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Mr. Brent St. Denis

Standing Committee on Industry, Natural Resources, Science and Technology

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● (0900)

[*English*]

The Chair (Mr. Brent St. Denis (Algoma—Manitoulin—Kapuskasing, Lib.)): I'm pleased to call to order this October 27 meeting of the Standing Committee on Industry, Natural Resources, Science and Technology.

This morning's meeting is comprised of two one-hour sessions. For the first, we are pleased to have with us again Ms. Sheridan Scott, the Commissioner of Competition, along with some of her officials. She'll introduce them in due course. Thank you for being back.

After a short suspension at about 10, we'll meet for an hour to at least begin the process of clause-by-clause consideration of Bill C-19, at which time I will ask Marlene to speak for Jerry on the government's amendments—and opposition members, as required, will speak on their amendments. So we'll get started with the process.

So without any further ado, we invite you to give your opening remarks. I believe you're here to comment on Professor Hogg's constitutional remarks and the Retail Council of Canada's similar arguments on the constitutional applicability of some of Bill C-19's provisions.

So with that, we invite you to speak for five, six, or seven minutes, Ms. Scott. Thank you.

Ms. Sheridan Scott (Commissioner of Competition, Competition Bureau): Thank you very much, Mr. Chairman and members of the committee.

Before I begin, I would first like to introduce my colleagues who are here with me today. Brendan Ross is senior competition law officer in the fair business practices branch. Richard Taylor, who you've met before, is deputy commissioner in the civil matters branch, and Rhona Einbinder-Miller is general counsel with the competition law division of the Department of Justice.

[*Translation*]

Over the past year, I have had the privilege of appearing before this Committee on several occasions to speak in favour of Bill C-19. The proposed amendments found in Bill C-19 will strengthen Canada's ability to innovate and compete in a global economy to the benefit of all Canadians We believe the proposals in this bill reflect a careful balancing of the interests of consumers, small businesses and large firms. These amendments will give us greater flexibility in our work and will effectively deter and remedy anti-competitive behaviour in the Canadian marketplace.

Mr. Chairman, today I would like to begin by responding to some of the concerns raised by the Retail Council of Canada and Professor Peter Hogg. I would also be pleased to answer any final questions you may have about any aspect of this important piece of legislation.

● (0905)

[*English*]

First, on the issues raised by Professor Hogg, I think it's important to stress that Bill C-19 is a government bill, and, as such, it has been vetted by the Department of Justice to assess its compliance with the Charter of Rights and the Constitution. Justice department officials must, by law, ensure that proposed legislation respects the Charter of Rights of Canadian citizens and businesses. The provisions of Bill C-19 are no exception.

While I certainly respect Professor Hogg's expertise in constitutional matters, in this instance, I—and, clearly, the Department of Justice—disagree with Professor Hogg's characterization of the AMP scheme proposed in Bill C-19. Professor Hogg's charter concerns are only triggered if it is determined that the administrative monetary penalities proposed in Bill C-19 are penal or criminal in nature. If the AMPs are not, then the charter issues identified in Professor Hogg's legal opinion simply do not arise. The key issue then is whether the AMP scheme proposed in Bill C-19 is properly characterized as criminal in nature. Our view is that it is not.

Increasing the maximum AMP level is meant to promote compliance with the act. It is not meant to impose a punishment amounting to a criminal sanction. Bill C-19 makes this very clear. It is simplistic to say that the proposed AMPs are penal in nature because they could, in a given circumstance, be so high as to punish. The proposed maximum is just that—a maximum that is intended to give courts the room to adequately promote compliance in relation to the particular circumstances before the court.

In this regard, the Competition Act provides explicit instructions to the tribunal that orders for AMPs "shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment". The act also provides the tribunal with criteria to assist in making this determination, and Bill C-19 provides additional criteria.

The act then goes a step further. A failure to pay the AMP is not a criminal offence; it is a debt to the crown, and nothing in Bill C-19 changes this.

[*Translation*]

The potential lucrative benefits for deceptive marketing in various media need to be taken into account in assessing an appropriate remedy. Current AMP levels of up to $200,000 could be seen by certain companies as nothing more than a cost of doing business.

In reality, if misleading claims attract customers and generate revenues, there is now little incentive to comply with the Act. Ultimately, it is law-abiding competitors and consumers who pay the price.

[*English*]

Mr. Chairman, it might be useful to consider how the AMP scheme works, with the following example.

A small advertiser in Canada offers a number of products for sale directly to consumers, including a gas-saving device. The company generates $12 million in revenues annually, including $2 million from the sale of this device. Let us assume that this device actually does not work as advertised.

First of all, it's important to note that if the company had exercised due diligence, there would be no AMP at all in accordance with the provisions of the act. However, if the company failed to exercise due diligence, how would the tribunal assess an AMP in these circumstances?

To ensure that the AMP is remedial and not punitive, the tribunal would consider the factors set out in the act to help it assess the amount of the AMP. Accordingly, the tribunal would be required under the act to take into consideration that the gross revenue from the sale of the product was $2 million. The tribunal would look also at the financial position of the company in question, recognizing that the company only generates $12 million a year in total revenues. If the company had corrected its conduct, that would further mitigate the AMP assessed, as would the absence of a prior history of contravening the act.

All these assessments are based on the criteria set out in the current legislation supplemented by Bill C-19. They are clearly focused on removing any financial incentive to break the rules and convincing the company to comply with the act in the future. The AMP is not intended to punish the company. While it is difficult to say with precision what the AMP might be, we do not expect it to be anywhere near the maximum of $10 million in these circumstances.

At the same time, the AMP would likely be much larger for a retailer who targeted a much broader range of customers, generated substantially more revenue from the conduct, and had engaged in precisely the same conduct before. Such a large AMP would reflect greater economic harm and the need for stronger deterrents.

[*Translation*]

Under C-19, this case would make an excellent candidate for restitution to consumers. If the court ordered restitution, or if the company offered restitution voluntarily to correct the impact of its conduct, this would affect the amount of any AMP ordered, again in accordance with the criteria.

I hope that this hypothetical example provides a helpful illustration of how this bill before you is carefully crafted to ensure that it can address a broad range of conduct with remedies that are measured and appropriate for the behaviour and are not penal in nature.

● (0910)

[*English*]

Let me close my remarks by saying that Bill C-19 will strengthen the Competition Act to effectively deter anti-competitive practices in all industries. It will strengthen Canada's ability to innovate and compete in a global economy. The amendments contained in Bill C-19, along with the two amendments proposed by the government as part of its energy relief package, constitute a careful balancing of the interests of consumers and businesses.

Mr. Chairman, the bureau must have the legislative tools necessary to ensure compliance with the law. The Competition Tribunal must be equipped with an appropriate range of remedies to deal with anti-competitive practices brought forward by the bureau, including financial penalties and restitution. Bill C-19 provides these tools and enhances the bureau's ability to respond to anti-competitive behaviour in the Canadian marketplace.

Thank you. I'd be pleased to answer any of your questions.

The Chair: Thank you, Ms. Scott. If we go a little past 10 o'clock with your time slot, is that okay?

Ms. Sheridan Scott: Absolutely.

The Chair: We're trying to get all members on. They will get to the point quickly with their questions.

If you are staying for the next half of this morning session to help us start the clause-by-clause, does it matter to you if members ask questions related to the amendments during this first hour, or would you prefer to leave that for the clause-by-clause?

Ms. Sheridan Scott: We're going to change our panel slightly when we move to the clause-by-clause, so depending on the question, it might be preferable to wait.

The Chair: Okay.

With the indulgence of members, if you feel the need to ask a question with amendments during this hour, feel free, but we'll take Ms. Scott's advice that she'd prefer to leave it to the next hour. We'll take that question as a notice for the next hour, if that's okay. Perhaps we could at least focus for the most part on the constitutional questions.

So I'm assuming, James, you'll start us off, and then Paul.

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you, Mr. Chairman, and thank you, Ms. Scott, for coming in today.

Reading Professor Hogg's testimony, it caused me quite a great deal of concern, and I have to say I'm a little surprised, so I'd like you to clarify some of your comments. You state that the AMP is not intended to punish the company, and you also state that the Competition Act provides explicit instructions to the tribunal that orders for AMPs "shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment." I'm not sure exactly how you can differentiate. You go on to say that the act then goes a step further, and failure to pay the AMP is not a criminal offence, but is a debt to the crown. I guess the simple question is, what if the company does not pay the debt to the crown?

Ms. Sheridan Scott: I'll ask Rhona to respond to that.

Mrs. Rhona Einbinder-Miller (General Counsel, Competition Law Division, Department of Justice): If the company doesn't pay the debt due to the crown, then it is civilly enforceable like any other debt due to Her Majesty by the civil procedure, basically, as any other civil debt would be enforced if it were owing from one private citizen to another.

Ms. Sheridan Scott: I guess the point we're making here is they aren't exposed to penal sanctions, to being sent to jail. They're certainly not exposed to that penal sanction. In terms of a penal sanction, or if one characterized the amount of money as being so high that it would amount to a penal sanction, we simply don't think that would occur, given the statutory framework that's in place now, supplemented by Bill C-19.

There are careful criteria that have been enunciated. These criteria clearly go to the enrichment to the company for engaging in these sorts of behaviours, as opposed to a fine that would punish them.

Mr. James Rajotte: This may be a simple question, but what if the company just refuses? "We don't recognize this; we're not paying."

Ms. Sheridan Scott: That would be like anybody else who would refuse to pay a debt: you would proceed against them as a civil matter. So the remedies that are available among ordinary citizens would be the same remedies that would be available in this case. Certainly one would never say that you are being penalized and that it is a criminal punishment if you fail to pay your debt as an ordinary citizen. That's simply not criminal in nature.

● (0915)

Mr. James Rajotte: Professor Hogg also talked about a problem with section 36, and some problems in using due diligence defence in a civil matter. Can you explain for us the difference between the due diligence defence and how it works in criminal and civil cases?

Ms. Sheridan Scott: I'm going to ask Brendan to provide a couple of comments about cases he has worked on in the fair business practices area, but the point in the legislation about due diligence is that if companies take steps to try to make sure that they're not engaged in misleading advertising, then there can be no AMP levied, and we would assume that companies would engage in these sorts of practices to ensure that they are in compliance with the law.

Brendan, do you have an example you can give, or any further comments you'd like to add?

Mr. Brendan Ross (Senior Competition Law Officer, Fair Business Practices Branch, Competition Bureau): That's it in a nutshell. Due diligence is a legal concept that exists outside of our statute as well. The idea is simply to take all reasonable care to make sure the consumers aren't misled or deceived by your representations. In a product case, that might involve, for instance, making sure you test the product. You make sure that there are tests to substantiate the claims you're making about it, and make sure that it actually works.

An absence of due diligence would be to do nothing to check to make sure the product works, and instead mount a million-dollar advertising campaign to sell it to Canadians.

Mr. James Rajotte: Is there a difference between civil and criminal in how it's used or applied?

Mr. Brendan Ross: I'm going to defer to counsel on the difference between criminal and civil, but I can tell you that the concept of due diligence is not actually specific to our statute. We just bring in that legal concept. It exists outside of the act as well, so I don't think Rhona is going to tell you there's much difference in the concept, but I'll defer to counsel.

Mrs. Rhona Einbinder-Miller: It's mainly in the procedure. In a criminal trial it is a defence so that the accused has to prove on the balance of probabilities, as opposed to the crown's burden. It amounts to the same thing in a civil proceeding, except that in the context of a civil proceeding the court could not impose an AMP if the person in the civil proceeding also shows due diligence, the steps that he or she took to prevent the occurrence of the conduct.

Mr. James Rajotte: The AMPs, to me, seem very, very large. It seems to me that the bureau has already been successful in certain cases in achieving AMPs in the million-dollar range in negotiated settlements of marketing practices cases.

Maybe you've already provided this to committee, so if you have, that's fine, but can we get a list of casework that justifies the need to increase the AMPs by this massive amount? Have there been 10, 20, 30, 40, 50 cases to justify this piece of legislation that increases the AMPs by this amount?

Ms. Sheridan Scott: Let me make just a couple of comments before I respond more directly to the amounts of money.

We should always remember that in this legislation, the AMP set out is a maximum; it is not imposed, necessarily. That's why we thought it would be useful to run through an example that the tribunal—because we take our cases for enforcement to the tribunal—

Mr. James Rajotte: I understand. I'm still asking for the.... It is a massive increase.

Ms. Sheridan Scott: They will be able to go up to $10 million.

In terms of circumstances where there has been a fine levied for around $1 million, there are only two examples I'm familiar with—and Brendan will correct me if I'm wrong—that would be at that level. Those are exceptions, of course. These are not fines levied by the tribunal. The tribunal is the judicial body that has been charged with the responsibility of interpreting our legislation and issuing orders.

In those exceptional cases, they were the result of a consent agreement where the party was willing to negotiate a settlement with us. That's exceptional. Not all parties are willing to negotiate settlements.

For example, in the Sears case that Brendan was directly involved in, Sears did not want to negotiate a consent agreement. In the Sears case, the maximum AMP that we could request was $100,000. That was the maximum that we could request. The proposals that we're putting forward would allow the tribunal to look at the circumstances in the Sears case. They would look at the product that was advertised, they would look at the financial impact, they would ask themselves economic questions, and then they would decide what the appropriate amount would be. But I'm sure you'd agree that $100,000 is not a significant amount of money in the case of a large corporation like Sears.

● (0920)

The Chair: James, we can come back to you. I'm sure we'll have time.

Mr. James Rajotte: That's not what I was asking, but...

The Chair: I'm sure we'll get you back on.

Paul, Marlene, and Bill Siksay.

Welcome to the committee today, Bill.

Paul, please.

[*Translation*]

Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ): Welcome, Ms. Scott.

I wish to tell you how beautiful a day today is. In the lives of parliamentarians, there are many frustrating times, but this is something altogether different with regard to the amendments tabled by the government, especially having to do with the investigative power provided under the Competition Act. I have the feeling that Mr. Finckenstein's ghost is walking about somewhere in the building. He must be delighted with what is taking place. For my part, I am pleased that you have followed up on this file.

I know that we will be dealing with these issues at the clause by clause phase of our study, but I would like to ask you an initial question in order to do a little bit of preparatory groundwork. The text as it stands suits me quite well. I do however require some explanation of subsection 124.11(4) of the Bill which provides that: "(4) If, on the *ex parte* application of the Commissioner or his or her authorized representative [...]"

Ms. Sheridan Scott: I do not have the text in front of me.

Mr. Paul Crête: We can give you a copy.

Ms. Sheridan Scott: It is all right. I have it here.

What exactly is the issue?

Mr. Paul Crête: It is what was amendment G-2, and it is entitled "Studies on the state of competition".

Roughly speaking, with this amendment the investigative power applies to the Canadian economy as a whole. That suits me just fine. This is a provision that we have been asking for for a long time.

Subsection 124.11(4) of this proposed new clause reads as follows:

> (4) If, on the *ex parte* application of the Commission or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation that a study is being carried out under this section and that a person has or is likely to have information that is relevant to the study, the judge may make an order under section 11.

Could you tell me what consequences this clause might have?

We now have a general investigative mandate, but I would like to know if this provision constitutes a restriction or a refining.

[*English*]

The Chair: A little slower, Paul.

[*Translation*]

Ms. Sheridan Scott: This is the main addition proposed. We now have a power to subpoena when we have reason to believe that there is anti-competitive behaviour at play. We do not have the power to examine the market. That then is the major change involved here.

Mr. Paul Crête: Indeed, the principal argument...

Ms. Sheridan Scott: The idea is to give ourselves the power to demand that information be provided to us. This could be confidential information or information to which we do not have access, that is not public.

Mr. Paul Crête: Does subsection 124.11(4) mean that the authorization of a judge will be necessary in order for such studies to take place or that you will be able to call upon a judge in cases where there is a refusal to supply you with the relevant information?

Ms. Sheridan Scott: We will proceed in this manner if we believe there is a need to get a court order in order to obtain this information. In this way, those involved will be confronted with an obligation. At the present time, when we request information, compliance is voluntary. If the party in question does not follow up on our request, then we have the right to call upon a judge. This grants us the same power with regard to our market studies.

Mr. Paul Crête: If I understand correctly, this situation is similar to that of the Committee when it asks people to appear as witnesses and they refuse. We are then able to demand by subpoena that they appear.

Ms. Sheridan Scott: That is correct. These three avenues are at our disposal. We can summon them to appear before us, we can have them sign under oath or simply submit the required information.

Mr. Paul Crête: I must say that I am delighted with this result. I nevertheless have a question to put to you, this one regarding the penalties. The presentations made by the retail trade people were completely different in nature.

I would like to know if you have numbers pertaining to the effects that the increased fines would have on small, medium and large companies.

When the matter was dealt with during the course of the presentation, I got the impression that a significant increase of the fines might act as a deterrent for everyone, but that the ramifications would probably be greater felt by the large companies.

Do you have any statistics by business category, in other words, the percentage of companies convicted or found guilty of non-compliance with the Competition Act?

● (0925)

Ms. Sheridan Scott: I do not have this information with me, but we could supply you with the list of the agreements negotiated with people who were the object of an inquiry or of those cases that were brought before the tribunal. That would give you some idea. I do not know if Brendan has any examples...

Mr. Paul Crête: In your view, will these amendments have the same effect on all businesses, be they small, medium or large? Will some of them be more affected than others?

Ms. Sheridan Scott: I do not really understand the argument that some businesses would be more fearful of indulging in creative or innovative advertising. We are in favour of creative advertising, that is clear. We encourage this and it is profitable for the market. It is misleading advertising that we do not like. There is a major difference between the two. I believe that most Canadians can differentiate between creativity and misleading advertising.

Mr. Paul Crête: The example I am going to give you is somewhat caricatured. Let us take the case of the owner of a convenience store who, whether wilfully or not, places an ad that contains an error and that this ad is determined to be misleading. A penalty will be levied on him.

Let us now imagine the same situation, but this time involving Wal-Mart. The collective impact will in this case be much greater, be it for the company or the community.

Why do we not create some kind of scale in proportion to the size of the business involved?

Ms. Sheridan Scott: That is precisely the reason why there are criteria in the act. In English, we talk about due diligence. But all companies and businesses, be they large, medium or small, are capable of asking themselves questions.

The Chair: Is that all right, Paul? Thank you.

[*English*]

I'm sorry; finish up, Ms. Scott.

[*Translation*]

Ms. Sheridan Scott: To conclude, I would like to say that in our opinion, most companies act in an honest and reasonable fashion. We have given you examples, but these are not cases where we would intervene, because they are not truly matters of misleading advertising.

[*English*]

The Chair: Thank you, Ms. Scott.

Ms. Marlene Jennings, please.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much, Mr. Chairman, and thank you to the witnesses for your presentation and your presence here today.

I have a few questions for you.

First of all, when minister Emerson appeared before our Committee, we asked him if he had any information with regard to the amount of the fines for collusive behaviour in force in other countries. Do you have any such information?

Also, do you have any information concerning the economic benefits of the market studies done in other countries?

And finally, you mentioned the Sears case and stated that under the law as it now stands, the maximum fine would be of $100,000. You also stated that if the amendments pass, the tribunal could then also take into account the gross income from the sale of the product and the total sales of the company.

I would like to know the gross income for Sears from the sale of the product.

● (0930)

Ms. Sheridan Scott: With regard to the fines imposed in other countries, the United States increased theirs in 2004. For businesses, the fines for this type of behaviour went from 10 million dollars to 100 million dollars. For individuals, the maximum was increased from $350,000 to one million dollars. Furthermore, people can be put in prison for up to 10 years.

For individuals, in England, the fines for this type of behaviour are at the discretion of the court—they can therefore be just about anything—and the prison terms are of five years. Companies can be forced to pay up to 10 percent of their total sales. For large corporations, of course, it is much more than the 10 million dollars proposed under Bill C-19.

In Australia, for the time being, these are civil and not criminal matters. The maximum is 10 million dollars. However, this will soon move into the criminal sphere, and the fines will be steep, but they have not yet been set because they are still working on their bill.

In Europe, these are civil as opposed to criminal matters, and the maximum fine, as is the case in England, is 10 percent of total sales.

Your second question related to the economic advantages of market studies. It must be said that different people have different ways of defining market studies. The trend towards this type of analysis is quite recent. I am not talking of studies for which years are spent analyzing the market, but of more limited studies.

Hon. Marlene Jennings: More limited in scope.

Ms. Sheridan Scott: Yes, indeed.

Several countries have just amended their legislation in order to provide for this possibility. For example, legislative changes were adopted in England in 2001 in favour of market studies. It is difficult to answer your question and to determine what positive economic impact there is. However, we consult with our international colleagues in order to gain from their experience and learn things, since we are able to amend our legislation. Last week, we met with several foreign representatives who explained various things to us. They made certain recommendations pertaining to a case in which there were guarantees for a new car. Their recommendations were estimated at more than a billion dollars, 600 million of which for the guarantees and 225 million for the electronic tools. Those are their numbers, but it is an indication that if we accept these recommendations, they will have a serious impact.

In the United States, they mostly made recommendations in the area of legislative reform, and Congress decided to amend the law. In such a situation, it is difficult to calculate the economic impact.

In Europe, two studies have just recently been undertaken. This is the first time in a very long time that such a market study is being done. I therefore do not really have any details about it. I attended an OECD meeting last week. When we went around the table to talk of future business, I suggested that we have a discussion on market studies and that we share our respective experiences in this area. I believe that this is what we will be doing in the spring or fall. The 30 countries that sit on the Competition Committee will discuss the successes they have had with market studies and the benefits that can flow from them.

Hon. Marlene Jennings: Perfect.

And what about Sears?

Ms. Sheridan Scott: With regard to Sears, I would prefer to let Brendan respond, because he is in charge of that case.

[*English*]

Mr. Brendan Ross: I think your question was on what kinds of revenue numbers we were talking about in the Sears case, if I'm not mistaken. The requirement that we have evidence about the volume of sales affected by the conduct is something in Bill C-19; it's not currently in the act, so that evidence wasn't required in the Sears case. There was information in this regard, but unfortunately it's covered under a confidentiality order that the tribunal issued. I can say, however, with a lot of confidence that the revenue for a single year was many times over the cap that we're talking about here in terms of the $10-million cap. It would be many times past that.

● (0935)

Hon. Marlene Jennings: But the example that Ms. Scott gave was about...false advertising—I forget what the term is now—that made the company $2 million gross, the sale of that particular product, with a $12 million gross revenue for that year.

Now, my question is, do you have the numbers? You're talking about how, in the case of Sears, the maximum we could impose was $100,000. So the implication is that the money Sears made from the sale of the particular item in question was enormous, and $100,000 is a drop in the bucket. Can you give us any idea as to the depth, the scope of the sales generated, the income or revenue generated from the sale of the items in question?

The Chair: Give it a try.

Mr. Brendan Ross: I'm trying my best to make sure I don't step across the tribunal's confidentiality order.

Hon. Marlene Jennings: Sure.

Mr. Brendan Ross: It would be on the order of tens of millions of dollars per year. I don't know if that's helpful.

The Chair: That may be as far as Mr. Ross can go, Marlene.

Hon. Marlene Jennings: It's extremely helpful, thank you. And I wouldn't want to get you in trouble with the tribunal.

The Chair: Thank you, Mr. Ross.

Thank you, Marlene.

Bill, welcome to the committee.

Bill Siksay, then Brad, then Larry.

Mr. Bill Siksay (Burnaby—Douglas, NDP): Thank you, Mr. Chair.

Thank you, Ms. Scott and your colleagues, for being here this morning. I'm making a guest appearance, so I'm not as knowledgeable as some of my colleagues here this morning, but I have a few questions.

In your statement this morning, you used the example of the advertiser with the gas-saving device. I wonder if you could just take it a little further and talk about how the restitution to consumers might be made in a situation like that, and what considerations would go into that?

Ms. Sheridan Scott: Brendan, can you respond to that, please?

Mr. Brendan Ross: Sure. The structure we proposed in Bill C-19 would allow the tribunal a lot of flexibility. If it was a direct seller, for instance, that had customer lists, the tribunal could simply order partial or complete restitution, depending on the facts of the case. Alternatively, the structure is such that the tribunal could say that the restitution should cost $1.5 million and it should be transferred to a fund administrator who will advertise. Consumers can make claims against the fund, and the fund administrator will handle that process.

So there's a lot of flexibility, depending on the circumstances. Restitution can change dramatically, depending on the quality of customer lists. You can, in certain circumstances—and the FTC does this routinely—advertise to consumers. It's a bit like a class action. You can say if you bought this gas-saving device, there's been a finding that it does not work, and if you want your money back, write in and put in a claim form by way of affidavit. So the tribunal's been given broad discretion on how to manage that process.

Mr. Bill Siksay: At some point, a provision kicks in on due restitution to groups and organizations as well. When would that kick in? Is that a new provision in this legislation?

Mr. Brendan Ross: There's no provision of that structure in there, in my understanding. It's really a direct-to-consumer thing.

Mr. Bill Siksay: It would be individual consumers who would be involved in that kind of restitution.

Mr. Brendan Ross: Right.

Ms. Sheridan Scott: Maybe I'll add this. The advantage, though, is that we would be bringing the case to the tribunal and individuals would not have to bring the case. It would be one single order ordering restitution, and it would flow from the action that we were bringing before the tribunal.

Mr. Bill Siksay: All right. Does the office of consumer affairs of Industry Canada have any relationship to the bureau? Are they involved in the restitution process? Is there any cross-conversation on that?

Ms. Sheridan Scott: Well, we certainly have conversations with our colleagues in that department. In terms of this activity, it would be an enforcement of legislation, and we are quite separate from Industry Canada with respect to the enforcement of the legislation.

Mr. Bill Siksay: Okay.

I have a general question. There are new duties associated with Bill C-19. Is there money in your budget to accomplish those new duties?

Ms. Sheridan Scott: Do you mean in terms of market studies? That's not in Bill C-19 yet.

Mr. Bill Siksay: Yes.

Ms. Sheridan Scott: There are additional cases brought on by the decriminalization of the pricing provisions. I think that when we've spoken to the committee before, we have indicated that we will realign our budget and absorb the costs that would be necessary to do those investigations.

With respect to market studies, the government will allocate additional funds, somewhere in the order of $3 million a year, to allow us to do those.

Mr. Bill Siksay: Does the reallocation that you have to do in light of Bill C-19 affect your ability to deliver service in a timely fashion?

Ms. Sheridan Scott: Of course, we can't do all the enforcement that we want to do. When we're doing X and not Y, it means that we're not doing as much as we would like to be doing. But I think I indicated to the committee before, with respect to that one amendment for the decriminalization of the pricing provisions, that we think we would be able to absorb it.

In 2006 our real issue kicks in, when our temporary funding of $8 million ends. That's our preoccupation. We think we may be faced with probably $2 million in additional costs, due to the enforcement under abuse of dominance.

● (0940)

Mr. Bill Siksay: Thank you, Mr. Chair.

The Chair: Thank you, Bill.

Brad, Larry, and Marc.

Brad, please.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): Thank you, Mr. Chair.

I find it a little interesting to watch different sets of lawyers go back and forth.

I think I'll make a comment before my question.

Irrespective of what we as committee members decide—and most of us here aren't lawyers—if the legislation is passed as is, it will go to court. One set of lawyers will argue against another set of lawyers, and some day the Supreme Court or maybe a lower court will decide it. Who knows what will happen? I've heard two excellent presentations on both sides of the issues.

Having said that, and with that as my preamble, let's assume hypothetically that Professor Hogg is right and the charter case holds, and so forth, and it's stuck down. What would be the practical effect on the rest of the legislation? Would you then consider it to be useful and functional? How severely would it be damaged in its useful practicality, if Professor Hogg is right and the AMP provision is struck down? Would it have a major effect or would it have a minor effect?

Ms. Sheridan Scott: We believe that the increase in the level of AMPs will have a deterrent effect. We would simply say there will be fewer deterrents than there would be if the AMPs were in place.

But the only aspect that he's attacking is on the AMPs we're proposing, so the rest of the legislation would stand if there were a constitutional challenge.

Mr. Bradley Trost: But what would be the practical effect? It would stand, but would it then accomplish the policy objective?

We don't have twenty pieces of legislation; we have one. It's an integrated package for a reason. On the integrated package, in your opinion, you don't think it would be as affected, but how substantive would it be? What other remedies would accomplish the same goal and might be a substitutionary option, instead of the current provisions?

Ms. Sheridan Scott: The other provisions are very different in their impact on the decriminalization, the returning to a law of general application, and what not. I don't think they would be at all affected by the AMPs.

I wasn't quite clear on Professor Hogg's opinion on this, but one of the possible interpretations is that the AMP would be unconstitutional only if it were at a particular level. It would be for the finding in a particular instance, where the tribunal determined that it was going to levy a fine that was significant, and it would only be found to be unconstitutional in that one case.

If the tribunal had a lower amount in another case, it could not possibly be characterized, as he tries to do, because for a penalty of $1,000, it's obviously very difficult to characterize something like that as penal. Those ones would all stand.

To the extent that it is unconstitutional, it would be that one decision by the tribunal, as opposed to the regime, that would be challenged.

Mr. Bradley Trost: I'd like to look a little bit at the difference between sections 52 and 74 of the act. They both deal, as I understand it, with false and misleading advertising. Section 52 is the criminal reference, and section 74 is civil. What was the particular reasoning behind choosing to amend the civil section and not so much the criminal?

Ms. Sheridan Scott: I'll let Brendan provide some more details on that, but the idea was to change the regime for AMPs, administrative monetary penalties. Those penalties relate to civil actions as opposed to criminal actions. When we're taking criminal actions, of course, people are exposed to prison sentences as well, and can be exposed to fines.

If we took a criminal action, and it went by way of indictment as opposed to summary conviction—and I know that lots of lawyers like to say lots of things of things, so I apologize for that—

Mr. Bradley Trost: I actually do know what those two terms mean, so keep going.

Ms. Sheridan Scott: Okay.

Normally, if we take the criminal track, we would go by way of indictment, not by way of summary conviction. If we were going by way of indictment, again, the fine would be in the discretion of the court, so it could be significantly higher than $10 million if the court thought that was appropriate. Prison sentences could be imposed in that case as well.

For the criminal side of misleading advertising, we already had fines that would be fairly significant. For the civil side, we were really looking at the introduction of AMPs for abuse of dominance, complaints between businesses, and then, looking on the other side, complaints between consumers and businesses. We thought it was appropriate to have similar AMPs on the civil track imposed.

● (0945)

Mr. Bradley Trost: Going back to my original question, perhaps I could have an official legal opinion here. I mean, witness testimony is good, but it wouldn't hurt to have the official legal opinion that has been suggested.

Ms. Sheridan Scott: I'll have Rhona respond to that.

Mrs. Rhona Einbinder-Miller: The Department of Justice is confident that on challenges, the constitutionality of the law would be upheld, but we're not in a position to table an official legal opinion. The Department of Justice and the Minister of Justice have to ensure that all bills are compliant with the charter before they're tabled—

Mr. Bradley Trost: I understand that, but I also realize that nothing's perfect. If it were perfect, the justice department would be the Supreme Court. But why can't an official legal opinion be tabled? Is it just bureaucratic reasons, or technical reasons, or...?

Mrs. Rhona Einbinder-Miller: I think it's the matter of solicitor-client privilege. We wouldn't want to do anything to jeopardize that.

Ms. Sheridan Scott: We think making the opinion public waives the privilege, essentially. Now, I could certainly undertake to provide you with some more detailed comments, if you wish, in writing. We could try to do that. It's just on the formal legal opinion that we solicit, we would be very worried if those started to be placed in a public forum, because then we would have waived our privilege and we would no longer be able to protect our solicitor-client privilege.

If you think it would be useful to have some additional comments, we could certainly do that.

Mr. Bradley Trost: It would be. As I said earlier, you have a bunch of non-lawyers here trying to split what undoubtedly is going to be argued some day in the courts.

Mrs. Rhona Einbinder-Miller: We're here to assist, so—

Mr. Bradley Trost: As was Mr. Hogg, and he assisted in a different fashion.

The Chair: Thank you, all.

Larry, then Mark, and I'm not sure if I have any other questioners after that.

Larry, please.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Thanks to all of you for coming. Since my colleague did a preamble, perhaps I'll do one too.

I can't agree with him that the Supreme Court is perfect, but it's the best we have, so it's very good. I think too often in committee people muse about the constitutionality of the bills we're doing in various committees. I'm not that worried, because I know that the Department of Justice thoroughly goes through every bill. They have lots of experience in checking the constitutionality of bills, and they would never get this far otherwise; that's usually what holds them up.

As my first question, we heard that AMPs for deceptive marketing practice will be far greater than criminal sanctions for misleading representation under the act. How can that be?

Ms. Sheridan Scott: Again, it's important to remember all the different tracks we have. When we look at the criminal side, it depends whether you go by way of summary conviction or you go by way of indictment. As I was mentioning earlier, on the indictable track, which is the one we normally go down, the fines are at the discretion of the judge, so conceivably they could be as high as the AMPs that are being proposed. When people comment on criminally they're less than this amount, that's the summary conviction route. For summary conviction, the maximum is $200,000.

That could be what the comment relates to. But people shouldn't forget that there's also an indictable track, and that's at the discretion, so conceivably it could be higher.

Hon. Larry Bagnell: We heard from the Retail Council of Canada that the proposed AMPs would show aggressive advertising. What are your views on their comment?

Ms. Sheridan Scott: I was indicating earlier that I did read that comment that they made. I'm not sure what they mean by aggressive advertising. They also have said, in the past, it will chill innovative and creative advertising. We're obviously very much in favour of aggressive advertising—innovative, creative advertising— but not aggressive advertising that is misleading the public. That's the real difference that we see.

As I said earlier, I don't think that ordinary Canadians have a difficulty in drawing distinctions between what is deceptive and what is innovative and creative. Certainly we provide opinions to some companies that are concerned about this, and we provide guidance. We publish guidelines that indicate how we approach the enforcement of those sections. In the Sears case, for example, we had published guidelines on our website to instruct companies on how we were going to go about interpreting the provisions and enforcing them. In that case, the tribunal ultimately said that, yes, we were correct; our guidelines were an accurate reflection of the law.

● (0950)

Hon. Larry Bagnell: Following up on Mr. Rajotte's question, could you just clarify the penalties available under the provisions of the act?

Ms. Sheridan Scott: Go ahead.

Mr. Brendan Ross: Currently it's $100,000 for a corporation, first time, and $200,000 on a subsequent finding of illegal conduct.

Hon. Larry Bagnell: That's it.

The Chair: Thank you.

Ms. Scott is going to stay for the next part of this meeting. I only have Bill that wanted to ask a question in this first section, and James. I think it's in the interest of getting the best bill that all members feel fully satisfied to ask Ms. Scott any questions.

So Bill, then James.

Mr. Bill Siksay: Thank you, Mr. Chair.

Could I just come back to the question of restitution again? In the bill, on page 3, at line 11, there's an amendment to section 74.1 of the act, in new proposed subsection 1.2. Can you explain how that relates to the question of restitution for me? I think that's where I was getting the organizations and groups.

Ms. Sheridan Scott: Brendan, why don't you just provide a bit of guidance on that?

Mr. Brendan Ross: Certainly. There's a distinct possibility, depending on the quality of the list, that you won't be able to find all the consumers. In fact, it's hard to come by data, but sometimes up to 80%, or more, won't find out about it, or won't respond, won't put in a claim. If that 80% then goes back to the company, that's an option that the tribunal has, but the tribunal also has an option, say, to give a remedy that is known as a *cy pres* remedy, provided to an organization that's going to try to benefit consumers as best they can—in other words, as a proxy for those who should have gotten their money back. That's really what new proposed subsection 1.2 is all about. It's giving the tribunal the authority to decide to do that in appropriate circumstances.

Mr. Bill Siksay: What would be the mechanism that would be set up to make that determination?

Mr. Brendan Ross: Both sides would make submissions on it, and then the tribunal, in setting up the whole system, whether it be by way of a fund administrator, a self-administrator, what have you, would say, for instance, when consumers put in these claims, they have until such and such a date, and then the balance could go to a group representing consumers who have suffered losses as a result of phony cancer therapies, or something like that.

The Chair: Thank you.

James.

Mr. James Rajotte: Thank you, Mr. Chairman.

I just want to clarify two issues. First, I want to follow up on Mr. Siksay's comments on restitution, because one of the concerns we have is the section of legislation is very vague here.

I want to quote from a person who appeared before the committee, Mr. Donald Affleck, the chair of the national competition law section of the Canadian Bar Association. He said:

> I have read of members saying that this is restitution. .... That isn't what the statute says. It does not speak to restitution. It says that this money is "to be distributed among the persons to whom the products were sold". It doesn't say people who lost money, people who were adversely affected, which it could easily have said. .... There's nothing to require that this non-profit organization have any connection with the community in which he's carrying on business.

Why was this section drafted in such a vague manner, and how would you respond to Mr. Affleck's comments?

Ms. Sheridan Scott: Brendan?

Mr. Brendan Ross: Certainly. It's probably worth underlining, first of all, that in terms of the issue of loss you don't get restitution until there's been a finding that consumers were materially misled or deceived by an advertisement. "Materially" means you were influenced into purchasing something. You don't get here until someone has been, or consumers are being, materially misled by these representations. That means buying things, typically, that don't work.

It should be contrasted with, for instance, the ordinary selling price provisions, which are separate sections of the act. Restitution doesn't apply to them.

That's the first step. From then on, as far as we're concerned it's quite implicit that no tribunal is going to interpret these provisions as saying we're going to pay money to consumers who didn't lose anything. That's not the intention and it's not our understanding of how it works.

The issue not-for-profit is something.... We did a lot of benchmarking with the Federal Trade Commission in the United States. You'll certainly see that this is a common feature of many of the agreements they've reached on these major cases, where restitution can be $20 million—for instance, for phony cancer therapies.

It will try to structure a system such that if there is a residue, instead of its going back to the company that was perpetrating the deceptive marketing, it's going to go to a group that comes as close as they can to those who were victimized by the deception.

● (0955)

Mr. James Rajotte: My second issue is relating to what I was asking about earlier, which is, to increase the AMPs by this amount.... I'll just repeat the question I had. It seems to me if you make a major legislative change like this, a major change to the level of the AMPs, there should be a reason for doing so. The reason for doing so, it seems to me, would be a series of cases—10, 20, 30, 40 of them—that would cause the government to say: there's a problem here; we have all these cases, in massive amounts, that are not dealt with by the current level of AMPs. What you did last time on the question was go through the Sears case. If I understand it correctly, there are only two cases you're pointing to from the past.

Are there 30 or 40 cases that have caused the government and the bureau to say they need to massively increase the amounts of AMPs? How many cases have caused the government to introduce changes in AMPs of this amount? Just identify them: are there 20, are there 10?

Mr. Brendan Ross: Let's put it this way. There's a limit to the number of cases we can take. We get perhaps 20,000 complaints of deceptive marketing in a year, in the branch. We can only take a pretty tiny percentage of that, obviously.

I'm trying to be careful, because I always sound a bit paranoid, but we have confidentiality provisions in our act as well. But I can tell you that it's very common to see product scams where consumers are losing a million dollars a month before we step in. It's not uncommon—I can think of two instances, but I can't go into the details—where consumers have lost over $20 million on a project that didn't work, in the space of two years.

Mr. James Rajotte: With all due respect, you're asking us to make major legislative changes based on things that cannot be revealed because of concerns over confidentiality. I respect that, but then what evidence do we have to support this massive increase in AMPs? I have not seen any evidence presented to justify this. All I'm asking for is cases or evidence to justify this massive increase in AMPs.

Ms. Sheridan Scott: I'll come at it a little differently. When we look at the AMPs related to misleading advertising, we also look at them in the context of the legislation and the other AMPs that are being proposed. So when we first were analyzing what we thought would be an appropriate penalty, we began on the abuse of dominance provisions. We were looking at the removal of airline-specific provisions that had AMPs in the $50 million range and decided that was a sort of starting point, because it had been found appropriate in the case of airlines. If we were going to extend it to other industries, we didn't see it as appropriate to decrease the amount of money significantly. So we proposed a $10 million AMP for the first contravention and a $15 million AMP for the second contravention.

Those types of enforcement actions are as between businesses, and as I mentioned earlier, we looked then at AMPs that would be levied as between a business and a consumer, which is the misleading advertising part of the legislation, and saw no reason to draw distinctions to say that the harm was necessarily less in the case of consumer-to-business complaints, particularly when we see the changing marketplace we are dealing with, driven in part by the Internet and globalization of corporations.

We're finding increasingly that our enforcement actions take place around the world, certainly on the misleading advertising front. We are in contact with our North American neighbours—with the Americans and the Mexicans. We have partnerships with them to try to attack some of these issues. We find that economic harm is increasing dramatically, compared with what it was before.

If you ask why that particular amount and which particular cases, the particular amount was really to try to have an even treatment as between the various enforcement actions under the legislation and then to look at the change in the environment in which we do our enforcement.

Did you want to add something?

● (1000)

Mr. Brendan Ross: I wouldn't mind.

And I apologize; it's frustrating for us, because when complaint information comes in, we can't share it with people. The only time we can share information is if it actually gets litigated, and it wasn't litigated, so of course the courts currently can't give us those kinds of numbers. So it puts us at a bit of a disadvantage in terms of being able to give you concrete numbers.

One case that was litigated, so this information is public, is the Universal Payphone System case, in which they managed to get over $7 million from consumers between January and September of one year. That was a litigated case where those numbers were made public by the judge. It gives you a sample, and I can tell you that it's a very common kind of scenario, very common.

The Chair: Okay, James.

We'll continue with this phase of the morning to exhaust everybody's concerns and questions as best we can.

Marlene.

Hon. Marlene Jennings: I'm coming to the issue of cases that were settled and not litigated and there are orders that preclude you from giving specifics about those cases. I understand that perfectly. The Sears case—the question I asked you about—was such a case.

I do understand Mr. Rajotte's frustration. Therefore, I would suggest that you are in a position to give information, including monetary amounts that have been identified, without giving the kind of information that would allow any person to identify the company. For instance, you know there's a case that has been settled, and there's an order, and you're not allowed to divulge. But you know there was an item sold—you don't have to say what the product was—and gross revenues from the sale of that product were in the neighbourhood of $10 million annually, and the corporation had gross annual revenues in the neighbourhood of....

We would have absolutely no clue what area of business that company was in. But you can give us that information, and you could actually prepare a list of say ten cases, or five cases, and simply give us that. That is evidence, because you're here, you're testifying before the committee, and while you have not sworn an oath, it is presumed that you testify truthfully. At the same time, you are under the order of the tribunal, so you cannot give out information that would permit anyone to identify the other party. But you can give out that kind of generic information, which is in fact evidence and might help Mr. Rajotte feel a little bit more comfortable about the types of AMPs being proposed through the amendments. So I would ask you, if you have that, to give it to us.

Thank you.

The Chair: Is it possible, Ms. Scott, to get a sort of generic summary based on real cases—even verbal, I suppose—but without the details?

Ms. Sheridan Scott: We don't have that with us, but we could try to endeavour to identify that, if we have that information. We don't always have the information about their gross revenues. It would depend on the nature of the complaint and how it was settled. We might not have gotten there.

The reason one needs to have that information for an enforcement action is because it goes to the criteria that the tribunal.... So we'll see what we can put together by way of a list, if we have access to that information.

Brendan, do you—

Mr. Brendan Ross: Yes, I can give a certain amount of information.

Hon. Marlene Jennings: Okay, that's great that you can provide some information in future, but do you have some information right now? Because we're supposed to be going to clause-by-clause. Actually, we were supposed to start at 10 o'clock.

Ms. Sheridan Scott: I think we have a couple of cases. Brendan had the one he mentioned before that had been litigated.

Are there any other examples of cases that you can give right away ?

Mr. Brendan Ross: I can give—

Hon. Marlene Jennings: You gave the Sears example, which you said was in the neighbourhood of $10 million.

Mr. Brendan Ross: Tens of millions, yes.

I can think of a variety of different kinds of cases. For instance, in the cases of products that don't work, I can think of several examples where revenues were $12 million a year from the product in question that didn't work. I can think of probably four or five examples off the top of my head in the last five years that would fall into that category. Typically, with products that don't work, I find as a sort of rule of thumb that you're looking at $1 million a month in consumer losses. For a deceptive ordinary selling price, it's a function of market share, but in a market that's even fairly diverse, $50 million in revenues from the products at issue would be a fairly common number to see.

● (1005)

The Chair: I think you've assisted in making a helpful suggestion.

Hon. Marlene Jennings: That was great.

The Chair: Ms. Scott, I'll be soon asking my colleagues, as we plan our clause-by-clause.... We're going to get started, but we're not going to get finished, because we've received amendments this morning, and the package we work from won't be ready to finish anything today. So I'm going to ask the committee if they would be willing to come back Wednesday afternoon.

Maybe a memo targeting, say, a Tuesday-ish deadline, to help colleagues with this very point, would be useful.

Ms. Sheridan Scott: We'd be pleased to provide that.

The Chair: Michael, you'll be the last one on this round. Then we're going to suspend, and then we'll start the other process, the clause-by-clause.

Michael.

Mr. Michael Chong (Wellington—Halton Hills, CPC): I just want to concur with what my colleague James Rajotte has said, and with what Marlene Jennings has said as well.

I've asked in the past a number of witnesses who have appeared in front of the committee whether or not they had empirical evidence, economic studies that have been done, to show that there is a need for such a huge increase in the penalties under this act. In each case I and this committee got anecdotes about individual cases, but there were no studies done of a significant sample size to show that there indeed were problems, based on quantitative evidence. I'm very uncomfortable in proceeding with significant legislation like this when we don't have that evidence.

So I would suggest that if there's any way the bureau could provide this committee with not just a series of anecdotes but some significant studies that have been done to show that there is indeed a problem in Canada with deceptive marketing on a wide scale or that there is indeed a problem with abuse of dominance warranting such a massive increase in these penalties, I think they would really help the committee.

I would also suggest, because this is such significant legislation, that we consider delaying clause-by-clause, because I'm not comfortable, and I'm sure many of my colleagues on this committee aren't comfortable, with making such significant changes without any hard evidence.

The Chair: By way of conclusion—and I'll use Michael's comments as a segue—I think the undertaking of the commissioner to provide by Tuesday-ish not anecdotes but—

Hon. Marlene Jennings: On Monday.

The Chair: Well, by Monday if possible, but Tuesday—

Hon. Marlene Jennings: But if we're going to clause-by-clause on Tuesday—

The Chair: No, it's Wednesday.

Hon. Marlene Jennings: Wednesday, okay.

The Chair: Wednesday if everybody agrees.

Tuesday we have the two ministers, Minister Dion and—

[*Translation*]

Mr. Paul Crête: It is Bill C-55.

[*English*]

The Chair: I'm sorry, it's Bill C-55. Pardon me; I'm a week out of sync.

So Tuesday-ish, we'll have a summary of a sampling of real cases —without identifying names, but based on real cases—that would support the concerns of some members about whether the AMPs are going up based on actual experience.

As far as going into clause-by-clause is concerned, Michael, we are just going to start. I just want to use the 45 minutes we have left to have a discussion of the amendments the government and members are proposing, so that we have a sense of what they are. If there's agreement to start Wednesday and hopefully finish Wednesday or Thursday of next week, we'll go into that meeting better prepared.

Ms. Sheridan Scott: May I just respond to that point?

On the misleading advertising, we'll certainly endeavour to do up a list that will give you some sense of how large these cases are. As I said, our analysis of this legislation began with the abuse of dominance side of the house—business-to-business types of complaints.

I think it's important to remember that the proposal to introduce AMPs in the range we're proposing is rooted in the recommendations of this committee. Those are the recommendations of this committee that we were carrying forward, and the same suggestions have been confirmed in the OECD reports. Whenever they've looked at the Canadian regime, they have suggested that we are out of step and should be amending the legislation to introduce AMPs on the abuse of dominance side.

So that's where this comes from. There isn't an extensive set of studies that was done. I think we should remember the roots in the abuse of dominance.

On deceptive advertising, again, it was a question of looking for appropriate and symmetrical treatment on the consumer-business side of the house. We'll endeavour to get you some information on that.

● (1010)

The Chair: Okay. Thank you.

My apologies to Marc. I accidentally missed your name. Do you want to get on record now?

Mr. Marc Boulianne (Mégantic—L'Érable, BQ): No.

The Chair: Okay. We'll make it up to you in the next four to five minutes.

Mr. Michael Chong: I have one quick question.

Could we have that OECD report tabled?

Ms. Sheridan Scott: Sure.

The Chair: Okay.

Thank you.

We're going to suspend while we shuffle the deck chairs. When we come back we'll start to dip our foot in the pool of Bill C-19.

● (1010)

(Pause)

● (1015)

The Chair: I'd like to reconvene.

We are going to simply start the process of clause-by-clause. I believe all we will get accomplished in the next 40 to 45 minutes is explanation of the amendments by the proponents, starting with the government. Then we'll work down the table in an informal fashion. It's kind of hard to go back and forth. We'll start with the government and go down the table and see how far we get.

In spite of requests to have amendments received prior to the meeting—according to our rule, it is acceptable to have amendments presented at a meeting, so there's nothing really technically wrong with that—we certainly don't have our package ready to go into the step-by-step process. So I'll ask members if there are any objections to us meeting Wednesday afternoon. If we need to meet on Thursday, great. If we don't, then we won't meet on Thursday morning.

If I don't hear any objections, we will try to find a room for Wednesday afternoon.

Hon. Marlene Jennings: I object. Is Wednesday a regular scheduled time for this committee?

The Chair: No.

Hon. Marlene Jennings: Then I object. I have other things. I have other committees. I'm sorry.

If we want to go to clause-by-clause, let's do it during the regular scheduled time. If this committee has adopted a rule saying there's no prior notice for amendments, then live with the consequences. One of the consequences is that I object to meeting outside of our two regular scheduled meetings.

The Chair: Paul.

Hon. Marlene Jennings: As you can see, I'm upset.

The Chair: Yes.

[*Translation*]

Mr. Paul Crête: Mr. Chairman, I seem to recall that a few weeks ago you had asked if we had any objections as to meetings taking place on Wednesday, and everyone had accepted the possibility of holding meetings on Wednesday. As for today, everyone knows that we were waiting for the amendments. It is normal that that took the government some time; we received them, we tabled ours and we are gathering information. I believe it should be possible to wind up our information sharing by 11 o'clock and we could then proceed with the clause by clause study of the Bill next Wednesday. We must send this bill back to the House as quickly as possible, because it is important. I am in favour of studying it next Wednesday.

[*English*]

The Chair: Okay. Just before I go to James, I want to remind you that we did pass a motion to that very effect on October 18.

James.

Mr. James Rajotte: Mr. Chairman, I think I'm along the same lines as Madam Jennings. We have to take our role as parliamentarians seriously. We've just finalized our amendments. What we should do is end the meeting now, let members take them back and digest them, get input from our research, get the evidence from the Commissioner of Competition, and digest it a bit. This is not an easy piece of legislation. You and I both sat on the committee that studied this issue for a long time. It's not an easy issue, either, so I think to rush into this....

I know the government is very keen on one amendment with respect to gasoline prices. That's fine; I have no problem with their being keen on it, but I think waiting a week or a weekend to actually digest this information is not a bad thing. It seems eminently reasonable to me.

The Chair: Marlene, what are your thoughts on this?

Hon. Marlene Jennings: I am seeking some clarification. The committee adopted a rule that, except for amendments to proposed bills, 24-hour prior notice is required. This means that one can bring amendments at any stage of a committee's study of proposed legislation.

Does that then mean that I could show up next Wednesday, while we're in clause-by-clause, and throw down some amendments? Then again, given that the members are saying they do not wish to move to clause-by-clause right now because a whole series of substantive amendments have just been tabled, put in front of them, and they need time to digest them, then I, if I wish to be obstructionist, could do the same thing.

Am I correct, Chair?

● (1020)

The Chair: Yes, you are.

Hon. Marlene Jennings: Then, given that, I would propose that in future...well, first of all, that this committee agree that no further amendments may be brought on this legislation, and second, that in any study of any future legislation, there be a 48-hour prior notice for amendments—and other than that, it would require unanimous consent.

The Chair: It's a very good point. We do have a motion now that prescribes our procedure. I think it's a good point that whatever experience we have from this bill, we revisit the motion. If the committee feels we should change it, that's fine—

Hon. Marlene Jennings: I just made a motion.

The Chair: Well, it would need unanimous consent to be considered as a motion, but before I go to you, Paul, maybe—

Hon. Marlene Jennings: I just gave notice of motion.

The Chair: Okay.

Hon. Marlene Jennings: I gave the 24-hour notice, which means we'll be dealing with my motion next Tuesday.

The Chair: Okay.

Hon. Marlene Jennings: Oh, I don't need notice; there you go.

The Chair: Anyway, next is Paul.

[*Translation*]

Mr. Paul Crête: I believe there are two things here. I would suggest that the general debate with regard to the notice to be given for the tabling of amendments to bills be held later. For today, let us simply deal with the matter of the bill we have before us and see what we might be able to agree on. If we decide that the meeting will take place next Wednesday, and given the fact that we have stated that we need some time to digest all of this, we could decide that the latest possible deadline for the tabling of amendments should be Friday afternoon...

Hon. Marlene Jennings: I agree.

Mr. Paul Crête: ... or Monday morning at 9 a.m....

Hon. Marlene Jennings: I would prefer that it be tomorrow afternoon.

Mr. Paul Crête: ...in order for us to receive them during the course of Monday. That would seem reasonable to me. The rules of the game would be clear for the future. It is our belief that no one among those who tabled amendments this morning had any ill intent. Everyone had to work very quickly in any event.

I would also like to tell Mr. Rajotte that it is not because we sometimes work quickly that we do not work carefully.

We could therefore decide that people have until 9 o'clock Monday morning to table one or more amendments to the Bill and that we will go to clause by clause on Wednesday. Our study would then be finished. Wednesday, we would discuss the amendments and vote, period, so as to be able to bring it to a close Wednesday evening.

[*English*]

The Chair: That's a reasonable proposal.

Bill.

Mr. Bill Siksay: Mr. Chair, I just want to say that Mr. Masse certainly didn't understand there to be any hard and fast deadline for amendments to be in today, but he would certainly endeavour to have anything he would propose ready for Monday morning, if that's the agreement.

The Chair: Is that a reasonable compromise, colleagues, that colleagues could have amendments in by say noon this coming Monday? Is there a great problem if we start Wednesday and maybe finish Thursday if we have all the amendments by noon on Monday? I think there's a will to get this bill done, and I appreciate that there are concerns over certain aspects.

We do have a number of nomination certificates—

Hon. Marlene Jennings: My motion comes before his motion.

The Chair: Yes.

We do have a number of nomination certificates to deal with as a committee, the Jean Chrétien Pledge to Africa Act advisory committee and the Standards Council chairman.

Marlene.

Hon. Marlene Jennings: I made my motion prior to Monsieur Crête's, and I completely agree.

[*Translation*]

I agree with you. I believe that the motion I have presented shows my good faith in this matter.

I would not want anyone to think that I believed that any member of this Committee had any ill will whatsoever with regard to the tabling of the amendments today.

There were no rules and therefore everyone had the right to table amendments at any time, even during the course of the clause by clause study of the Bill. I simply wished to indicate that this did not make sense and I believe everyone understood it.

I am therefore prepared to amend my motion and insert Mr. Crête's. However, I will retain the second part of my motion asking that the Committee adopt, as a general principle, that 48 hours' notice must be given for the tabling of an amendment to a bill.

● (1025)

The Chair: Are you talking about the way things will be done in the future?

Hon. Marlene Jennings: Yes.

The Chair: Paul, you have the floor.

Mr. Paul Crête: I would prefer that we discuss the second part of the motion during a subsequent meeting. I am talking here of the matter of 48 hours' notice for the tabling of an amendment to a bill. Emergencies do indeed sometimes arise.

In the case at hand, let us live with the rule that has just been discussed, and which resembles 48 hours' notice. We will be able to draw the necessary conclusions afterwards and decide if we wish to generalize this principle and apply it to all bills or find some other solution.

Indeed, during the clause by clause study of a bill, it can happen that we reach a compromise on an amendment and that all of a sudden it become appropriate to pass it. In such a case, if the rules prevented us from tabling it, then that would create a problem.

In this case, we are talking about proposed amendments tabled initially by the parties. But during the course of clause by clause itself, compromises can be reached. I however do not wish to get into a debate here and now about the general rule.

Hon. Marlene Jennings: I would like to add this: if, during the course of a clause by clause study, there is unanimous consent, then the motion is in order. That is the case at any point in time, despite the general rule providing for notice.

I am however prepared to agree to your request. This is why I have divided my motion into two parts. The first part relates to the deadline for the tabling of amendments to this bill, which is Monday, October 31, at 9 a.m., as Mr. Crête suggested. The second part of my motion would become a separate motion that we will discuss, I hope, Tuesday during the Committee's study of routine business.

[*English*]

The Chair: Marlene, would you be willing, for the second part—

Hon. Marlene Jennings: I just said that.

The Chair: Maybe I missed it, but could we discuss it at the next business meeting when we discuss procedure?

Hon. Marlene Jennings: When is the next business meeting?

The Chair: I don't have a date, but we do have business meetings from time to time.

Hon. Marlene Jennings: No. I think I've been very generous, conciliatory, and collaborative. I would like the second part of my motion to be that there is an agreement that it will be discussed on Tuesday at our committee. If there's not that same kind of conciliation and collaboration on the part of all of the members—

The Chair: We have two ministers coming on Tuesday.

Hon. Marlene Jennings: Yes. Well, you know what, Mr. Chair, that's the problem—

The Chair: I'm sorry. There are two bills, Bill C-55 and Bill C—

Hon. Marlene Jennings: Well, that is a problem, is it not? It may concentrate the minds of all members of this committee, so that when we do show up on Tuesday we can dispose of my motion in short order as the first order of business.

I don't think the discussion has to be long. I think just about everyone already has a viewpoint on it; therefore, it would be very easy to just read it out and call for the vote. I would be prepared to do that.

The Chair: Thank you, Marlene.

Let's finish with Paul. Then we'll go on to general discussion of the amendments that are proposed.

Paul.

[*Translation*]

Mr. Paul Crête: Madam Jennings, we are well known for our sense of compromise. Would it not be reasonable to do that next Wednesday, after our clause by clause consideration of the Bill? Tuesday, we will be examining Bill C-55. There will be other people here, and we risk holding up... The spokespersons for each party will not necessarily be the same.

Wednesday, we will have gained the experience of having done the whole thing with 48 hours' notice. We could evaluate that experience and then decide. If that is what we do, then will be respecting the spirit of your request. I believe it would be logical to proceed in this way.

● (1030)

Hon. Marlene Jennings: I can accept that. However, the Chairman himself said that there is a very real possibility that we will not be able to finish our clause by clause consideration of Bill C-19 next Wednesday. He stated that we might have to pursue it Thursday morning. I would therefore be prepared to postpone the discussion, the debate and the vote on my motion—the second part of the motion I have just split in two—until 5 p.m. next Wednesday. However, if the debate is not over and if there has been no vote on my motion, I would suggest that we continue Thursday and that it be the first item on the agenda before getting back to clause by clause.

[*English*]

The Chair: Okay, so is there agreement that for the first part of the discussion, the amendments of Bill C-19 be in by noon on Monday?

Hon. Marlene Jennings: No. You said nine o'clock on Monday.

The Chair: Okay, the proposal is for nine o'clock on Monday, and discussion on how we handle amendments in the future be done on Wednesday.

Hon. Marlene Jennings: Wait a second. You'd be in favour if it were at noon?

The Chair: Well, nine or noon, that's—

Hon. Marlene Jennings: I see someone nodding her head yes in the back. Is that the direction you've been given, that you will support it if it's—

Mr. Bradley Trost: We're just asking for clarification here.

Hon. Marlene Jennings: The suggestion from Mr. Crête was nine o'clock on Monday.

Mr. Bradley Trost: We're fine with that.

Hon. Marlene Jennings: The chair has just proposed noon. I'm asking if you are okay with nine o'clock. If not, and you prefer noon, I'm prepared to say noon.

Mr. Bradley Trost: We're okay with either.

The Chair: Okay, we'll leave it at nine o'clock on Monday, and we will meet on Wednesday at 3:30. The clerk will find us a room to continue the process that we will start here momentarily. At that meeting we will discuss the second part of the motion—

Hon. Marlene Jennings: And at 5 p.m. at the latest, even if we have not concluded clause-by-clause, we will suspend clause-by-clause. We will then deal with my second motion. If we have not concluded the debate and vote and disposed of my motion by 5:30 when the committee ends, we will continue that as first order of business on Thursday until it's been disposed of.

The Chair: Okay.

Is it clear that by five o'clock we'll deal with her proposal under part B and continue Thursday if necessary? Is there agreement on that?

Hon. Marlene Jennings: Agreed.

The Chair: Okay, we're agreed.

Let's put on the table the amendments that are proposed by the government and the opposition.

I think Marlene is going to stand in Jerry's place and just put them on the—

Hon. Marlene Jennings: Actually, no. I need to digest all of the amendments. How can I discuss the government's amendments without putting them into context with the other amendments, which have just been tabled and placed before me?

The Chair: I was only proposing, Marlene, that we would—

Hon. Marlene Jennings: You can go ahead and discuss whatever you wish to discuss. I'm not comfortable with discussing something that I have not taken a moment to contemplate.

The Chair: Jerry, unfortunately, has been preoccupied with an important personal matter and couldn't be here to do that, so I understand Marlene's hesitation.

Is there any willingness of the Conservatives or the Bloc to explain their amendments?

Paul.

[*Translation*]

Mr. Paul Crête: I would like to add something. Given that the government has tabled an amendment dealing with the Commission's investigative power, we will withdraw our BQ-1 amendment, which contains the following: "[..] grounds exist for the making of an inquiry into an entire industry sector, or;". The government's amendment fully satisfies us. I am furthermore in favour of having each and everyone of us digest all of this on our own.

[*English*]

The Chair: Do the Conservatives want to talk about their amendments now, or leave that until Wednesday?

Mr. James Rajotte: Next week.

The Chair: Okay.

Before we adjourn, let me just take a moment to clarify that there is a question about the government's amendment proposing the creation of new powers for the bureau, in particular, in relation to the financing of the new powers. So I need to clarify with Susan and the officials and the government whether it requires a royal recommendation. If new money is required, that motion may have to be dealt with in the House at second reading and report stage; we may not be able to deal with it here, should that be the case.

The other amendment is in order, as far as any matters are concerned.

● (1035)

[*Translation*]

Mr. Paul Crête: Mr. Chairman, that would be excellent.

[*English*]

The Chair: I'd also like to let you know that we do have some groups that would like to come back. You may or may not want to do that during the clause-by-clause process. We're being asked by them for copies of government and opposition amendments.

Do I have your permission for the clerk to give out copies of your amendments to whoever asks for them?

An hon. member: Yes.

The Chair: Okay.

I have other things, but I will leave them until Wednesday.

Paul.

[*Translation*]

Mr. Paul Crête: What about the borders?

[*English*]

The Chair: Yes, the clerk is going to speak to Monsieur Crête, Mr. Duncan, Mr. Masse, and Mr. Pickard to get more information on how this border issues meeting should be. It's not really clear from the motion passed by the committee what the officials are being expected to provide, so the clerk will speak to each of the parties and make it very clear so that she can instruct the Border Services people more completely.

[*Translation*]

Mr. Paul Crête: I would like a suggested date for that meeting.

[*English*]

The Chair: You have a date?

No, after that, we'll propose a date.

[*Translation*]

Mr. Paul Crête: I would suggest it be as early as possible, in order for us to be able to...

[*English*]

The Chair: Yes, I know it's important to committee members, and we'll get a date as soon as possible. Hopefully Bill C-19 will go fairly well.

I just wanted to inform you that Michael Chong's motion was in order; I did check with the House Clerk. Our clerk was correct on that.

Yes, Michael.

Mr. Michael Chong: Has the clerk of the committee sent a letter to the Minister of Industry notifying him of—

The Chair: I just signed it yesterday, yes.

Also, we will need to pass a budget Tuesday morning for bills C-55 and C-281 to cover witness costs.

Is there anything else, committee members?

Thank you, Ms. Scott. I guess we will see you and your colleagues next Wednesday afternoon.

Thank you. We are adjourned.

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