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Chair

Ms. Marlene Catterall

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● (0905)

[*English*]

The Chair (Ms. Marlene Catterall (Ottawa West—Nepean, Lib.)): I call to order this meeting of the Standing Committee on Canadian Heritage.

It's rare for us not to have a full slate of members here, but things in the House are a little unusual these days.

I'm pleased to welcome Gaston Jorré, senior deputy commissioner of competition, mergers branch, and Richard Taylor, deputy commissioner of competition, civil matters branch.

Mr. Jorré, are you starting? Merci beaucoup.

Mr. Gaston Jorré (Senior Deputy Commissioner of Competition, Mergers Branch, Competition Bureau): Yes, I have a brief statement, and I think copies have been passed around to members.

Thank you, Madam Chairman.

[*Translation*]

Madam Chair and members of the committee, as you have already heard, I am accompanied today by Mr. Richard Taylor, Deputy Commissioner of our Civil Matters Branch.

We are pleased to have this opportunity to participate in your study of the Canadian feature film industry.

[*English*]

The bureau recognizes that governments must balance a variety of interests and concerns when establishing new policies and programs or assessing the effectiveness of those already in place. While important issues of culture do not fall within the scope of our mandate, the bureau's work does ensure that Canadians can benefit from a competitive marketplace in all sectors of the economy, including film.

I would like to briefly outline our roles and responsibilities and provide you with an overview of how the bureau has dealt with past issues involving this industry.

[*Translation*]

The Competition Bureau is an independent law enforcement agency. Headed by the Commissioner of Competition, Sheridan Scott, we enforce and administer the Competition Act, an economic law of general application which governs most business conduct in Canada.

Essentially, the Bureau acts as a marketplace referee. We receive thousands of complaints each year from consumers and businesses alleging anti-competitive conduct. We investigate and when necessary, take the matter before the Competition Tribunal or another court. We also review mergers, which is something I will touch on further in my presentation.

And we act as an advocate for competition. In this latter role, in recent years, the Bureau has appeared before a number of parliamentary committees studying cultural issues.

[*English*]

You will find more information on the structure and mandate of the bureau in the annex of the written copy given to you. I won't go through that annex.

In 2002, the former Commissioner of Competition appeared twice before this committee when it was considering broadcasting policy. He also appeared before the industry committee in 2003 on the issue of foreign ownership of telecommunications common carriers. And as acting Commissioner of Competition, I testified before the Standing Senate Committee on Transportation and Communications in 2003 in its ongoing inquiry into the state of Canadian media industries.

During our appearances before these committees we emphasized that our interests in the cultural sector are strictly focused on competition. However, as I have already mentioned, this government and this committee may have other interests in mind, including cultural goals. I will now describe for you how our enforcement work and our analytical framework are used for determining competitive harm, and then I will give you some examples relative to the film industry.

So turning to the analytic framework....

[*Translation*]

We use a well-defined analytical framework and fact-based approach to carry out our enforcement work. Our analysis of whether markets are or are likely to be competitive applies to all industries and all types of business transactions and conduct.

Generally, it involves two principal steps. First, we define the relevant product and geographic markets. Second, we analyze whether or not market participants have the ability to significantly increase or control prices for a sustainable period of time.

While the legal tests in the Competition Act vary based on the particular kind of conduct under review, in all of our cases, we consider a number of factors to satisfy those tests and meet our evidentiary burdens.

In the course of our investigations, we speak with complainants, market participants, and competitors of targeted firms. When necessary, we use subpoenas or search warrant to gather evidence necessary to our analysis. We may also hire independent industry or economic experts to obtain their views.

[*English*]

We use a variety of tools to promote compliance with the law and remedy anti-competitive conduct. They range from education and suasion, such as speeches, warning letters, and investigative visits, on the one hand, to adversarial proceedings before the courts in the Competition Tribunal at the other end of the spectrum. We also often have consent resolutions.

Let me illustrate the application of our act in two recent film matters. One is a civil reviewable matter and the other is a merger. I'll begin with the civil matter, which was reviewed under the refusal to supply section of the Competition Act.

In 2000, the bureau initiated an extensive inquiry into the Canadian film distribution and exhibition industry. The bureau received complaints that major distributors and two Canadian exhibitors—Famous Players and Cineplex Odeon—had engaged in practices that denied other exhibitors access to commercially valuable films.

The bureau used its powers of inquiry to obtain evidence in the form of documents and written responses from some 40 exhibitors and distributors. There were no problems experienced in obtaining documents requested from foreign-owned firms. The bureau also obtained evidence interviews and economic and legal analyses.

In December 2002, after carefully examining the documentation provided, and considering many films distributed in a five-year period, the bureau discontinued the inquiry, having not found violation of the act.

Let me now turn to a recent merger. First let me explain a little bit how we look at a merger. When we examine it, the test we have to apply is whether it would result in a substantial lessening or prevention of competition in the relevant markets. To make this determination, we have to consider a number of factors, such as the relevant product market, the relevant geographic market, the market shares of the parties, the market concentration, barriers to entry, effective remaining competition, and foreign competition. We also look to innovation and other factors.

If the bureau finds a transaction to be anti-competitive, the commissioner asks the merging parties to restructure the transaction or obtain remedies on consent to resolve the competition concerns. Consent agreements negotiated between the commissioner and the parties are filed with the Competition Tribunal. By the way, when there are problems, this is the usual method of resolution. It's only in a small number of cases where we have to go to the tribunal. When problems cannot be resolved, we do not hesitate to take action in front of the tribunal.

I'll turn to the specific case.

● (0910)

[*Translation*]

In March 2002, Onex acquired control of Loews Cineplex and Cineplex Odeon which had been under bankruptcy protection in both Canada and the United States. This was an example of a merger with a strong pro-competitive element in that it kept a failing firm in the market as a competitive factor.

However, in the course of reviewing the proposed restructuring of Loews Cineplex, the Bureau learned of a previous merger between Galaxy Entertainment, controlled by Onex, and Famous Players. Famous Players was Canada's largest exhibitor and Galaxy had 12 theatres in five provinces.

Under the Competition Act, the Bureau has the authority to review mergers up to three years after they take place. So, we opened an investigation.

The competition concern was that Famous Players had a share ownership in and some ancillary agreements with Galaxy, that raised concerns under Onex's proposal to acquire Loews Cineplex.

These concerns were remedies when Famous Players agreed to divest itself of its interest in Galaxy and terminate its ancillary agreements.

The result was that Cineplex was able, following its restructuring, to continue as a competitive enterprise in the Canadian market, and Canada's largest exhibitor, Famous Players, remained an independent competitor with no corporate connections to Cineplex.

[*English*]

Madam Chair, I have spoken today about the role of the bureau and our enforcement experience, in particular with respect to distribution and exhibition. We fully appreciate the interest Canadians and this committee have in developing a diverse and competitive cultural sector. While our role in this regard is of necessity limited to ensuring that markets remain open and competitive, we believe that such markets, in and of themselves, are necessary to achieving our broader cultural objectives.

Mr. Taylor and I will be pleased to respond to your questions.

The Chair: Thank you very much.

Who would like to begin the questioning?

Madam Oda.

Ms. Bev Oda (Durham, CPC): Thank you.

Thank you very much for coming to the committee today with your presentation.

I have more a question of philosophical principle. You have distinguished between the role of the Competition Bureau and, say, the CRTC or other governing bodies. In your work, are the factors you use determined by marketplace commercial criteria versus...?

I know at the CRTC there's the thing called “diversity,” to make sure there's a variety of options and opportunities for not only the viewers but the producers of film.

I guess the other way of looking at full, robust competition would be how many people or how many entities in the country actually are the decision-makers, the critical decision-makers, to ensure that we have a good variety of product being produced, and not only produced but exhibited in the country. Do you have any comments on this?

● (0915)

Mr. Gaston Jorré: The basic role mandated by the act is one of promoting competition, and the focus is on economic competition. Do you have competition in the relevant markets of whatever you're looking at?

That, by its nature, doesn't look at such questions as where head offices are. It's neutral with respect to such questions. It's whether you have competition for customers in prices, quality, and so on.

Ms. Bev Oda: For example, if we have one national broadcaster, the CBC, I don't know if you would have a role, any role at all, if hypothetically the CBC were to use only one independent production company to source its programming and other production companies would say they do not have access, that there's no fair competition for them on where their products go or are placed.

Mr. Richard Taylor (Deputy Commissioner of Competition, Civil Matters Branch, Competition Bureau): That would depend very much on why the CBC uses only one independent production company. If the independent production company has a dominant position in production and says to the CBC, “I will supply you, but you must not use any other,” then that gets into what I deal with, abuse of dominance. That's an exclusive kind of dealing.

If the CBC is using one production company because it's the most cost-efficient or they happen to be the best at what they do, and they've had a long-term relationship and there's no pressure placed on CBC to use only that company, then the buyer of the product has the right to choose who to use to supply a product, whether it be General Motors choosing Magna to supply parts, or whatever. It's only when the seller of the product puts pressure on the buyer that they must use them to the exclusion of other ones that we might get into a competition issue.

Ms. Bev Oda: You just said something that has triggered something. It's when the seller of the product puts pressure on the buyer of the product.

Mr. Richard Taylor: Right. We call it “exclusive dealing”, section 77 in the act.

Ms. Bev Oda: But in order to have rigorous competition—which is an openness of marketplace, to me—is there not also a criterion of making sure there are adequate buyers of product in the country?

Mr. Richard Taylor: If they have earned their position of dominance or size in the market where they are a significant buyer, if they've earned that through selling a good product or by being a good competitor, or, in the case of something like the CBC, by having a unique position in the Canadian context, if they've earned it that way and not through anti-competitive conduct, then we don't touch that.

Monopoly is not something the act sanctions—the existence. Whether you're a buyer or a seller, the act does not sanction that fact.

What the act does something about is a buyer or a seller who is very large and, as we say, in a dominant or commanding position in the market, using an anti-competitive act to exclude other rivals and maintain their position. That's contained in section 79, the abuse of dominance provision.

Ms. Bev Oda: Does national ownership, whether it's a Canadian company or a foreign-owned company, come into your considerations of the marketplace?

● (0920)

Mr. Gaston Jorré: No, we look at the competitive impact.

There are two very different roles in the bureau. You have the enforcement role, where the act only applies when specific provisions trigger it. You also have an advocacy role, and in this capacity we have championed changes to promote competition. For example, we have championed deregulation of telecommunications carriers. For enforcement, though, you have to come within a specific provision before we can act.

Ms. Bev Oda: In a speech given by Commissioner Sheridan Scott last December at the IIC, she suggested that the methodology of analyzing the marketplace be consolidated. She said that the Competition Bureau has a well-defined analytical framework and suggested that the CRTC might use this framework to arrive at its decisions.

However, you've just said that you do not consider ownership of any corporate entity in your considerations. Do you believe that the CRTC would be able to fulfil its mandate under the Broadcasting Act if it were to use the Competition Bureau's framework?

Mr. Gaston Jorré: I don't remember all of that speech, but I believe she was directing her comments to a particular portion of the CRTC's analysis to which our expertise might be applied—the analysis of competitive impact in the markets.

I don't believe she wasn't talking about the whole of the mandate, about all of the decisions of the CRTC. It was simply referring to competitive analysis, which is one of the many things the CRTC considers.

Ms. Bev Oda: One of the suggestions had to do with their consideration of mergers. There is an overlap between the Competition Bureau and the CRTC in consideration of mergers. She pointed that out. She also pointed out that in examining such mergers the bureau focuses on the likelihood of anticipated effects on competition, which is a valid point. However, I would suggest that if the Competition Bureau does an analysis, there would have to be another done by the commission to take into account its mandate regarding diversity and cultural matters.

Mr. Gaston Jorré: Yes, the CRTC has broader considerations in its mandate. I don't think the suggestion was focused on anything other than the competition aspect.

The Chair: Thank you.

Mr. Kotto.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Thank you, Madam Chair.

Good morning and welcome. I apologize for arriving slightly late. I did nevertheless hear most of your remarks.

If I understand correctly, your mandate is strictly limited to the administrative side, in another words to enforcing the act in the market place. As for me, I am concerned with cultural sovereignty. Our current study deals with the film industry.

When you consider what is happening in film-exhibition, do you make a distinction between merger and convergence and merger and concentration?

Mr. Gaston Jorré: We enforce our act, which contains specific provisions. when we analyze a merger, the fact that there is some convergence among the various media is a factor that we must take into consideration. For example, in a transaction when the same entity becomes the owner of print media and broadcast media, we must, among other things, consider whether they are specific markets. So in the case of advertising, we must look at whether it is in the same market as radio, TV and the print media, or in a separate market.

Convergence has an impact on the questions that we must ask when we enforce our act. I am not sure if I have really answered your question.

● (0925)

Mr. Maka Kotto: I am reading between the lines, but what I was trying to determine, in asking you that question, was if you enforce the act to the letter. I was wondering if you had a kind of policy vision that encompasses my concern, in other words cultural sovereignty.

On several occasions, I heard you mention market openness. Are we to understand that it is all about market liberalization?

Mr. Gaston Jorré: In general, we hope to see as much competition as possible. As champions of competition, it goes without saying. However, the act contains legal tests. We apply them, and the outcome, in the act, is dictated by the legal tests.

Mr. Maka Kotto: All of Canada faces American hegemony in film—the screen time is approximately 96 per cent in Canada, and 94 per cent in Quebec—and indigenous film has very little chance of existing in a context like that. Does this situation concern you? Do you intend to make recommendations on that subject?

I do not know if your mandate includes notifying Canadian Heritage or other government entities of this delicate issue. It will have an impact on the project for the Convention on Cultural Diversity, that you have perhaps heard about. The objective of that undertaking is to safeguard diversity. The fact remains that in Canada, we face this hegemony, and that concerns me a great deal.

Mr. Gaston Jorré: Cultural issues as such are not part of our mandate. Of course, guaranteeing competition has repercussions. However, our mandate does not cover policy or culture. That is the purview of other agencies and departments.

Having said that, I think that regardless of the area, promoting competition is beneficial.

Mr. Maka Kotto: Do you agree that your mandate has shortcomings, since you govern competition in the marketplace?

Mr. Gaston Jorré: The government and Parliament created other entities that are responsible for cultural policy. That is the purview of the Department of Canadian Heritage and other organizations.

Mr. Maka Kotto: When we talk about trade rules, we tend to think about competition. That is what led me to ask you if the market openness which you alluded to earlier meant that you were in favour of liberalization in this market. The two issues are linked, to my mind.

The policy surrounding domestic preference, like quotas, have existed in the music industry for 35 years. We have protected indigenous music by seeing that it is broadcast on the airwaves. Provisions like that do not however exist for a film. When we talk about competition and refer to your organization, we tend to think that there is or should be a role for you to play in that area.

But if that is not the case, is that not one of the shortcomings of your mandate?

● (0930)

Mr. Gaston Jorré: Our mandate is very specific: it is to promote competition. The government has chosen other ways of dealing with cultural policy.

Mr. Maka Kotto: I am not talking about cultural policy, but strictly about the impact that your role has on this policy in different spheres.

I would like you to talk about radio networks, transactions or other topics like that, but that is not on the agenda. If your action is not based on any vision or ideological perspective, you are free to opt in favour of federalism or protecting national identity.

Mr. Gaston Jorré: We are nevertheless bound by certain provisions. In the case of mergers, the act contains a very specific legal test. Under section 92 of the Competition Act, we must determine if the transaction will result or not in a substantial lessening of competition.

We must enforce that. Parliament adopted that policy test on competition. The same is true for other provisions, whether it be for abuse of dominance or something else.

Mr. Maka Kotto: Okay, thank you.

[*English*]

The Chair: Merci beaucoup.

Mr. Silva.

Mr. Mario Silva (Davenport, Lib.): Thank you.

Thank you, first of all, for being here this morning.

I want to find out about your complaint mechanisms. You mentioned the fact that you receive thousands of complaints, and then you went on to the fact that in 2002 there was an extensive inquiry into film distribution and you received a variety of complaints.

I want to know the percentage of complaints you got and the overall total number of complaints.

Mr. Gaston Jorré: Before talking specifically about the film complaints, which I'll ask Richard to answer, you have to bear in mind that we have a number of roles, including ones with respect to misleading advertising. So the complaints come from across the entire spectrum.

I don't have numbers for the number of complaints, and I can't remember whether we have published numbers. The total numbers, though, are very large. I don't know the breakdown, although I suspect the larger portion come to the branch called fair business practices branch, which includes things such as misleading advertising, which is there to ensure the transparency of the market.

Then you asked something about the percentage in relation to those complaints, and I didn't catch the—

Mr. Mario Silva: The percentage of the complaints you got about film in relation to the overall number of complaints you received in the bureau.

Mr. Gaston Jorré: Oh, it would be a relatively small portion of all complaints.

Mr. Mario Silva: But you don't know what that percentage would be. Would that be 5%, 2%?

Mr. Gaston Jorré: It would be very low in comparison with the totality.

Mr. Mario Silva: And when you have received these complaints, within your guidelines, how do you go about enforcing, or even investigating, those complaints?

Mr. Gaston Jorré: It's simpler if we make some assumptions about what area the complaint relates to. Is it a competitor complaining about abuse of dominance? Is it an individual complaining about what they believe is misleading advertising? It does vary a little bit.

Generally speaking, you're going to start by talking with the complainant, trying to determine whether what's being raised fits within the act. Then if it seems to fit within the act—and it depends a lot on the nature of the complaint—you may call the party who is alleged to have done this or you may call competitors. It depends a lot on the domain.

For example, if it was misleading advertising, the first thing you'd want to do is look at the ad in question and compare that. Richard might tell you what the process would be if it's in the abuse of dominance area.

Mr. Richard Taylor: Sure.

Just to get back to your earlier question, in civil branch, we receive about 600 complaints a year. It ranges from 450 to 650. Under our service standards, in all complaints the initial complainant is contacted within 24 hours. Many of them are not issues under the Competition Act. Many relate to tax policy and other things, provincial spheres of influence, so we can deal with them right away. But the majority of them do raise issues that may or may not be a competition problem under one or more of the sections that my branch enforces.

So the first thing is to get all the information from the complainant. After that, we'll check our files, because we've done extensive examinations of multiple areas in the past. We'll check our own records, and we'll look at public sources for information on the players and the types. We'll try to corroborate the specific allegations by talking to other players in the market. We'll talk to the company that's alleged to have done the infraction.

Eventually we'll come up to a decision as to whether we believe on reasonable grounds that there's been a contravention of the act—which is if we believe there is something to the complaint, that there is something going on we need to investigate more fully—and then we'll go on what we call an inquiry, and we can use subpoena powers to obtain documents and have hearings with those who are involved.

That's basically the process.

● (0935)

Mr. Mario Silva: Issues like bonusing, tax incentives, and grants that are given by different jurisdictions in Canada fall outside your purview then. So if city A or province A wishes to steal a production from another province or city, gives an unfair advantage to a production so they feel enticed, there's nothing that can be done at all by the bureau?

A voice: No.

Mr. Mario Silva: It's totally out of the purview of this.

Okay. Thank you.

The Chair: Mr. Schellenberger.

Mr. Gary Schellenberger (Perth—Wellington, CPC): Thank you.

I have just a couple of little things. As you were mentioning, you get thousands of complaints a year for competition. I'm quite sure that 90% of those are probably on gasoline prices. I understand that.

I just have a hypothetical thing here. What happens if—as we have now—we have two major distributors and one gets into trouble or seeks bankruptcy protection and the other one might seek to take over that particular thing? I know we have a lot of smaller distributors.

What would the decision probably be in that particular thing? Would that mean they could not have a monopoly of all of these theatres, so many theatres then would be...that one would have to go into bankruptcy and close these theatres?

Mr. Gaston Jorré: Where you have a company going into bankruptcy, where you have a "failing firm", as it's referred to, you have an added element in any merger or acquisition analysis. You still go through all your normal analysis of the effect, but when a firm is failing you have a further question you have to ask yourself. If the alternative to this transaction is the firm failing, which outcome, at the end of the day, is going to be—how should I say—the best outcome for competition? That actually changes things a bit, because sometimes there are potentially other buyers, but if you're faced with "this is it or it fails", you have to ask, "Well, if it fails, are people likely to pick up the pieces and start it up?"

That's actually a very difficult issue. It was faced, for example, in the Air Canada-Canadian situation. As you will recall, the end result was to allow the transaction but put a number of conditions, including freeing up landing slots at capacity-constrained airports, freeing up gate space, certain restrictions on Air Canada—all of which were designed to facilitate new entry.

You have to add that into the equation. How you will come out depends on the circumstances and the facts of the case. But it adds an additional complication.

Mr. Gary Schellenberger: I'm quite sure it does. I appreciate that, because the one thing I've figured out as we've gone around and talked to people is that we need as many screens as we can get in theatres to see the films that, lots of times, aren't seen. So I'm quite sure it would be a big problem if a lot of these screens were shut down.

That was just a hypothetical question, and I appreciate your answer. Thank you.

● (0940)

Ms. Bev Oda: Is there any time left?

The Chair: Yes, you have time left, Ms. Oda. You have three minutes.

Ms. Bev Oda: I'd like to do a follow-up, if I could. You've indicated that you are pro competition.

Mr. Gaston Jorré: Our mandate, among other things, includes being the advocate. We are, as the former commissioner put it, the advocate and the champion of competitions.

Ms. Bev Oda: Yet you describe your organization as an independent law enforcement agency.

Mr. Gaston Jorré: That's correct.

Ms. Bev Oda: As an independent law enforcement agency, should you not get whatever mandate you have regarding pro competition out of the legislation, not as a self-designated mandate separate from legislation?

Mr. Gaston Jorré: The legislation does provide for it. For example, it gives us the right to intervene before federal boards and tribunals to advocate competition. It also allows us, with leave of the relevant board, to appear in front of provincial agencies.

Ms. Bev Oda: So when you use the description "pro competition", you're saying that the legislation you act within is pro competition, and that's what makes you pro competition.

So if the committee or the government were to feel that pro competition is a good thing, but maybe—I don't know—that there has to be some oversight as far as Canadian participation in a competitive marketplace, it should look to the legislation out of which you are working.

Mr. Gaston Jorré: Or to other instruments—the government has a number of other instruments on cultural policy. If the government wishes, and Parliament wishes, to make changes, it probably wants to use instruments that are specifically oriented towards cultural policy.

The Chair: Your time for questioning is over, Ms. Oda.

Ms. Bev Oda: I guess my dilemma here is that in a free and open marketplace, where obviously legislation and government have said that competition is a good thing in the natural course of things, if a Canadian element will not have a role or a place in a full and freely open marketplace, to have other instruments trying to struggle and maintain a position within that marketplace becomes increasingly difficult when we have a competition bureau that's saying, here's our mandate, here's what we're supposed to be doing. Do you understand what I'm trying to say here?

Mr. Gaston Jorré: I would just note that the government has many policies and objectives. It applies these through different instruments when you do have rules through the Investment Canada Act that affect cultural policy. They have to be applied as well as our act.

The Chair: Thank you.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): My question is for Mr. Jorré. By the way, I really appreciated what you said.

I think I understand your position as regards the Competition Act and the importance of market openness and market liberalization. I am a lawyer in my free time, and section 77 of the Competition Act concerns me. In my opinion, that section is broad enough to give you several mandates. However, I cannot imagine you look at it every week. In my opinion, it hardly applies to the industry.

By way of background, our area of interest is the film industry in Canada. Our objective is to have more Canadian films — perhaps through co-production — and for more Canadian films to be seen, etc. One of the means at our disposal is, of course, TV. We want TV to be a proactive player in the film industry.

I will eventually get to my question. I wanted to give you some time to find section 77. I am trying to see how section 77 can be used to prevent a company from... We are talking about convergence, mergers and consolidation. The situation in Quebec is unique. We want to protect our culture at all costs. So how can we prevent that under section 77 of the Competition Act? There must be a complaint. Citizens must lodge complaints, if I understand correctly, for there to be an investigation like the one you did in the case of Onex.

Have I got that right?

● (0945)

Mr. Gaston Jorré: Complaints are not the only way of examining a case. It can be triggered by a merger or by a mandatory notification for large mergers. It can start because something was drawn to our attention without necessarily a complaint having been made. Having said that, I am not sure that I understand the link between section 77 and the promotion of cultural industries.

Mr. Marc Lemay: Actually, it is not about promoting cultural industries, but defending them. Section 77 does contain the notion of exclusive dealing and market restriction. I wonder about this. You get involved after the transaction.

Mr. Gaston Jorré: Yes, that is just the way it works, given these provisions.

Mr. Marc Lemay: If someone wants to lodge a complaint in accordance with this section, it must be drafted in accordance with the context of section 77 of the Competition Act. That is my understanding.

Mr. Gaston Jorré: That is Richard's area.

Mr. Marc Lemay: I know that is more Mr. Taylor's area, but you can speak English.

Mr. Richard Taylor: You are right. We enforce the act. There are many sections, and each one contains requirements with respect to what we must show to obtain a conviction.

Mr. Marc Lemay: However, a conviction is not always the objective. The objective may also be a restructuring of the company. Is that correct?

Mr. Richard Taylor: Yes.

Mr. Gaston Jorré: At present, the typical remedy covered by these provisions — civil provisions other than mergers — is to change the behaviour. As you know, Parliament is currently considering Bill C-19, which sets out new penalties.

Mr. Marc Lemay: You did say Bill C-19?

Mr. Gaston Jorré: Yes. But it will not change the provisions. It will simply add penalties to the remedies set out in the civil provisions, in addition to an order to put an end to what is being done.

Mr. Marc Lemay: Thank you.

[*English*]

The Chair: Since my colleagues have no questions to pose, I'm going to ask you a couple.

One, in regard to the study you undertook in 2000, when you discontinue an inquiry, do you publish your findings and explain the basis for discontinuing the inquiry?

Mr. Richard Taylor: In general, we'll make an announcement of some form, a press release, or a bulletin. It would typically cover some of the reasons for when we did not find there was a case. It would also typically be put in our annual report, which is a report we make to Parliament. Under the statute we must report.

● (0950)

The Chair: Is there room for anybody to critique your reasons for discontinuing as opposed to continuing an inquiry?

Mr. Richard Taylor: Under the act, the Minister of Industry can order us to re-examine a matter under the specific provisions of the Competition Act.

The Chair: Secondly, on mergers, do firms have the obligation to inform you? For instance, you only discovered when you were examining another merger that Famous Players had merged with Galaxy. I can't imagine that the combined assets were less than $70 million.

Mr. Gaston Jorré: There are notification rules that are related to two factors. There's a size of the transaction test and a size of the parties test, both of which must be met. The current size of the transaction test is $50 million. It used to be $35 million, and that is of what you are acquiring. That's measured in a number of different ways. It is notifiable if both thresholds are met. The party size is $400 million.

The Chair: Thirdly, you mentioned that you have the right to intervene before boards and commissions on issues of competition. Have you ever done that in front of, say, the CRTC?

Mr. Gaston Jorré: In the telecom domain—Richard.

Mr. Richard Taylor: Many times in the deregulation of long-distance markets, and we will be now, they've announced a hearing to consider the deregulation of local markets. We've intervened before the CRTC on telecom policy matters many times.

Mr. Gaston Jorré: We've also, on occasion, been invited by provincial boards and have appeared.

The Chair: I have one last question.

Under the exclusive dealing, is it an offence to refuse to provide a product?

Mr. Richard Taylor: That's covered by a specific section, 75, and there are certain requirements. It very much depends on whether or not you meet the requirements of the specific provision.

I'll just mention a few of them. The person refused must be substantially affected or unable to carry on business due to the refusal, and also be unable to obtain product anywhere in the market, not just from the refused person. Due to insufficient competition the person must be adversely affected, and competition also must be adversely affected. Those are some of the considerations we would look at. A refusal is not illegal.

As an example, I'd love to have a Toyota dealership in Nepean so I could go to Toyota and say, I need a dealership in Nepean because Toyota is selling lots of cars and I could make lots of money. That would not be illegal under the act. They have a right to supply who they want with cars. The act does not interfere with that right, only under the conditions I've mentioned.

The Chair: I'm not sure I'm clear on those conditions. If an American distributor refuses to distribute their product in Canada because they don't like a government regulation, is that what you would call exclusive dealing and an offence?

Mr. Richard Taylor: Again, I'd have to know all of the circumstances that led to that, but if it was a boycott to enforce anti-competitive practices, where they said, I'm not going to supply my product into Canada until you give me 100% of your screens, that would be anti-competitive. But if they said, I'm not going to do business in Canada because of government regulation or policy, it would be unlikely that would be a competition issue. That's my feeling.

The Chair: Thank you.

Are there any other questions from members of the committee?

Then I think we will thank you, Mr. Jorré and Mr. Taylor, for your time with us and for your submission to us.

I invite Mr. Farber to the table.

Mr. Farber and Mr. Short, as we've been conducting our hearings, we've been hearing about tax credits in many ways from many different witnesses. Tax credit policy is obviously key in helping in the success of Canadian film production, and that's why we've invited you here this morning.

Do you have a presentation you wish to make to us or any comments to start off with?

● (0955)

Mr. Len Farber (General Director, Tax Policy Branch, Department of Finance): Yes, Madam Chair. I'll make some opening comments, maybe giving you a little bit of a history of the development of the tax incentives for the film industry in Canada.

Let me first introduce my colleague, Mr. Ed Short, who's a senior tax policy officer within the tax policy branch of the Department of Finance and has been involved in film policy for quite some time.

I'm pleased, Madam Chair, to be here with you this morning. I'm particularly delighted to come after competition policy. From the complex to the mundane in the simple world of tax policy, this is the right spot to be in.

Tax policy, with its impact on the film industry, has evolved over a very long period of time. Back in the early seventies there was not very much of a film industry in Canada at all. There were very few if any public companies. There were a number of small production companies across the country, but not a lot was happening in that context.

In 1974 the government introduced a tax shelter capital cost allowance or depreciation program, which was basically designed to assist Canadian film producers to attract financing from third-party investors. Those investors could depreciate their acquisition cost of the film or the "certified production", as it was then called, on a current basis. In other words, whatever they paid for the film was currently deductible and acted as a tax shelter to offset other unrelated income.

Now, only a portion—

The Chair: Just a second, Mr. Farber. I don't know about all the other members of the committee, but I'm not a huge expert on tax policies, capital depreciation, or appreciation. Can you put this in very simple language for all of us?

Mr. Len Farber: Capital cost allowance is just a tax term for depreciation. So if you bought a film and paid $100, you can deduct that $100 as an expense on your tax return to shelter other unrelated income. It's no different from putting money into an RRSP or any other matter where you have a deductible expense.

So that's what a tax shelter program is all about. It allows you to shelter other unrelated income—as opposed to expenses that are normally, in the context of a business, incurred in order to earn income, and income derives from the expenditure and therefore you have a netting of an amount, which produces net income and therefore taxable income.

So that's how a tax shelter program actually works, and it's of particular interest, clearly, for high-income investors, to the extent that they have large amounts of taxable income, a lot of shelter like that, current expenditures that in theory are designed to give you an income flow in the future. So you're getting current deductions for the hope or the promise that there will be income in the future.

But only a portion of the cost of that incentive to the government resulted in a benefit to film producers, because in dealing with matters of that nature, when you're going out to solicit funds from investors, you basically have a number of different parties that you have to please in that kind of tax shelter.

You have to raise money from the investor, who is interested in a return. The promoter who is dealing with the sale of the shelter is also interested in getting a piece of the funds that he is about to raise, and the money is ultimately designed to go to the film production.

Back some time ago, I think it was in the mid-1980s or so, the Department of Canadian Heritage commissioned a study by Ernst & Young, chartered accountants, to look into that aspect of it. If my memory serves me correctly, the results of that study clearly showed that the benefits in terms of tax shelter financing were split in thirds for the interested parties—one-third for the investors, one-third for the promoters, and one-third for the film producers—clearly a very inefficient way to support film production in this country.

Governments have always been concerned with tax shelter investments, for many of the reasons I've just described, and back in the 1985-86 tax reform, governments began to curtail the use of tax shelters. Primarily at that point in time, research and development tax shelters began to be closed off and a number of other measures designed to deal with money at risk, in order to ensure that investors got benefits or any tax room only for money that they were actually at risk for. In other words, if they borrowed from the producer or the promoter putting up the tax shelter type of investment and there was no recourse for that loan to be paid, that would not serve to allow for a tax shelter investment. So measures were being introduced in the mid- to late 1980s to start curtailing the use of tax shelters.

The 1995 federal budget announced a policy change with regard to providing incentives for Canadian-owned film and video productions. The new incentive for this cultural product took the form of a refundable tax credit based on qualified labour expenditures by eligible production companies. This new credit mechanism provided a fully refundable tax credit of up to 12% of the eligible cost of two qualified Canadian corporations on what was termed a "certified" Canadian film or video production.

A certified Canadian film or video production was a production that met certain criteria laid out by the Department of Canadian Heritage, dealing with the number of Canadian actors, producers, ownership rights, copyright... A host of different things that were developed by the Department of Canadian Heritage were part and parcel of the regulations in the Income Tax Act and had to be certified by the Canadian Audio-Visual Certification Office, CAVCO.

● (1000)

This new definition of "qualified" productions was in fact substantially the same as the production that qualified for the film tax shelters I mentioned earlier.

The credit itself is computed as 25% of qualified labour costs, which, when it was introduced at that time, could not exceed 48% of the cost of a film or video production. When one does the numbers, it works out to a 12% credit, so it's 25% of half of the cost of a film, basically. In the 2003 budget, the then Minister of Finance announced an increase in that limitation of 48%, increasing it to 60%. And likewise, the maximum credit went up to 15%.

As I indicated a few moments ago, the Minister of Canadian Heritage is responsible for certifying whether a film meets prescribed Canadian content rules. Regulations in respect of the Canadian content credit concern such things as I mentioned earlier, the cultural content, the ownership criteria, the number of Canadian actors and what not, and it's on a point system. Canadian content films must have a minimum of six out of ten points, I believe it is, in order to qualify as a Canadian production.

Having given you a bit of a background to that, I think it's important to recognize as well that almost all provinces have similar types of incentives for similar Canadian types of productions. Ontario and B.C. have recently increased their credit rates on Canadian content films from 20% to 30%, and Quebec offers up to 39% for French language films.

When one looks at the combination of incentives for production in Canada, it's fairly generous, and the generosity really stems from both the content aspect for Canadian content productions...but also benefiting Canadian labour. These are fairly high-paying jobs, they're significant jobs, and clearly, from the early days back in 1974 to what we're talking about now, the industry has evolved to a tremendous degree. There are a number of large public companies that are in the film production area. There are a lot of smaller productions that produce regional films and what not, and it's become quite a significant industry, employing a lot of Canadians and having a very good talent pool, so much so that a lot of the large American production houses are doing a lot of filming in Canada as well.

I'm sure the chair and members of the committee have heard or read about the various issues that relate to employment in some of the regions with regard to whether or not these production houses will continue their filming in Canada.

That basically deals with the foreign credit, which is another what I'd call industrial policy incentive that is applicable to film or video production services that are provided in Canada for films that don't have sufficient Canadian ownership or cultural content to qualify under the Canadian content credit.

The foreign credit was introduced as a refundable credit of 11% of salaries and wages paid to Canadian residents for services performed in Canada. It was raised in the 2003 budget to 16%. Regulations in respect of the foreign credit generally concern whether the genre, the make-up of a film or the production, can be certified by the Minister of Canadian Heritage as an accredited production. Again, we have a kind of certification process in order to be eligible for the foreign credit. Suffice it to say that any particular film can't have access to both credits; you're either in one camp or you're in the other.

Once again, with regard to this refundable credit for film services, almost all of the provinces have similar types of incentives, and again, they'll range from 11% to 18%, while Quebec has amounts up to 20%. By and large, the combination of the federal and provincial credits for film development in Canada has grown over the years.

● (1005)

It's a significant source of support, and it has proven quite valuable to the industry, to judge by its growth over the years. There is the hope that over time the industry will become self-sustaining. As the industry grows, prospers, and develops its talent pool, production studios are being built right across the country that will one day enable it to survive on its own.

That is a brief overview of the various incentives. There are other direct government incentives in the form of grants, whether it's money provided to the CBC, Telefilm Canada, or the Canadian Television Fund, which support the development of television series and other productions. There's a host of direct expenditures involved in the development of the Canadian film industry.

With that, my colleague, Ed Short, and I would be pleased to take any questions.

● (1010)

The Chair: Thank you very much.

Mr. Schellenberger.

Mr. Gary Schellenberger: It was great to hear all the numbers and the way things work. At many of our meetings we have heard about tax credits and tax shelters, and how they help the industry. It was enlightening to hear some of these things explained today.

Could a tax shelter be set up to direct more money to film production? I know that the moneys don't always go where they're supposed to. One of the common complaints we hear is from producers. People set out to do a film, and one of the first things they have to do is go to a bank for money. A lot of the money they receive from the government, or other sources, has to go towards carrying costs. One producer said that when they go to the bank it's 2% or 2.5% above prime. I have a mortgage of .75% below prime. It's surprising. They get the loan at 2.5% above prime, so the bank knows it's making its money. A large chunk of the tax credits ends up going to the banks.

Is there a way that the funds could be distributed a little earlier in the program, so that these people might not have to borrow so much money?

Mr. Len Farber: That's a question it would be very difficult for us to give you a direct answer on because we're not responsible for the administration of the program. Between the Canada Revenue Agency and the certification office at Canadian Heritage, that is how the program is administered.

What I can tell you, though, from our understanding, is that in the first instance, the Canada Revenue Agency, once they have all the information, attempts to turn things around within 90 days. Now, that's a fairly reasonable period of time. But I caveat that with having all of the information. We have received complaints from a number of different film production studios that they weren't getting access to the credits in the manner that you described and that it was costing them. Often, as we did a little bit of research into it, we found that not all the information had been provided, and the applications and what not to CAVCO had not been completed to the fullest extent. So once all the information is there, we're given to understand, they can turn it around fairly quickly.

In addition to that, those production companies that have a history, that have been around for quite a while, and that are known to both the agency and to CAVCO can get turned around even quicker. Because you know who you're dealing with and it's not a matter of dotting the i's or crossing the t's all the time, they will process things a lot faster. So to the extent that film production houses gain some experience and have been in the film area for a number of years, you find that even those 90 days become shorter and shorter. But for new companies or one-off production companies that don't have a track record, you can understand where different government departments will want to do their due diligence and ensure that the company to whom they are going to pay these credits, which can amount to a lot of money, is bona fide and is doing what it has to do. So from that perspective, I think it works reasonably well.

The only other thing I would want to mention is that over time the financial institutions have become somewhat accustomed to this industry. Clearly, with the track record the film industry has had since the early seventies, one can maybe understand why some financial institutions were somewhat reluctant. But as they gained experience and as the products became better and better and became very marketable and made money...I think the reluctance of banks to participate is not what it used to be. Certainly, some of the financial institutions are very active participants in the film industry and have been very instrumental in seeing a lot of Canadian product being produced.

● (1015)

Mr. Gary Schellenberger: There is just one thing we were talking about. You've explained that in Ontario and B.C., and I think Saskatchewan, I'm not sure, but in various places they've upped the tax credits and it's made a difference. I know as we talk to production houses or to producers and whatever, those tax credits have made a difference. I know that tax credits kind of got abused, or back a number of years ago it seemed to be the case, so some of these things were cut. Am I right when I say that? Is there a way to protect that? Could we increase them by even a small percentage that might be able to help to stimulate the industry?

Mr. Edward Short (Senior Tax Policy Officer, Tax Policy Branch, Department of Finance): Actually, as far as the tax credits go, there has not been a history of abuse. There has been a history of abuse with tax shelters.

I'm sorry, the second part of your question was...?

Mr. Gary Schellenberger: You've almost answered my question. There is a difference between tax credits and tax shelters?

Mr. Edward Short: Yes.

Mr. Len Farber: Yes, as my colleague just said, we haven't experienced a lot of abuse in the tax credit mechanism, simply because the credit mechanism deals directly with the production company. So you don't have the promoters and the investors trying to skew the system to whatever degree they can. We started tightening up tax shelter mechanisms in the earlier years, without directly taking them away, to the degree possible to ensure we had as many controls on them as we could.

It's quite clear that one should never underestimate the ingenuity of the tax professional community. Wherever we found a tightening mechanism to deal with, there was always a way out of it. But the difference between a shelter program, which by and large tries to deliver to others the deductions of a production company that can't use them, because the revenues obviously come in later, and a tax credit based on labour expenditures.... Again, these are totally controllable expenditures, which you can totally audit. Labour gets T4 slips, so we know the amounts exactly, or what value for money you are getting in many respects. It's going right into direct labour.

So from that perspective you've got a program—at least from when it was made refundable—from which they can access the cash almost immediately.

Mr. Gary Schellenberger: I have one more quick question, if I could.

You say that for Canadian film, the criteria are six out of ten points, with actors and everything. Is the Canadian distributor a main part of those criteria for a Canadian film to access some of these...?

Mr. Edward Short: No, the producer has to be a production corporation primarily in the business of producing Canadian film or video productions, so a distributor would generally not qualify. Now, there are some production houses with distributors affiliated with them, but generally speaking, the production is considered to be something separate from the distribution. So the distributors don't receive.... It's called the Canadian film or video production tax credit, because it's an incentive to produce the film.

Mr. Gary Schellenberger: Okay, thank you.

The Chair: Monsieur Kotto or Monsieur Lemay.

[*Translation*]

Mr. Maka Kotto: Thank you, Madam Chair. I listened to your presentation with a great deal of interest, but I am going to ask you a question that is general, probably philosophical; let us say somewhat philosophical.

In a world that is increasingly dominated by cultural darwinism under the leadership of Hollywood, a world where we are no longer sheltered from homogeneization, cultural standardization, in other words a world inclined to destroy "cultural biodiversity", what is, based on your experience in this area, the best fiscal policy that should be put in place to support, promote and exhibit national films, in order to take back something akin to cultural sovereignty in this area, since we are no match for the leviathan that spends, for two films, budgets equal to the budget available for all film production in Canada?

That is very general, but it is a philosophical question.

● (1020)

[*English*]

Mr. Len Farber: First of all, I'm not encumbered by knowledge on this issue, so I might be able to talk about it from my own personal experience.

While I believe that the tax credit mechanism, combined with a certification process dealing with cultural content, is about as good a program that a government can develop in order to support the kinds of cultural products you're talking about, at the end of the day, it won't drive the economics. If a film is not going to be seen by people in the movie houses or in distribution for television, then it's not going to make money. Somehow or other there has to be a process where the products achieve the kind of viewing audience that is ultimately possible.

I think that is being achieved by actors, directors, and producers, who have unique knowledge about the Canadian marketplace, Canadian history, and what it is that the Canadian marketplace will want to see and pay for. But ultimately, it's driven by audiences. Government policy can't really direct that.

[*Translation*]

Mr. Maka Kotto: The government can nevertheless develop a vision to resist, to protect its national identity. We know that film projects an image that directly affects our collective psyche and determines behaviour, defines values, and that will probably lead us to lose or strengthen our national identity. The policy is also there for that.

[*English*]

Mr. Len Farber: I agree. When one looks at Canadian content film production, which is that unique Canadian content quality film, it enjoys government support to the exclusion of others. In that capacity, as I understand it, it's a cultural product and is therefore excluded from any type of NAFTA arrangement because it is Canadian culture.

In that context, I think it gives support because it has significant Canadian content criteria in order to promote the production of Canadian films. That's in combination with other criteria outside the tax system, for example, the CRTC criteria with regard to Canadian viewing on television stations and what not, and the percentage of product that has to be domestic product.

I think the combination of all that serves to promote Canadian content films and television series to a point where the industry, in my understanding, is doing quite well in Canada and the Canadian cultural product is being protected in that way.

[*Translation*]

Mr. Maka Kotto: I am going to venture a question, as I do not know if it is part of your mandate at the Department of Finance.

Given the exodus of talent to money and glory on the other side of the border, have you looked at fiscal policies to keep talent here, especially in English Canada? We often talk about poverty in these circles, about material shortages, so when talent is marginalized, people are more inclined to cross the border, because they cannot survive and they are stifled by a tax system that traps them when they get a contract five years later, after having struggled for four years. Have you thought about or put together any proposals to retain talent here?

● (1025)

[*English*]

Mr. Len Farber: Again, I think it's a question outside of our direct domain. I may be viewed as repeating myself, but I think the combination of film credits for both Canadian content and the service productions.... As I said earlier, there are a lot of American studios that are filming here in Canada, and doing a lot of filming here in Canada. The only way they can access tax credits, because it's an industrial incentive, is to employ Canadian labour. As a result of the combination of the two, we have developed a very significant talent pool. The large American production houses are filming in Canada because I think they firmly believe that the talent is here, both at the production level and at the acting level, and they're able to shoot very good product here with state-of-the-art studios, which have been developed in Toronto and B.C. and in other areas across the country.

I think the combination of all of that certainly provides a livelihood for that talent pool and ensures that there is enough work to go around. And to the extent that this continues, I think we have a very vibrant environment for that to continue here.

The Chair: Merci.

Monsieur Lemay.

Sorry, I'm just trying to find out what's going on here.

[*Translation*]

Mr. Marc Lemay: There is a vote on adjournment. We will have to be in the House of Commons in 30 minutes. That is what we have just been told.

I would like to ask a very important question. Section 241 of the Income Tax Act deals with information, the communication of personal information, in other words who are or who were the directors of an organization, etc. We know that there is a draft bill to amend section 241. Our request has been made to amend that section of the act. Are you aware of that? If yes, what stage is the draft bill at?

[*English*]

Mr. Edward Short: That amendment you're speaking of is in a draft bill that has been released to the public for consultation. It hasn't been tabled in the House of Commons yet.

The amendment, in particular, results from a recommendation from a committee. I can't remember the name of the committee, but it was the result of a review that was done of the Canadian film or video production tax credit, and in particular of the cultural criteria, about four years ago. So this amendment implements the recommendations of the committee.

I don't remember specifically if there is an amendment to suggest that personal information of directors is included in the list of information that could be released, but I do believe it did suggest that to the public there could be released a list of the films that were certified and the companies that produced those films, or asked for certification.

Mr. Marc Lemay: Okay.

The Chair: Ms. Bulte.

Hon. Sarmite Bulte (Parkdale—High Park, Lib.): Hello, Mr. Farber. It's always nice to see you. I have a number of questions for you.

Let me go with tax shelters to start. I understand what the problem was. My understanding is—correct me if I'm wrong—that the tax shelters tended to be of more benefit to the industrial productions than to our own homegrown productions. Is there any thought to perhaps bringing in another tax shelter that would specifically relate only to Canadian productions and address the concerns of the middleman and the investor? That's one.

On tax credits, certainly people have spoken to me about increasing the scope of what's involved here—not just the labour costs but the other costs associated with film production—to be eligible for those tax credits. I wonder if you could comment on that.

I'm very interested to hear you say that the tax credits turn around in 90 days. I have constituents who have said that they're still out hundreds of thousands of dollars as they wait for the tax credits. These are people with a history of filmology. One of the things we heard in Winnipeg too—and I think it may be what the province is considering doing there—was to give an advance on the tax credits to help in the interim financing. Is there anything we can do about that?

I have a question on co-productions. When there's a co-production where there is a treaty, do they have the benefit of the Canadian tax credit? I was recently at a Law Society of Upper Canada meeting where they talked about how in Germany they try to separate the bare copyright from the equitable copyright. Have we looked into doing something like that? I guess that's more to do with co-production.

Mr. Farber, you also spoke about how it was important to get to audiences. One of the things that has come up in our hearings as well is talk about ways of finding new venues to get those audiences, be that DVDs or this whole new concept of e-cinema. Is there something we can do there from a tax policy perspective to perhaps encourage that?

I was delighted for you to speak about the CTF, because, as we know, the CTF is set to sunset in March of next year, unless it's renewed. What is the philosophy within your department about continuing that after the potential expiry date?

● (1030)

Mr. Len Farber: Well, that's a seven-part question.

Hon. Sarmite Bulte: I was listening and taking notes.

Mr. Len Farber: I tried to take notes.

The Chair: I thought it was seven questions, each of which had several parts.

Mr. Len Farber: Madam Chair, I'm trying to be kind. I know she's only allowed one question, so if you have seven parts....

Let me try to go through the list as best I can. If I leave things out, my colleague can help.

On tax shelters, I think your impression that they were only skewed to foreign film productions is because that was the last shelter that was available. Canadian film tax credits sort of came on the scene before tax credits were extended to foreign film productions. So the last scream may have been the loudest scream, with regard to what shelters were still available.

It was really in that area, as we tried to tighten down on shelters, that they continued to find new mechanisms to deal with shelters. You may have heard the concept of the print and ad kind of tax shelter that was promoted. It wasn't an investment in a film per se, but in some of the surrounding issues with advertising—print and ads, and what not. I don't think it was really taken advantage of more by anybody in particular.

The policy is very clear that whenever you have a shelter type of mechanism, you're basically taking deductions that are not worth very much to the company or the taxpayer and giving them to somebody else who can utilize them against other sources of income. As I tried to indicate earlier, it's a very inefficient way of dealing with it. I think the credit mechanism goes directly to the producer—direct support for what he is doing. So I think that's very important.

Your second issue relates to whether or not the base can be expanded beyond labour. Certainly there have been submissions over the years by both the Canadian content films as well as the foreign service productions, in order to expand the base. As I said earlier, when we're dealing in this area, one of the things that is very important to government is ensuring that the dollars end up where they're supposed to end up, and that we're promoting Canada in that context. Going to direct labour is the most discernable way of doing that.

There are other issues related to a production, but are those other things uniquely Canadian, for example? If one expanded it to airline services...I mean, they have to get here. Unless they're travelling on Air Canada, and I'm not sure who's going to check that, I'm not sure those are Canadian expenditures. Meals...there's a host of other things that have been promoted as something we ought to expand the base into.

In terms of the Canadian content films, the better direction in which the government saw fit to go was to increase the percentage of labour allowable. Rather than sticking to 48%, it moved to 60% and raised the credit. So that was in direct support. When we're talking about foreign film services, the only way to ensure an industrial type of incentive for Canadian labour is to stick to the labour component. I think it would be difficult to expand that base, and the government has resisted that.

On interim financing and whether or not they can cash in on credits earlier, I've heard reports just like the one you described. As I said, when we looked into the few that were brought to our attention, we found out that all of the information hadn't been submitted. It's very easy for some to say they're waiting for their credit and they haven't got it, but I think departments have to be diligent and get the information. The credits are worth a lot, and we want to make sure they're going to bona fide productions.

The turnaround time I indicated earlier is working reasonably well, as far as I understand. To the extent that there's a track record, as I said earlier, I think they find they don't need as much information because they know who the players are and who it's going to, so it's not as difficult.

● (1035)

Co-productions—

Mr. Edward Short: I'll actually just add something to that last point, Len, and this is that a few years ago there was an amendment proposed to the act, and actually this one has passed, that allows the Canada Revenue Agency to issue a refund without having done a complete audit of the film expenditures. The Minister of Revenue can do this, has discretion to issue that refund, and normally would do it if the company has a track record and if they're talking about usually a film for which they've already received the certification. Films take usually more than one year to complete, so if it were the second or third year, and they were submitting their tax return, then Revenue doesn't have to wait to issue the refund. They can turn around and issue the refund and do the follow-up later.

On co-productions, the answer to this question is that co-productions that have been approved by Telefilm do qualify as Canadian film or video productions. As long as the producer otherwise meets the criteria of being Canadian-owned, then, yes, they do qualify.

Actually, maybe I can skip ahead to the copyright issue. The Department of Canadian Heritage is currently engaged in the consultation with industry as to whether or not there should be changes to the existing rule on copyright. There's a current rule, which was requested by industry in 1995, that suggests the Canadian producer has to hold copyright for 25 years. There have been questions raised since that time about what does this mean exactly?

When you're talking about a film, copyright or ownership of the film generally means the big bundle of rights to drive economic gain from that film. So you get into questions of whether or not copyright is just copyright on paper, where parties agree that, yes, we have copyright, but you can exploit the film. Or does copyright really mean the right to exploit the film as well? This is an exercise that Canadian Heritage is engaged in right now; that is, they're trying to decide just what the policy should be. Even in their own minds they're going from case to case. They're not always sure where they want to be. Do they want to allow business to be able to structure agreements the way they choose, or do they want to be sure that, for instance, an American distributor doesn't take all the economic gain from a film and leave the Canadian producer with nothing but the piece of paper? So this is something that's currently under review.

● (1040)

Mr. Len Farber: I don't think we can make very much comment about that. It's handled by a different area within the department. It's clearly not a tax issue; it's a granting amount. As I know you know, when it was scheduled to expire the last time around, it was funded again for a couple of years—I can't remember, two years. I have no doubt that there will be discussion when that timeframe comes up as well, as it has been discussed over the years.

The only other issue you raised was this e-cinema issue. Frankly, I know nothing about it.

Hon. Sarmite Bulte: We're finding that what's shown as a great proposal, very few people know about.

Very quickly, on the grind they talk about, about Telefilm, the clawing back of tax credits.... Is there anything we can do to stop it, or is it a Treasury Board guideline?

Mr. Len Farber: The grind happens in a number of different areas.

Let me talk about the tax system for a moment. Under the tax act, we give deductions or credits for money that a taxpayer is at risk for, so if you have, as we have across the country, both federal and provincial credits, to the extent that you get a provincial credit, it grinds the capital cost of the film by that amount because this is money that this producer has received. So, for example, if you have a cost of a film of $100 and you have received a provincial credit of, let's say, $20, the cost to you of the film at that point in time is $80. You're out of pocket $80, so the federal credit is based on the net amount that you're at risk for.

I think many of the other grant programs work on a similar basis. If you're receiving a grant from Telefilm, that's money for which you're not at risk, so if your film costs you $100 and Telefilm gives you $50, you're out of pocket $50, so government incentives would be based on your net out-of-pocket costs. If you didn't do it that way, you can very quickly see how it would cascade to a point where the combination of all the incentives would be more than the cost of the film.

The Chair: *C'est tout?*

A voice:*Oui*.

The Chair: I'm sorry. I think everybody wishes we had another few minutes, but the House calls.

Thank you very much, Mr. Farber and Mr. Short.

We are adjourned.

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