system and a more transparent system that provides for involvement from workers and communities and provinces when these large investments are considered in the Canadian economy by foreign investors.

That's what I would say.

The Chair: Thank you very much.

Mr. Warawa, four minutes.

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

Thank you to the witnesses for being here today.

Today is November 18, 2014. It was at the beginning of this year that the government tabled five international treaties regarding intellectual property. Then in February, in budget 2014, we proposed to modernize Canada's intellectual property framework to better align with the international practices. That's important, because that harmonization will help Canadian business gain access to the international markets. It will lower costs for Canadian business and attract foreign investment.

Unfortunately, the NDP have a track record of opposing all foreign investment—

An hon. member: [*Inaudible—Editor*]

Mr. Mark Warawa: —and we've heard that in their questions.

I have a question for Mr. Schwartz.

I listened politely to my colleagues, and I would ask them to listen politely too, please.

You've said that there is a need to advance. We want to harmonize so that we get rid of red tape and help Canadian business. Is it important that we advance? As I pointed out in my opening comments, we've been dealing with this for months and months and months and months. We have opposition trying to oppose it advancing. Is it important that we advance, and what would be the consequences if we did not advance?

● (0935)

Mr. David Schwartz: The various treaties cover different aspects of IP law and I think, in fairness, how they affect different countries is a difficult and somewhat sensitive issue. The material I talked about, PLT, is generally a very sensible and favourable thing for all countries. I can speak quite positively about that. I think you will never get 100% agreement on a treaty implementation because to a certain extent, when you try to harmonize things and simplify procedures, you take away some of the flexibility and opportunity for states to act independently. That will be the case in every treaty and you will see people hold differences of opinion.

I can tell you today in my area of expertise that the PLT is largely a sensible and appropriate step forward. You may want to hear from one of the others about the design implementation but in terms of your question overall, at least for the treaty we're talking about today, this is generally a sensible step forward in formal harmonization.

Mr. Mark Warawa: What is the consequence of not proceeding?

Mr. David Schwartz: The consequence of not proceeding, to be truthful, would not be profound. We could live without the Patent Law Treaty. We could live without these changes. I think some of the changes, though, will help in avoiding simple mistakes where people have lost rights. There have been instances. We could point to specific cases.

DBC Marine was a case where an error was made. No one saw it. The applicant didn't see it. The patent office didn't see it. These people lost their rights in a meritorious invention. You would look at this and have to say, "You've got to be kidding me, you can't lose your rights over this." PLT would fix that one.

We could live without it, but it's a positive step. That's my answer.

The Chair: Thank you very much.

Now on to Mr. Côté for a couple of minutes.

[*Translation*]

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

I never thought I would frighten Mr. Warawa to that extent. Clearly, that is not something to be proud of, but here is something that would be good.

[*English*]

Mr. Mark Warawa: On a point of order, Mr. Chair. We were restricted to four minutes each in the interest of everyone having an opportunity to ask a question, and I see Mr. Sandhu has not been given that opportunity.

The Chair: No. He has given his time to Mr. Côté.

Please proceed.

[*Translation*]

Mr. Raymond Côté: My sincere thanks to Mr. Warawa for caring about my very esteemed colleague's fate. If he took the hand offered by the opposition, in terms of splitting such a monstrous bill or agreeing to review the opposition's proposed amendments, we could probably very easily speed up the process of passing government bills.

That being said, there is a situation in the riding of Beauport—Limoilou that is a bit similar to the one presented by Mr. Rowlinson. When the White Birch Paper mill in Stadacona was taken over by American Peter Brant, it had 1,600 employees. After a long labour dispute or after a lockout that lasted over two years, it barely has 200 people now.

The lockout took place when the company was placed under the protection of the Companies' Creditors Arrangement Act. Unfortunately, in that dispute, retirees were held hostage and lost most of their pensions. Actually, the company forced a restructuring and a transfer of funds to a new fund under a different form. In addition, Mr. Brant sold White Birch Paper mill to an American investment fund of which he is a shareholder. He sold his own company to himself.

I often find that my government colleagues are a bit naive. It would be touching if the consequences weren't so tragic. The reality is that employees and retirees were harmed. I am constantly in contact with the president of the Stadacona retired workers association. Many retirees have passed away without receiving their due, and even their loved ones will probably not receive the benefits.

The Investment Canada Act is an important act that could have a slightly broader scope. Above all, it could create a climate of trust for all the company's partners. We are talking about the trust of investors, and you were right in saying that investors must be able to trust in order to plan to settle in Canada. However, I would like to check whether you also think that the trust of other members of Canadian society plays just as important a role in helping us build a strong economy.

● (0940)

Mr. Mark Rowlinson: Thank you very much for the question.

That is exactly what we are saying. Indeed, when the legislation has an impact on foreign investment, the government and investors are not the only ones who need to be consulted; the community, workers and retirees also need to have the right to participate in discussions.

Although the agreement between the investor and the government was made public, that does not mean that all the information provided to the government also needs to be released, be it for White Birch Paper or even Rio Tinto.

For instance, when Rio Tinto forced a six-month lockout on our members at the Alma plant in Quebec, just after buying Alcan—another fairly similar situation—it would have been desirable to know what the agreement between the investor and the government entailed.

At the end of the day, if a multinational does not do what it said it would do, there should be a remedy for workers and the community. Multinationals should make investments as agreed. That is what we are calling for. We believe that this is not only in the best interests of the government and investors, but to a greater extent in the best interests of the community as well.

[*English*]

The Chair: Thank you, Mr. Rowlinson and Monsieur Côté.

That's the end of our time.

Please note, colleagues, that the Conservative side was shorted one question, so I will be giving them preference on time in the next panel.

We'll suspend now while we change panels.

● (0940)

(Pause)

● (0945)

The Chair: Colleagues, we're back.

Before us right now is the Canadian Radio-television and Telecommunications Commission, Christianne Laizner, senior general counsel, and Christopher Seidl; the Canadian Wireless Telecommunications Association, Kurt Eby; the Public Interest Advocacy Centre, John Lawford; and the Competition Bureau, Martine Dagenais and Roger Charland.

To be kind to witnesses last time, I actually shorted my colleagues. I just wanted to ask you if you could try to maintain the four minutes per group, so that I could make sure that they get the time.

We'll begin with the CRTC.

Ms. Christianne Laizner (Senior General Counsel, Legal Sector, Canadian Radio-television and Telecommunications Commission): Thank you, Mr. Chairman.

My name is Christianne Laizner. I'm the senior general counsel and executive director of the legal sector of the Canadian Radio-television and Telecommunications Commission. With me today is Chris Seidl, who is the CRTC's executive director of telecommunications.

We are here today to answer your questions concerning Bill C-43, the budget implementation act 2, which proposes to grant the CRTC expanded tools and responsibilities.

[*Translation*]

The CRTC is an independent, quasi-judicial tribunal that regulates Canada's telecommunications and broadcasting sectors. We operate in a transparent manner, and with the goal of upholding the public interest, so that Canadians have access to a world-class communication system. Our decisions are based on the evidence provided to us by the individuals, companies and organizations—including some on this panel—that participate in our public proceedings.

Mr. Chair, we recognize that this committee must complete its review of Bill C-43 quickly, and we are happy to accommodate its schedule. We would ask the committee, however, to keep in mind that our responsibilities as a regulatory body set us apart from the other members of this panel.

● (0950)

[*English*]

Let me now turn to Bill C-43. As you know this bill proposes to amend the Broadcasting Act and the Telecommunications Act to expand the powers of the CRTC. We believe that three of these amendments will greatly enhance our ability to achieve the objectives that Parliament has entrusted to us.

The first would allow the CRTC to issue monetary penalties to any company that violates the rules of the Telecommunications Act. Mr. Chair, this is an important addition to the CRTC's tool kit. By granting us the power to issue monetary penalties, Bill C-43 would give us a new tool that would act as a deterrent to anyone wanting to breach the legislation or our regulations.

Let me be clear on our use of monetary penalties. It is not our aim to turn to these penalties first. Our experience enforcing the national do-not-call list and Canada's anti-spam legislation reminds us that the best enforcement approach should be determined by the particular facts of the case. Sometimes education or a warning may bring about compliance and other times a more forceful approach is needed. The option to use monetary penalties to promote compliance gives us greater flexibility to tailor the right enforcement approach to each situation.

I'll now ask my colleague, Mr. Seidl, to address the other proposed amendments.

Mr. Christopher Seidl (Executive Director, Telecommunications, Canadian Radio-television and Telecommunications Commission): Mr. Chair, I would like to begin by discussing the proposal to give the CRTC the authority to impose conditions on companies that resell telecommunications services provided to them by other carriers. Currently we do not have direct jurisdiction over these companies to require them to, for example, provide emergency 911 services. We impose public interest regulatory requirements on carriers whose services they resell and we look to the Canadian carriers to enforce these requirements with respect to the resellers. Bill C-43 would allow us to regulate these resellers directly. As an important change it means that the CRTC can extend the same safeguards to Canadians across the country regardless of the type of service provider they choose.

Bill C-43 would enable us to disclose the commercially sensitive information we receive to the commissioner of competition. By giving the commissioner access to confidential information he and his staff will likely be able to participate more meaningfully in our public proceedings. This would give us a more complete public record upon which to base our decisions.

The CRTC takes great pride in the role it plays in regulating Canada's broadcasting and telecommunications sectors. We're ready to apply the new responsibilities provided to us under Bill C-43 to further uphold the public interest.

We would be pleased to answer your questions. That being said, there are a number of ongoing proceedings before the CRTC. Mr. Chair, I hope the committee members will understand that, depending on the question, our answers will necessarily be limited in order to maintain the integrity of those proceedings.

Thank you.

The Chair: Fully understood, Mr. Seidl.

Now on to Mr. Eby, four minutes, please.

Mr. Kurt Eby (Director, Regulatory Affairs, Canadian Wireless Telecommunications Association): Thank you, Mr. Chairman.

I'm Kurt Eby. I'm the director of regulatory affairs and government relations at CWTA. Bernard sends his regrets.

I'll be brief. I'm here to talk about one specific aspect of Bill C-43, and that is the amendments to the telecom act that would impose a prohibition on charging for paper bills. We just have a couple of things we wanted to talk about on that and answer questions.

Basically, this industry has been trying to move to electronic billing like many other industries. The government, for example, is phasing out paper cheques by April 2016. It's the same kind of principle, and we're facing the same challenges that were faced when companies went to direct deposit payments and we implemented automated teller machines. A number of practices have been tried to entice people to move to electronic billing. These include credits, discounts, offering reward miles, donations to charitable causes, and of course, charging to receive a paper bill. Bill C-43 proposes to remove that particular option, of course, and we just have a couple of comments and requests for the committee regarding some amendments to the bill in that respect.

The first one is about to whom this prohibition would apply. We think, as the government has stated publicly, that this should apply to individual consumers and not to businesses. Our request is that particular clause, clause 194 in the bill, be amended to read:

> Any person who provides telecommunication services shall not charge an individual or small business subscriber for providing the subscriber with a paper bill.

Right now, it just says “subscriber”.

That definition of “small business” is already used by the commissioner for complaints about telecommunications services, and is used in the wireless code by the CRTC. The definition is that a small business is a business whose average monthly telecommunications bill is under $2,500. Businesses above that, corporate accounts, we think have the power and the ability to negotiate the full extent of their agreement, which would include how they receive a bill or invoice, and what goes on in that manner. We think this bill, as the government has stated, this proposal, which is to put more money back in the pockets of hard-working Canadian families, should be limited to families and individual accounts.

Our second request is regarding the coming into force period. A couple of weeks ago Industry Canada told this committee it had not undertaken consultation with the telecommunications industry with respect to how ready they would be to implement this. Our members have confirmed to us that it would be difficult if not impossible to effectively coordinate all of the IT system changes necessary to comply with this by, basically, January, when it could come into force. They have indicated that March 31, 2015, which is slightly more than five months from when the bill was introduced, would be an appropriate time to make sure that everything came into effect effectively and reasonably, and everyone would see that change uniformly.

That's all. I'm happy to answer any questions on that.

● (0955)

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

Now to Mr. Lawford.

Mr. John Lawford (Executive Director and General Counsel, Public Interest Advocacy Centre): Thank you, Mr. Chair.

My name's John Lawford. I'm the executive director of Public Interest Advocacy Centre. We're a non-profit charity that specializes in representing consumer interests, and in particular vulnerable consumer interests concerning important public services. We're commenting today on Bill C-43 and notably on the power to levy administrative fines and monetary penalties for non-compliance with the Broadcasting Act, Radiocommunication Act, and Telecommunications Act.

Our message today is that it is necessary to have such penalties, and the amounts proposed are appropriate. However, the bill also does away with paper bill fees for telecommunications and broadcasting invoices, and that is a matter on which PIAC wrote a report and a result we have worked very hard to achieve, first through the CRTC and now here before you. We'll also speak briefly to the other two points that Mr. Seidl raised.

The AMPs provisions in the bill are proportionate to the job to be done and are necessary. On the CRTC side, this addition is necessary as the regulator transitions from price regulation towards policy-based framework regulation. In short, the CRTC has forborne price regulation and relies upon market competition. It no longer has the enforcement stick of denying requested price increases until a certain regulatory outcome is achieved. In addition, other legislation has already provided the CRTC with AMPs power in the national do-not-call list enforcement and now Canada's anti-spam legislation. So it is incongruous that the CRTC does not have a monetary penalty power for its core jurisdiction of setting conditions of service.

One of the framework measures that the CRTC is now tasked with overseeing and that is close to our heart is the wireless code. At the moment, should a company take a systematic and wrong interpretation of the code to heart, the CRTC can only make an order to stop that conduct in the future and perhaps register it with the Federal Court of Canada for enforcement. However, the telecommunications provider in question can reap any monetary gain from such a breach of the code until such time as it is asked to stop, with no monetary downside. The AMPs provide the CRTC with both the power and the appropriate tool—a monetary fine—to quickly discourage such behaviour.

We note the amounts in question—up to $10 million for a corporation and $15 million for a repeat offence—are identical to the CASL penalties and also the false advertising penalties under the Competition Act. This level of fine is necessary to deter very large corporate service providers that may make many millions more by ignoring a CRTC or Industry Canada interpretation of statutes.

Our second point is about paper bills. PIAC's report on paper bill fees estimated that the cost of only telecommunications and broadcasting service fees to consumers was nearly half a billion dollars a year. As part of this report, PIAC collected the views of consumers through an analysis of a telephone survey. Of Canadians asked, 74% disapproved of the practice of charging people extra for paper bills, 71% approved of offering consumers a discount for electronic billing, and 83% believed receiving a paper bill in the mail is part of the cost of a company doing business.

This legislation became necessary when the CRTC was unable to convince the telecommunication and broadcasting providers to do the right thing and stop charging such fees. We fully support it and we do not support any delays of the kind Mr. Eby has mentioned.

We wanted to note that the information sharing between the CRTC and the Competition Bureau during formal and less formal proceedings will, in our opinion, assist the Competition Bureau in its advocacy work and allow the CRTC to make better decisions in a competitive marketplace.

Lastly, we just wanted to point out that the addition of the new reseller provision Mr. Seidl referred to, while welcome, does hide a jurisdictional issue that this committee should at least publicly air. We'd be happy to answer questions about that.

Thank you.

● (1000)

The Chair: Thank you very much.

We now go to the Competition Bureau and Mr. Charland.

Mr. Roger Charland (Associate Deputy Commissioner, Legislative Affairs and Planning, Competition Bureau): Thank you, Mr. Chair.

My name is Roger Charland and I am the associate deputy commissioner responsible for legislative affairs and planning at the competition promotion branch.

I am accompanied today by my colleague, Martine Dagenais, associate deputy commissioner, who is responsible for economics and advocacy.

Thank you for inviting us to appear to discuss Bill C-43, particularly with respect to the proposed amendments to the Telecommunications Act.

Before my colleague, Martine Dagenais, speaks to the bureau's interest in Bill C-43, I propose to begin with a brief overview of the Competition Bureau's mandate and role in promoting competition.

The Competition Bureau, as an independent law enforcement agency, ensures that Canadian consumers and business prosper in a competitive and innovative marketplace. Headed by the commissioner of competition, the bureau is responsible for the administration and the enforcement of the Competition Act and three labelling statutes.

The Competition Act provides the commissioner with the authority to investigate anti-competitive behaviour. The act contains both civil and criminal provisions, and covers conduct such as bid-rigging, false or misleading representation, price-fixing, or abuse of dominant market positions.

The act also grants the commissioner the authority to make representation before regulatory boards, commissions, or other tribunals to promote competition in various sectors.

To advance the bureau's enforcement objectives and our mandate to advocate market-based solutions before regulatory bodies, we continuously strive to strengthen our relationship with our domestic and international law enforcement partners and counterparts, as well as with key government departments and agencies. These partnerships allow the bureau to enhance the impact of its competition, compliance, and promotion work for Canadian consumers and business alike, both in Canada and in our export markets.

As part of these efforts the bureau has entered into cooperation agreements and memoranda of understanding with a number of key agencies, including the signing of a letter of agreement with the CRTC in September of last year. The bureau and the CRTC each play an important role in the telecommunication and broadcasting industries, and the agreement provides a framework for cooperation and assists both agencies in the delivery of their respective mandates in the sector.

I will now invite my colleague, Martine Dagenais, to speak to the bureau's interest in Bill C-43.

[*Translation*]

Ms. Martine Dagenais (Associate Deputy Commissioner, Economic Policy and Enforcement, Competition Bureau): Thank you, Roger.

Good morning, Mr. Chair.

As my colleague Roger has mentioned, the Competition Bureau has a role in informing regulators and policy-makers on competition matters, and we take this role seriously. In the past two years, the Bureau has made submissions to the CRTC in connection with its wireless code of conduct, as well as its reviews of broadcasting and television services, wireless roaming rates, and wholesale mobile wireless services, among others. These are important sectors of the economy, and a focus of the Bureau's competition promotion efforts to bring about more choices, lower prices and higher quality goods and services for consumers.

Accordingly, the Bureau is pleased by the amendments to the Telecommunications Act proposed in Bill C-43 that would allow the CRTC to share confidential information with the Bureau when that information is relevant to competition issues that the CRTC is considering. The amendments will bring the Telecommunications Act into line with federal legislation that regulates other industries, such as legislation governing matters before the Canadian Transportation Agency or the Canadian International Trade Tribunal.

This information sharing would enhance the Bureau's ability to analyze telecommunication markets and result in more substantive submissions to the CRTC on competition matters. The CRTC would therefore be able to make more informed decisions in telecommunication proceedings on issues relating to competition.

The Bureau understands the importance of competition in the telecommunications market to consumers, and it will continue to advocate in this area for the benefit of all Canadians. We believe the amendments proposed in Bill C-43 will further the objectives of both the CRTC and the Bureau with respect to this important sector of the economy.

Thank you again for inviting us today. We will be happy to answer your questions.

● (1005)

The Chair: Thank you, Ms. Dagenais.

I will now give the floor to Mr. Daniel for four minutes.

[*English*]

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

Thank you, witnesses, for being here.

I personally think that it's important that there are monetary penalties to enforce government policy on wireless policies. But in a sense I think we've talked about the penalties being as low as $10 million to $15 million. Compared to the billions they're spending on wireless acquisition, etc., this seems really low.

Can any of you comment on what you feel about how much the penalties should be?

Mr. John Lawford: I'd like to start, if I may. The AMPs also apply for the Radiocommunication Act and spectrum, as you're speaking about. The kinds of violations I believe this is aimed at are, for example, failure to roll out in an area, so if someone is sitting on spectrum in a certain area, they can be asked to get moving. It's a poke, but to take away the licence for that particular area might be a much larger effect, and so this gives an intermediate tool to Industry Canada to encourage compliance with the conditions of that licence. It's a good midway point. You're right, the spectrum overall is worth billions, but in each sector that might be a good example where it's appropriate.

Mr. Joe Daniel: Would somebody from CRTC like to comment on that?

Ms. Christianne Laizner: Yes, Mr. Chairman, the administrative monetary penalty regime is a civil remedy and it's on a continuum. The purpose is to promote compliance with the regulations and the act, and, in that way, penalties up to $10 million for the first violation and up to $15 million for the second violation are still substantial amounts for any corporation to incur. There is also a naming and shaming aspect of that as well, because the CRTC would publish the names of those who violated the rules. We found in our other enforcement areas, such as the national do-not-call list, for example, that it is an effective tool in the tool kit.

Mr. Joe Daniel: Thank you.

Mr. Eby, have you any comments?

Mr. Kurt Eby: I definitely agree with what the CRTC is saying. Because this is new and we haven't had this before, it would premature to say that these aren't high enough or stiff enough penalties. I'm not entirely sure what violations have been going on up to now that have not been enforced appropriately, so I wouldn't say that we would need stronger penalties than $10 million to $15 million.

Mr. Joe Daniel: Mr. Charland, have you any comments?

Mr. Roger Charland: I don't have a particular comment.

Mr. Joe Daniel: Okay. Obviously these changes are intended to protect consumers, improve the bottom line for businesses and Canadian families, and ensure that they're getting real value for their hard-earned dollars. When I look around the world, and I've been to places like India where even the beggars have cellphones, our services for cellphones etc. are extremely high here, in my view.

Can you talk about what you think competition should be doing to improve that for consumers here?

Mr. Kurt Eby: I don't know that those people in India are watching TV on those cellphones or streaming live video. The ability to have a cellphone and make calls is different from having what have been proven to be among the best networks in the world. Recent studies have shown that app response time in Canada is the fastest in the world. There's a difference between availability and quantity and quality and usage. The usage volumes in Canada, which are traditionally among the highest in the world, show that people here are getting value.

● (1010)

Mr. Joe Daniel: Mr. Lawford.

Mr. John Lawford: I believe there's a proceeding now on at CRTC that they probably can't speak to about trying to get wholesale access so that perhaps more entrants can come into the market and offer those sorts of services. In PIAC's view, the lower-income end of the market, so to speak, has not been well served yet by the present competition in Canada. We look forward to that proceeding and other work of the Competition Bureau before CRTC to make that more of a reality.

The Chair: Thank you, Mr. Lawford.

On to Monsieur Côté, *pour quatre minutes*.

[*Translation*]

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

Mr. Eby, we are now studying the amendments made to three acts, as part of the phoney study of an omnibus bill. Long before being elected as a member of Parliament, I quickly realized that the business community was trying to reduce the uncertainty related to changes, be they legal or regulatory, or other aspects of a competitive environment.

Right now, the government is forcing the opposition parties to examine, in one compressed chunk, a whole set of very disparate measures. Among others, aspects linked to the Immigration and Refugee Protection Act will overlap with the amendments proposed to the bills that we are studying here. Let us not kid ourselves: we are about to see a regime change in a year.

The Standing Committee on Industry, Science and Technology is doing this study without being able to introduce amendments or to reach a consensus. That being said, the NDP finds that some of the proposed measures are interesting. We might have been prepared to support them.

In your view, will the players that you are representing have a hard time with the uncertainty caused by the provisions being passed as a block, without debate and amendments? Do you think that could eventually bring about changes that would have an impact on the competitive environment in a year or two, in the short term?

[*English*]

Mr. Kurt Eby: I think so, yes. There are a lot of things being proposed. If it all comes into force on royal assent, it's very quick, an AMP regime that is new being one example. Other than the criteria under which a penalty would be levied in the bill, that's all that exists. We don't know what the process would be, how a complaint would come about, what the investigation would be and how it would be determined, what a fine would be, and how a company could defend themselves or make representations.

It's a lot happening at once in a very quick time.

[*Translation*]

Mr. Raymond Côté: Ms. Laizner, we talked about the fact that, for the Standing Committee on Industry, Science and Technology, the context is very flawed. In fact, the committee cannot amend the proposals submitted for various bills, including some that concern you directly.

Given that the opposition could have supported some provisions dealing with CRTC's mandate if they had been considered separately, in separate bills, do you think passing the provisions in an omnibus bill has an impact on the support that the CRTC might receive from the House of Commons?

Clearly, the government will once again take the opportunity to say that the opposition parties are against everything, that there are investors, penalties for offenders or other aspects.

Does that affect the work and the support that the CRTC is entitled to have?

● (1015)

[*English*]

The Chair: Mr. Warawa.

Mr. Mark Warawa: On a point of order, Chair, I believe the question is out of order. It's inappropriate to ask the CRTC if they support omnibus bills. It's inappropriate for the NDP to use it as an excuse to be voting against pay-to-pay.

Clearly, this government is in line with what Canadians want, to get rid of pay-to-pay, and they want to use... This diverting it on the CRTC, it's an inappropriate question, Chair.

[*Translation*]

Mr. Raymond Côté: Mr. Chair, Mr. Warawa is clearly straying away from the purpose of the debate.

Actually, the New Democratic Party cannot fully participate, for instance in terms of supporting billing fees or administrative monetary penalties, given that all those items are buried in the amendments to the Immigration and Refugee Protection Act in particular. Clearly, that has consequences for some organizations that oversee important activities in our economy.

[*English*]

The Chair: Yes, Madam Gallant.

Mrs. Cheryl Gallant: Mr. Chairman, the NDP were asking the CRTC a political question, and on that basis it's out of order.

The Chair: Thank you, Madam Gallant.

Fortunately, the time had expired, so I really don't have to rule on that.

What I did want to mention, though, totally outside of the framework of the conversation right now, and it may have been a consequence of the translation, Monsieur Côté, is that the committee does not have carriage of the bill, you are correct, and so we cannot amend the bill, but we can propose amendments. The question from the finance committee was for us to hear evidence. It came through as “proposal”, and I just wanted to make sure that the record was clear. I know it would be done inadvertently from translation, but I just want to be clear that that's what we heard.

[*Translation*]

Mr. Raymond Côté: Mr. Chair, we agree that proposing amendments to the Standing Committee on Finance is not the same as proposing amendments to the Standing Committee on Industry, Science and Technology.

[*English*]

The Chair: Okay. That round has expired with that great flurry. Let me get my bearings again.

Mr. Lake, for four minutes.

Hon. Mike Lake: Thank you, Mr. Chair.

I think I'm going to start my questions with Mr. Lawford and Mr. Eby.

Mr. Lawford, just to clarify, you said the cost of pay-to-pay billing per year was how much?

Mr. John Lawford: For the telecommunications and broadcasting industry, we've estimated it at nearly a half a billion dollars. It consists of two groups in our report, which you don't have before you, but which is available on our website in both languages. Of those Canadians who purchase either telephone or broadcasting services and don't have access to the Internet or use computers, we estimate it at $65 million per year. If two in ten of the other customers who do have Internet still choose to receive a paper bill, and that's an estimate on our part, it's another $363 million, to which we add, depending on your province, federal and provincial tax. You're in the neighbourhood of $450 million to $500 million per year.

We don't know, Mr. Lake, how many consumers take paper billing, even though they have the Internet, because the companies wouldn't tell us. So that's an estimate that we've put in our report, which is available on our website.

Hon. Mike Lake: Mr. Eby, in September 2013, in the Speech from the Throne, this was first mentioned, I imagine that your organization saw that and made comment at the time.

Mr. Kurt Eby: Yes, we did.

Hon. Mike Lake: So it's not as though the organization or your members didn't see this coming in advance and start to prepare. I imagine your members have started to prepare for this?

Mr. Kurt Eby: They had seen it coming. It was a year later that the bill was introduced.

Hon. Mike Lake: Would steps not have been taken in business organizations in a multibillion-dollar industry to prepare for something like this?

Mr. Kurt Eby: We don't talk about what they do business-wise, but I don't know that they're always preparing for whatever legislation or regulation might come down, when they don't know the exact form of it at that time. They were also invited to a CRTC meeting this past summer, the invitation to which said they would be invited to come and propose alternatives and comment on other aspects around paper billing, which they did. At that time it seemed as though there might be a regulatory process that wouldn't be a full prohibition.

● (1020)

Hon. Mike Lake: I have just one more question.

At half a billion dollars a year, that's roughly $40 million a month for the industry. Just as a quick hypothetical question, if the government were to make a change that allowed your members to bring in $40 million in revenue every month, do you think they'd find a way to make that work by January?

Mr. Kurt Eby: I can't comment on that. If it were right now and by January, I think it would be very tough. They can't update their IT systems in December.

Hon. Mike Lake: So would they say, we'll forgo that $40 million in revenue every month because we can't do it until March?

Mr. Kurt Eby: I can't comment on how they would respond to that.

Hon. Mike Lake: It's probably safe to say they'd find a way to make it work out; is that right?

Mr. Kurt Eby: It's possible.

Hon. Mike Lake: Yes, okay.

Christianne, switching gears a little bit—I don't know how much time I have, but I imagine it's not very much—can you give us an example of where this new power involving AMPs would be used?

Ms. Christianne Laizner: One example would be that if you, as a holder of a mobile service, decided to switch providers and they refused to port your phone number—because you know we all like to keep our phone numbers when we change cellphones—that is something that would be subject to an AMP. There are examples at the wholesale level, at which carriers are to provide a certain quality of service to the smaller players in interconnecting them into central office facilities. Sometimes, if the timeframes for providing that service aren't adhered to, that failure could be another example. Charging for a paper bill, once this legislation comes into effect, would be an example.

The Chair: Thank you very much.

For those who may be reading a transcript, the acronym AMP is...?

Ms. Christianne Laizner: It means “administrative monetary penalty”.

The Chair: Thank you very much.

We go on to Mr. Chan for four minutes.

Mr. Arnold Chan: Thank you, Mr. Chair.

I want to thank all the witnesses for their presentations.

This is a quick question for Mr. Eby.

I was wondering whether, when the government was consulting with you with respect to the proposed amendment, they indicated to you why they were solely speaking to the telecom industry. Did they give you any indication that this regulation might apply more broadly?

Mr. Kurt Eby: No, none; we were never really directly consulted, in any event.

Mr. Arnold Chan: Okay, that's fair enough.

You talked briefly about seeking a transitional period to the end of March. Is there any particular evidence that you could tender to this committee with respect to concerns from your members explaining why their IT systems can't be amended before that period?

Mr. Kurt Eby: In particular, the answer is very quick when talking about multiple IT systems beyond wireless—this will cover telecom and Internet and obviously broadcasting as well—because they're not always integrated, as I think many people probably know when they get their bill.

Mr. Arnold Chan: Yes, but we're talking about dropping one line on a bill.

Mr. Kurt Eby: Yes, but it's a lot more complex than you'd think. What I have been told by all of them is that they cannot undergo IT system changes between, generally, December 6 and January 2 because of how busy the Christmas period is. They can't make those changes at that time, so they would basically have between now and the beginning of December, I suppose.

Mr. Arnold Chan: Thank you, Mr. Eby.

I want to turn to the CRTC with two quick questions.

I was wondering about the impact the CRTC would have on small TV stations, if this bill were to pass. I ask in reference to the possibility of de-bundling, should this bill proceed.

Also, a number of years ago the CRTC removed the requirement of local over-the-air TV stations to carry local news. I'm wondering whether the CRTC would contemplate revisiting this decision in light of the possibility of de-bundling, if it were to go forward.

Ms. Christianne Laizner: Mr. Chairman, the CRTC currently has a proceeding before it called Let's Talk TV where it's looking at a wide range of issues, including bundling, so we really can't comment on what may or may not happen in that area because the decision of the commission has not yet been rendered, even though the public hearings have concluded.

We do note that under the provisions in this Bill C-43 there is a prohibition on charging for paper bills under the Broadcasting Act, as well as under the Telecommunications Act. So there is the same provision under both acts.

● (1025)

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

Now to Ms. Bateman for four minutes.

Ms. Joyce Bateman: Thank you very much, Mr. Chairman.

Thank you to all of our witnesses this morning. I want to apologize to you, Madam Laizner. We should have moved everyone over and you would have had equal footing, but I'm going to come back to you in a moment with a question. I very much appreciate your testimony and your comments about monetary penalty. I'm going to ask you for an example of that.

I first want to ask Mr. Eby a question.

You have served the industry, it's the industry companies that pay your salary, is that right?

Mr. Kurt Eby: They do.

Ms. Joyce Bateman: How much are those companies making? There is a change now; they can't charge for paper bills. What is the impact on their bottom line?

Mr. Kurt Eby: I don't know. We don't talk about business issues.

Ms. Joyce Bateman: What do you do? I'm curious. I am a chartered accountant and I am always looking for value for money and I'm curious about what services you provide. If you were serving the industry, you would probably have done some kind of calculation as to impact.

Mr. Kurt Eby: If we did, we would have to do it separately. We can't go to our members and ask them all to tell us how much they make from something, because we are not allowed to talk about what they make.

Ms. Joyce Bateman: So you have absolutely no clue what the impact will be on the industry's bottom line that you serve. We are going to rely on Mr. Lawford's—

Mr. Kurt Eby: I would caution you not to rely on that particular study. We've had a look at it and there seems to be a lot of issues in it.

Ms. Joyce Bateman: But at least he did the math. So bravo, Mr. Lawford.

Mr. Kurt Eby: They could have done a much better job, I would say.

Ms. Joyce Bateman: How? Which three points?

Mr. Kurt Eby: They included the 3.4 million wireless prepaid customers. Prepaid doesn't have bills. They included all of the subscribers to—

Ms. Joyce Bateman: They just disappear.

Mr. Kurt Eby: They included all the subscribers to Shaw and Cogeco and all of EastLink's non-wireless subscribers, all of the SaskTel and MTS subscribers, and none of those companies charge for paper bills. This was the base they used.

Ms. Joyce Bateman: Well, I look forward to getting your calculation. If you are willing to provide that to the committee, we would be most interested. I really think on behalf of the companies you serve we have to know the consequence of things, and this is actually going to happen. I know if I was one of your members, I would want to know.

I'm curious. We know that Canada has the highest rates in the world.

Mr. Kurt Eby: I don't think that's true. I don't think the government's own study supports that.

Ms. Joyce Bateman: It doesn't?

Mr. Kurt Eby: No.

Ms. Joyce Bateman: I don't know if you have teenage children, but I do, and when they do comparisons with friends that they've made, say, in France or whatever, we're way above the market.

Mr. Kurt Eby: That doesn't make us the highest in the world. Japan, traditionally has much higher wireless rates than us.

Ms. Joyce Bateman: Does anybody else have higher rates than us, other than Japan?

Mr. Kurt Eby: The United States does.

Ms. Joyce Bateman: Really? Which providers?

Mr. Kurt Eby: Yes. According to the Wall Communications study, which is commissioned by Industry Canada and the CRTC, the rates in Canada are lower than the United States.

Ms. Joyce Bateman: Thank you. We'll be following up on that.

Anyway, it is safe to say we are in the top five in the world. Are you comfortable with that?

Mr. Kurt Eby: In terms of what you pay a month—

Ms. Joyce Bateman: Yes.

Mr. Kurt Eby: —which is different from price.

Ms. Joyce Bateman: How is what you pay different from price?

Mr. Kurt Eby: Because of what you are getting in return. On a unit basis, because Canadians use more data and they use more voice minutes and they use more text than, say, someone in France. So yes, you are paying more but you are using three times as much.

Ms. Joyce Bateman: Okay. Thank you.

The Chair: Thank you, Ms. Bateman.

We will go to Mr. Sandhu first, then to Mr. Masse.

Mr. Jasbir Sandhu (Surrey North, NDP): Thank you, Mr. Chair.

I'm concerned about a couple of areas.

First of all, we're glad, thrilled, to see the government move on the pay-to-pay billing to provide some relief for consumers. We've been pushing for that for a number of years. But the Conservatives are helping their friends in the big banks again. They are still going to be able to charge the extra fees to Canadians.

That's one aspect, but the other aspect I'm very concerned about, Mr. Lawford, is not only that I've seen the wireless telephone bill really high for my own family, but I constantly hear complaints from my constituents when we compare what some people pay in the United States and what we pay here or what the Europeans pay.

I think there's a missed opportunity on the Conservatives' part to provide that relief, that competition, to allow Canadian consumers to lower the wireless bill. Is there anything in this particular bill that allows those fees to be lowered?

● (1030)

Mr. John Lawford: Taking away the paper bill fee obviously lowers that cost immediately on a pretty substantial basis for a number of people, which is a great start. The rest of the bill affects that more indirectly, and that would be by having the Competition Bureau, for example, have the same information as the CRTC when they make their representations about how competitive the industry is in regulatory proceedings. That is a very important change. We'd like to do all sorts of great things in the bill, in any bill, to promote more competition. But within the framework we have, the CRTC over here, and then leaving aside all that spectrum stuff, that's a very positive change, and should help the questions like the ones you're asking at least get before the CRTC.

The Chair: Mr. Masse.

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

Mr. Eby, you get four months right now to implement the changes. Maybe you can explain why it takes telecommunications giants four months to structurally provide this service. It seems a bit of a stretch to me. Can you convince this committee why this time is necessary, why it will take one quarter of a year to change the billing process? What's behind that complication?

Mr. Kurt Eby: It's the complexity of the billing systems, the number of plans they have in the market, and then spreading that across four services in most cases, and potentially multiple billing systems. These IT systems deal with tens of millions of customers. It's not that easy. It's not just flipping a switch.

Mr. Brian Masse: You're communicating with them on a regular basis anyway. You're saying it's just the volume? There's a problem with the companies communicating with their current customers on a monthly basis?

Mr. Kurt Eby: It's not a communications issue, it's to make sure this system, which makes that bill for everyone, works for everyone; it's uniform for all customers at the same time; it goes into place at the same time, so when the government announces the date it will be ready, there'll be no mistakes.

The Chair: Thank you, Mr. Masse.

Now we'll move on to Madam Gallant for four minutes.

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

Mr. Eby, you requested that large businesses be exempt and that just persons and small businesses would receive the cost-free paper billing under the new regime.

Do larger businesses just receive an invoice once a year online? How do you communicate their usage? How would they be able to gauge their usage on a monthly basis, or even a day-to-day basis?

Mr. Kurt Eby: That would all be negotiated when the account is made. We're talking about corporate accounts of more than $2,500 a month. It would be a very wide range, covering all businesses. It's not just to apply this regulation to those accounts. The volume is so large. That's going to be a competitive issue: how every company offers to make sure this company can track their usage, and how many devices or services they have in play, to make sure that's freely negotiated, but is not subject to this particular piece of legislation.

Mrs. Cheryl Gallant: So $2,500 in fees per month is what you feel is the threshold?

● (1035)

Mr. Kurt Eby: That's what the CCTS has set as the level for small businesses as a business expense of under $2,500 a month for telecommunications fees.

Mrs. Cheryl Gallant: Small businesses, very small businesses, depending on what field they're in can go well over the $2,500. If they were to receive....They would have to go into the Internet and obtain the itemized aspect of their billing.

Would it show usage on a monthly basis? What would the breakdown be like? How would it differ for those companies versus the ones who still receive the paper bill?

Mr. Kurt Eby: I'm not sure. I don't offer that service. I can't speculate. It would be similar, just over a much larger volume of users.

Mrs. Cheryl Gallant: Do the companies, the telecoms, charge late charges in addition to the paper billing and do they charge for late charges if a person accesses their billing over the Internet?

Mr. Kurt Eby: A person who doesn't pay their bill on time?

Mrs. Cheryl Gallant: Right. If they happen to forget that it's due on a certain day or don't have access to the Internet. Where I come from, we have many companies and individuals who don't have access to the Internet on a consistent basis, whereas they may have access to cellphones depending on where they are.

If they were to be late, do the companies charge late fees?

Mr. Kurt Eby: Yes, I believe they do.

Mrs. Cheryl Gallant: In lieu of going to the online charges, the online billing as opposed to paper billing, would there be any consideration on the part of the telecoms to forgo the late billing?

Mr. Kurt Eby: That's not something we discussed.

Mrs. Cheryl Gallant: They don't always have access to that when they need it in some parts of the country.

Mr. Kurt Eby: Right. Many providers already waive the paper bill fee for people who don't have Internet access because of that.

Mrs. Cheryl Gallant: Who do they contact? Who do they speak to when there is a complaint about billing?

Mr. Kurt Eby: Who does an individual speak to? They would take that complaint to the CCTS. You could complain directly to your provider, of course, and hopefully they would rectify it, but if you want to make a formal complaint, you take it to CCTS.

The Chair: Monsieur Côté.

[*Translation*]

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

Mr. Lawford, the NDP launched a campaign against “pay-to-pay” fees a while back already. The goal of the campaign is to deal with the increase of fees all over the place. While the government is bragging about lowering taxes, benefiting only a small segment of the population—because the income of the rest of the people is too low for them to benefit—people are paying all sorts of fees for both government services and various businesses. The purpose of our study is to focus on pay-to-pay fees charged by various telecommunication companies, such as cable television. It took the government some time to act.

What do you think about the government's piecemeal approach, which overlooks other types of fees that could harm people? I am thinking of the banking sector, among others, where the voluntary code does not apply to banking fees. People are forgotten in some sectors, while the government is clearly catching up in others.

In your view, what type of climate is this creating right now?

Mr. John Lawford: Thank you for your question.

The Public Interest Advocacy Centre (PIAC) deplores the fact that banks are not subject to the proposed amendment. The Canadian Bankers Association has apparently convinced the folks at the Department of Finance that statements are not bills.

In my view and that of the consumers we are representing, there is no difference between a statement and a bill. Perhaps this committee could propose an amendment to include statements. I don't think that will happen, but I still wanted to mention it.

In our report, we estimate that Canadians pay between $200,000 and $300,000 in annual fees for those statements. We deplore the fact that there is a difference between a statement and a bill.

● (1040)

[*English*]

The Chair: Mr. Lawford, it has been the custom of our committee that when the bells go, we adjourn.

We want to thank the witnesses for their testimony.

Colleagues, you should be prepared for a vote coming up very shortly.

I regret that it's so cold in here. I'm going to instruct the clerk to light the fire behind us next time.

The meeting is adjourned.

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