



House of Commons
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 032 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Friday, August 7, 2009

—
Chair

The Honourable Michael Chong

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Industry, Science and Technology

Friday, August 7, 2009

• (0900)

[English]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Order. Good morning.

[Translation]

Good morning, everyone.

Pursuant to Standing Order 108(2) and the motion adopted by the Committee on Friday, August 7, 2009, we are studying the proposed sale of certain Nortel Networks assets.

[English]

We're here today, pursuant to Standing Order 108(2) and the motion adopted by this committee on Friday, August 7, 2009, to study the proposed sale of certain Nortel Networks assets.

I'd like to welcome our three witnesses this morning. From Nortel Networks Corporation, we have Mr. George Riedel, who is the senior vice-president and chief strategy officer; Mr. Richard Lowe, president of Carrier Networks; and Mr. Derrick Tay, legal counsel.

Welcome to you all. We thank you for appearing in front of our committee.

We'll begin with a 10-minute opening statement.

Mr. George Riedel (Senior Vice-President and Chief Strategy Officer, Nortel Networks Corporation): Good morning, Mr. Chairman. Thank you.

My name is George Riedel. I'll briefly introduce my colleagues. Richard Lowe, as has been said, is the president of the Carrier business and will be answering business-related questions. Derrick Tay, from Ogilvy Renault, will handle any legal issues.

There is a matter of protocol, Mr. Chairman; we have a document that we received from the courts only yesterday, and as a result, it's only in English. I gather we have to table this document for consideration for the committee to be able to talk to it later. We did not have time to translate it, so our apologies.

The Chair: We'll accept the document. You can table it with us. I'll instruct the clerk to have it translated into both official languages and have it distributed later to the committee members.

Mr. George Riedel: Thank you, Mr. Chairman.

So let me make a few comments, please.

Nortel operates, as you know, in an integrated global industry as an integrated global company. It's important, in terms of the

implications, to set the stage here. We have, as of January, a number of jurisdictions where we are filed. These jurisdictions have certain considerations about how they deal with our assets and our intellectual properties. The sale of any of our businesses or any of our intellectual property rights requires the participation of all these jurisdictions—Canada, the U.S., EMEA, and the like. As a result, it's a complex equation that we have to sort through. Consequently, there is really no “Canadian only” answer to any business question here, because each of these estates has to be consulted and involved.

As you may know, the Canadian estate is in part funded by the other estates. So part of the equation that we try to solve for here is maximizing value. Preserving jobs and maximizing value is what we're trying to achieve here. Things that would interfere with either the funding of the Canadian estate or the transparency or the integrity of the process bring that into challenge. So our intent is to, in a complicated equation, maximize value and preserve as many jobs as possible.

Let me put that in the context of the global wireless industry we operate in. The global wireless industry is about \$50 billion in capital expenditures. The business we're talking about today has about \$2 billion in revenue. So we're about number six or number seven in that industry on the global scale.

Consolidation is a requirement in this industry. Customers have consolidated already. The vendors are continuing to face pressures to generate additional returns. Scale is a very important requirement for competition—scale in terms of R and D, scale in terms of footprint, scale in terms of balance sheet. So it's in that backdrop that we sit here today to talk about the transaction.

We went through a process, a process that was approved by the courts in both Canada and the U.S. That sales process has been overseen by our number of creditors as well. The court monitor has been involved. A range of advisers has also been involved. The courts have found conclusive evidence, supported by the monitor, that the process was properly followed, and they have approved the sale.

As I mentioned earlier, yesterday we received a document from the court here in Canada. It's worth noting that the court has reaffirmed that any party who wanted to bid for the business and complied with the bidding procedures was permitted to do so. That's an important fact to get on the record. Secondly, the court found they were satisfied that the unchallenged record clearly established that the sale process had been conducted in accordance with the bidding procedures and the guidance of the court.

So basically, we followed a process. The court was very firm with us about wanting apples-to-apples comparison of the stalking horse bid so that it was able to determine what was the best and highest value for this asset. There were objections throughout the process. Those objections were dealt with and resolved. But the courts have in fact guided us as to how to execute this process, and endorsed the process.

Our third point is that one of the comments made in the press and by others is that we have somehow utilized federal funds to develop this technology. It's important to point out that in the last 10 years, Nortel has not been able to utilize federal R and D tax credits to fund either the CDMA or the LTE technology development in Canada and the generation of related patents. Specifically, Nortel has suffered cumulative tax losses since 2001 and has not used any R and D tax credits to reduce its federal tax liabilities. As such, these technologies have not been developed by federal direct grants contributed to the company.

Fourth, on the value of these assets relative to the Investment Canada Act, we have conducted an analysis of the assets being acquired by Ericsson. The book value of these assets is \$149 million U.S. That's \$111 million in current assets and \$38 million in fixed assets. So the total of \$149 million does in fact fall below the threshold of \$312 million in book value.

It's important to note the difference between book value and market value. The purchase price paid in the auction was in excess of that book value. Market values tend to be higher than book values because they capture a range of benefits in the intangibles—customer relationships, brand, intellectual property, growth opportunities, and the like. The distinction between the asset purchase price paid by the auction versus the book value is explained by that.

• (0905)

The other point I'd make is that the analysis was conducted in conjunction with PricewaterhouseCoopers to do the carve-out economics for the balance sheet. So we feel very good about the comment that it does in fact go below the threshold of \$312 million.

The fifth point is that it's important to note that both CDMA and LTE are open standards. They are technologies developed around the world that are embraced by a number of vendors and are set by standards and committees in the industry. And in our mind in regards to any national security issue, it doesn't appear to us that this poses any significant concern. They're open standards; they're international technologies. We're not aware of any issues, but we are obviously happy to work with the government to confirm that this sale does not in fact raise any national security issues.

In addition, there has been a question about the sale of, or situation with, our remaining patents. Nortel has a very rich intellectual property portfolio. Some of these patents are being assigned to businesses, and some of them will be held for further evaluation. No process has been put forward yet for the sale of the remaining Nortel patents. Any process that we would put forward would have to be discussed with the court monitor, the credit constituencies, and be brought forward to the courts for approval, where any interested party would be able to participate in that process.

In summary, our view is that this is a good deal for Canada, as Ericsson's purchase of these Nortel CDMA/LTE assets preserves jobs, creates growth, and provides certainty for customers, partners, and employees.

And those are my remarks, Mr. Chairman. Thank you.

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

We'll have about an hour of questions and comments from members of this committee, beginning with Mr. Garneau.

[*Translation*]

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chairman.

I would like to start with a few remarks. The Liberal Party very clearly recognizes the importance of the knowledge economy for the future of our country, and our leader has very clearly said so on numerous occasions. As we all know, Nortel has more than 5,000 patents and a talented staff of researchers, scientists, engineers and technologists whose jobs are at stake. We should also not forget retirees whose pensions are at risk. This is the largest corporation in Canada in terms of R & D expenditures. When this kind of corporation is being dismantled and is at risk of disappearing, we as parliamentarians definitely all have a duty to examine this extremely important situation for Canada's future.

The Liberal Party very clearly relies on the high technology sector to ensure our country's future prosperity. That's why our leader, Michael Ignatieff, sent a letter to the Prime Minister last week to encourage him very strongly to focus on this issue in view of its importance for Canada and Canadian taxpayers.

With that preamble,

• (0910)

[*English*]

First of all, I would like to thank Mr. Riedel, Mr. Lowe, and Mr. Tay for being here this morning. We very much appreciate the fact that you are here to help us shed some light on what has been happening, as you pointed out, to some extent, in the media or behind closed doors. So we definitely want to shed light on many unanswered questions, and I do appreciate some of the clarifications you have provided.

I'd like to focus my first question on any meetings that have occurred between Nortel and the federal government over the course of roughly the last year and a bit.

When it became clear to Nortel that it was not going to be possible to engineer the turnaround and you began to contemplate options, did Nortel management meet with federal officials? If the answer to that is yes, I would like to hear from you how those meetings unfolded.

Mr. George Riedel: Let me start.

We had a number of meetings with both the federal and Ontario governments. On the federal side, about 13 different meetings took place beginning in the fall of last year and going through January of this year. Those meetings were about seeking support for a plan for Nortel. A number of different plans were discussed, because we were looking at a range of options. There was an ask on the table for funding and support for those plans.

At the end of the day, the government chose to not provide any pre-filing support. The feedback we got was that the government did not see the plan or plans presented as being viable; the industry was not at risk, unlike other industries like auto; there were no overarching national interest issues; and perhaps most troubling for us, the Nortel brand was politically tarnished by the range of challenges and legacy issues we had to deal with. As a result, there was no support.

Mr. Marc Garneau: Thank you, Mr. Riedel.

If I can summarize what I've just heard, you said that the government did not consider the plan you proposed to be viable; it did not consider the industry to be in the same predicament as perhaps GM and Chrysler; and the brand had been tarnished. I would like to ask you for a little more clarification on that specific issue of the brand being tarnished.

Mr. George Riedel: The best I can do is offer some comments around the well-chronicled set of challenges that have faced Nortel—whether they were financial, operating, or other—and the concern that the business had reached a point where it was difficult to see a successful turnaround.

Mr. Marc Garneau: Thank you.

Getting back to another point you made about the plan not being viable, did the government specify in which way it considered the plan you proposed to not be viable?

Mr. George Riedel: To go back to one of my opening remarks, the industry faces significant scale challenges. In the businesses in which we operate, the R and D required, the balance sheet required, and the footprint in terms of global reach required all represented structural challenges to the business. So it was our view and the government's view that without a resolution to some of the structural challenges—some form of partnership or merger to address some of the scale challenges—while you could continue to see some operating profitability in the short term, on the horizon as you looked down the track it was very difficult.

• (0915)

Mr. Marc Garneau: Thank you.

You mentioned 13 meetings. Can you give me the time scale from when the first meeting occurred until when the last meeting occurred?

Mr. George Riedel: I can. The first meeting occurred on October 6, 2008, and meetings continued until June 2009.

Mr. Marc Garneau: Thank you. Perhaps we'll come back to some of these points later on.

I would like to begin a second question on financial support. You very clearly said that Nortel could not avail itself of SR and ED

credits for its CDMA and LTE technology, and therefore there was no direct investment.

I am very interested, on behalf of the government and taxpayers, in knowing the big picture on financial support going back quite some time, because Nortel became a very big player. I think we need to get some idea of the financial assistance that has been provided to Nortel going back a few decades, because it's all part of a long progression. Have SR and ED credits been used in other areas of technological development other than CDMA and LTE? Has EDC financing been used by Nortel over time? Have other forms of government financing, such as TPC and DIP, been made available? I want to get a sense of how much investment has been made by the government.

I realize you may not have those figures at hand, but we would ultimately like to get a sense of that to know to what extent the government has been involved in the financing and development of Nortel.

Mr. George Riedel: Let me try to take each one in turn.

In 2003 EDC stepped in to provide a bonding facility that enabled us to post performance bonds for support of customer commitments, not R and D commitments. So they were very helpful in providing a bonding facility so we could sell a network or a piece of technology in different markets. At that time the facility ranged between \$250 million to a maximum of \$750 million, so that was very helpful.

In more recent times EDC provided post-filing support of \$30 million to help us continue to operate after the January filing. That's the extent of my knowledge on EDC funding.

On the SR and ED tax issues, my knowledge only goes back to 2001. Prior to that, I'm sorry, I just don't know. I can find out. As I mentioned earlier, from 2001 on we were not able to use those tax credits because of the losses.

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

[*Translation*]

Mr. Bouchard, go ahead please.

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chairman.

Thanks as well to you for coming to testify before the Industry Committee.

I must tell you that we of the Bloc Québécois are open to the idea of studying this Ericsson-Nortel transaction in committee. We want to know the impact of that transaction so we can determine whether it is beneficial for Quebec and whether Ericsson's commitments are indeed met. I assume that, in the context of that transaction, you have had to talk about projects and development, and we hope that Quebec receives its share.

I must also tell you that, at first glance, we are in favour of this transaction, but we want to know its conditions.

We are pleased to have learned that the legal proceedings have been conducted within a regular framework. I even read the comments by one judge who expressed a certain amount of enthusiasm over the way it had taken place. We are taking part in this committee meeting in order to carefully examine the guarantees given by Ericsson regarding the number of jobs retained in Quebec and the pension fund. We also want to ensure that the rules have been followed.

I'll give you an example of a situation that we had back home—I come from the Saguenay-Lac-St-Jean region of Quebec. Rio Tinto, a foreign company, acquired Alcan, a Canadian company that had its headquarters in Montreal. Our party had set certain conditions, but unfortunately the minister approved the transaction in haste. Even though we made those conditions known, the minister quickly short-circuited us and imposed no conditions on Rio Tinto. I therefore believe it's normal to have a discussion on this to ensure that Quebec receives its fair share.

Earlier my colleague talked about timetables, about the date of the end of negotiations. That timetable no doubt includes stages. When did you start the negotiations? Was there an important stage that occurred on a given date? When did you complete the negotiations? I know the date because you mentioned October 6, but I would nevertheless like you to give us an overall picture.

• (0920)

[English]

Mr. George Riedel: Let me make sure I address your question correctly. It's the negotiations with Ericsson that you're speaking of?

[Translation]

Mr. Robert Bouchard: Yes, indeed.

[English]

Mr. George Riedel: Okay.

Let me try to take this in two stages. In the court-approved process, you go through what's called creating a stalking horse. We had several conversations, starting in the fall of 2008, with a number of parties to create a stalking horse. Ultimately, Nokia Siemens Networks prevailed, on June 19, to become that stalking horse. That defined the scope, the terms, and the arrangements for this asset sale. That then created an auction process, which concluded, as you know, two weeks ago with Ericsson and the winning bid.

In terms of the actual negotiations between the different parties, we've been talking to Ericsson since June of last year, on and off, about opportunities to do something together. In earnest, they picked up pace and intensity in the May timeframe of this year, and then concluded with the auction process just recently.

[Translation]

Mr. Robert Bouchard: During that period, you no doubt had contact with Industry Canada officials or perhaps even with the minister. Did you provide Industry Canada with any documents? What kind of information did you communicate to Industry Canada?

• (0925)

[English]

Mr. George Riedel: I'm not aware that we produced any documents on this topic for Industry Canada. I can go back and

check the records, but I'm not aware that we did produce any documents on this topic.

Derrick, go ahead.

Mr. Derrick Tay (Legal Counsel, Nortel Networks Corporation): Perhaps I can add some further clarification on that.

In the court-approved process, what the court was trying to do was to provide a process whereby, number one, the market could be tested in terms of the scope of assets, and number two, we had a process that would get us the best deal possible. That means getting not only the highest price but also the cleanest deal. As a result of the auction, a lot of the conditions that were originally attached to the stalking horse bid and to other people's bids were removed so that we got as clean a deal as possible.

These deals are always subject to the extent that, by law, any regulatory approvals are needed. The deals would be subject to that. As Mr. Riedel has said, based on the existing tests under the Investment Canada Act, we do not meet the threshold. So there was no communication during that process with the government.

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

Merci, Monsieur Bouchard.

Mr. Lake.

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

Thank you to the witnesses for appearing before us today.

In your opening comments, you talked about maximizing value and preserving jobs as the goals here. In the area of maximizing value, I know it's not really a particular focus of the study today, but we'd be remiss if we didn't address the issue of the pensioners who are on the Hill today. I'll take a couple of minutes to do that right now and then follow up with some questions more related to the topic of study today.

In your opinion, as you maximize value through this process, this auction and future auctions, what impact will that have on your ability to address some of the concerns of Nortel pensioners and former workers who've been fairly severely impacted by developments with Nortel over the last few years?

Mr. George Riedel: Mr. Lake, as I said, our mission is to maximize value. The focus on how that value ultimately gets distributed to the claims process is governed by two things, the law and the courts, and their guidance of that.

So my simple answer is that the best we can do is to continue to have a court-governed auction process, bid process, to maximize value so that those pensioners and employees can be best looked after through the court-approved claims process.

Mr. Mike Lake: Before I move on, I'll just give you a quick opportunity to say anything to the pensioners and former workers who might be watching the proceedings today.

Mr. George Riedel: I have great empathy for their situation and I work hard for their benefit to produce maximum value. I certainly understand the human cost they're bearing, and my goal is to continue to do everything I and the company can do to improve their ultimate recovery.

Mr. Mike Lake: Moving to the preserving of current jobs, you've said this is a specific goal for Nortel as you go through this process. Certainly, that has been a concern in some of the coverage that we've seen since the winning bid was announced—the preservation of jobs here in Canada, not just in the short term but also in the long term.

You've said this is a good deal for Canada. You've said this has been your goal and that you're happy with the outcome. How specifically does this deal preserve jobs here in Canada in the short and long terms?

Mr. Richard Lowe (President, Carrier Networks, Nortel Networks Corporation): Mr. Lake, if I could respond to that, as part of the stalking horse process and ultimately the auction, a minimum of 2,500 jobs were committed as part of the transaction. It doesn't specify that that is the total number, but it specifies a minimum. Of those, approximately 800 jobs are located in Canada, the majority of them in the Ottawa area. About 80% of them are actually R and D jobs. Those jobs are split between the mature technology and the next generation technology.

So one of the things we've been trying to do is to ensure that the buyer not only has the resources to maintain the current technology but also has an opportunity to use the resources we have in Canada to help them develop the next generation, or LTE, technology. So one of the outcomes we feel particularly good about is that they've expressed an interest in that scope for those resources—the over 600 resources in Ottawa—which will give an opportunity for those employees to continue to develop and hone their skills and to have that work remain in Canada.

• (0930)

Mr. Mike Lake: I'm just going to let one of the representatives of some of those employees, Mr. Royal Galipeau, take the rest of my time in this round.

[Translation]

Mr. Royal Galipeau (Ottawa—Orléans, CPC): Thank you, Mr. Chairman.

A very large number of Nortel employees live in Orleans, in the riding of Ottawa—Orleans, which it is my honour to represent in the House of Commons. Ultimately I very much regret that we are now in the position of resting on this carcass.

[English]

So I've come to this committee hearing quite focused on ensuring that Nortel employees are treated properly and fairly, and I'd just like to focus on that for the moment.

How would this sale be best for the current employees?

Mr. George Riedel: I could provide two pieces of input on that, one of which is from the customers.

We have developed some world-class LTE technology. Richard's team has done a phenomenal job. But the customers—the large North American and European and Asian customers—have been very direct with us that while they like our technology, they're not going to commit commercially to buy it, because they are concerned about our long-term viability. Hence, their very firm guidance to us was to get this asset in safe hands, that is, with a partner who can help invest in and develop the technology and the people over the next decade or so for it to see its optimal potential.

So if you ask the folks in this organization today if they're excited about the prospect of where they sit today and a future with Ericsson versus the challenge of where they were earlier in the year, having known the customers weren't going to buy the technology they were building, it's a far different answer you will get.

Mr. Royal Galipeau: Many former employees who are concerned about their pensions have come to visit with me also. I realize that's primarily a provincial responsibility, but it doesn't prevent me from caring. How do you see the sale of these Nortel assets benefiting the pensioners? How do you line up those pensioners in the list of creditors?

Mr. George Riedel: Again, I want to acknowledge the human situation that exists on one hand, but the economic answer is that this is the best way to maximize the value for that asset. That value then gets distributed over time through the court process. That's the most efficient answer to their very human question.

[Translation]

The Chair: Thank you, Mr. Galipeau.

[English]

Thank you, Mr. Riedel.

We'll now move to Mr. Masse.

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

Thank you, gentlemen, for appearing here today.

I'm going to continue with the pension issue because I think it's important. Perhaps you can shed some light on what's happening to a Canadian pensioner versus an American pensioner in terms of Nortel employees. Can you provide some information about the differences in those situations?

Mr. George Riedel: I'll attempt to do so.

Again, to go back to my earlier comment, there are multiple jurisdictions here in filing—U.S., Canada, and EMEA. The process for maximizing value through asset sales is under way. The distribution of those proceeds to the various claims will go through a settlement process across the estates and then a claims process for each of the different geographies to address that. Obviously the U.S., with the PBGC, has stepped in to address the shortfall in the U.S. pensions.

That's the short answer of where this goes: maximize value and let the court process deliver those proceeds through the claims.

• (0935)

Mr. Derrick Tay: Perhaps I can help in some of that.

The Canadian court has been very sensitive to employee and pension issues. In fact, there are things we can do and things that are out of our hands. What the law says as to distribution, who gets what and what priorities, is the law.

The court has retained, at the company's cost, representative counsel for all ex-employees, and it has retained representative counsel for continuing employees so that for all these issues, to the extent that there are issues that impact employees, the employees have legal representation at no cost to them. These people are overseeing the process—the sales process and the court process.

Also, the court has instituted just recently, in the last couple of weeks, a hardship program so that those employees who really are in a hardship situation have some recourse to get an advance on the money they would ultimately get as a claimant in the process.

Mr. Brian Masse: I want to cut through the process a bit, to drill it down to the actual individual pensioner. A pension is a deferred wage. Not paying that is theft, in my opinion. That belongs to them. They've earned that. For every Canadian who pays into his or her pension as part of a negotiated contract, be it with a union or be it individually with their employer, it's supposed to be there.

Is it roughly correct that in the U.S., as things stand currently, not just because of Nortel but also some of the government programs they have to support, a pensioner right now will get around 60% of his or her pension, whereas a Canadian pensioner will get around 20% of his or her pension? Is that accurate?

Mr. George Riedel: I don't have those figures and facts. I couldn't comment on that. I just don't know.

Mr. Derrick Tay: Given that it's a legal issue, the assets that have been set aside in the pension, the trust assets, belong to the employees. They do not fall within the bankrupt estate, nor do any creditors have any exposure to that. The value of those pension assets is a function, in part, of the market. It's the same thing whether it's a bankrupt company or a solvent company. That's why a lot of companies, most companies, have a pension deficit.

The point is that there is nothing in this process that takes away the value from the pension plan. It cannot, because those assets do not belong to the company.

Mr. Brian Masse: Right now in the U.S., their government has backstopped some of those pensions. That's the difference in what's happening for the employees.

I want to go back to your comments with regard to the book value. What is the book value you're estimating, how did you come to that conclusion, and has that been substantiated by any other parties?

Mr. George Riedel: The analysis was on a set of assets that would be transferred or carved out. If you think about Nortel as one global integrated company, in order to sell these assets, we had to carve out these businesses, with a P and L, a balance sheet, and the like. That analysis was done both on our part and in conjunction with PricewaterhouseCoopers. The combination of the assets being

transferred, both fixed assets and current assets, totals \$149 million U.S. That has been shared with Industry Canada.

Mr. Brian Masse: Are you familiar with the fact that the Investment Canada Act has now moved away from book value to enterprise value?

Mr. George Riedel: I understand there was a new finding from the Wilson committee to do that, at least as of July 12, where the current record still is that it's a book value test.

Mr. Brian Masse: It's up to the government to decide, because the legislation has been passed, so that will change. Once again, that's an estimated cost.

In general, in terms of the technology, I think it's important to perhaps shed a little light on that. Also in general, not necessarily to Nortel but for any company that is developing a patent in technology, moving it to market, what's the difference in the benefit to the company between moving an actual patent to the market versus selling it off and then becoming a servant of that product in the market?

Mr. Richard Lowe: The patents we have taken for the CDMA business, as an example, are patents that are predominantly used by that technology and are actually being sold with that asset sale.

In the case of the LTE assets, there is a non-exclusive licence around the field of use of infrastructure that is going with the transaction. It does not preclude those particular patents from subsequently being the subject of another process, so there are actually two different situations that we're dealing with here. Only a subset of the patents are actually being sold, and only those associated with the CDMA business.

• (0940)

Mr. Brian Masse: How many patents in total are being sold with the Ericsson proposal, and then how many more patents do you anticipate the sale of in the upcoming future?

Mr. George Riedel: There are 109 patent families being sold as part of the existing transaction. We have in total 5,069 patent families.

It's important to note that probably about 40% of those 5,000 patent families are in fact being mapped to be sold with the assets, meaning that whether it's the enterprise business that we've announced or the CDMA/LTE, the buyer will want certain intellectual property with those assets.

The Chair: Thank you very much.

We'll now move to Mr. Rota.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you, Mr. Chair.

Thank you for coming out this morning.

One thing this whole thing has brought to my attention is the number of pensioners of Nortel who live in my riding. There's quite a number, and I'm surprised at how many called and were concerned. When I heard this, I looked around and I called one of my colleagues, David McGuinty, who is the MP here in the area. I thought if there's anybody who has an understanding of this, it would be him, because he does have quite a number of employees as well as pensioners in his riding.

Issues came up, such as long-term disability, the people who are on this. There are 400 people who are again uncertain, and I guess that's where my question is leading. When we look at what's going on, I'm not clear on where we're going or what the end game is. I understand that Nortel is selling a large part of the patents; 2,000. That leaves about 3,000, and I'm not clear about where they'll go or what's going to be done with them. Is Nortel going to continue to exist after this exercise is over? Does it remain as a research company that only sells its technology? Does it patent and then resell technology for use? Is it a shell company? Will it remain in Canada?

These are all questions that are coming to me from people who really aren't sure what's going to happen. Will it remain as simply an R and D company that will maintain what it has done and maintain its excellence? So the questions I have are very simple. After this is over, will Nortel continue to exist in any way?

There's an income strain from royalties, whether through sales or leases. Where will that go? Who will use them? Who will benefit from them? Is it shareholders? Is it pensioners? Is it a third party that will take over a shell company? Will it be a one-time expenditure; boom, it's done, it's over with, Nortel disappears?

If you can clarify any of those questions, I think there are a lot of people out there who would appreciate it.

Mr. George Riedel: Let me take it in three pieces.

The principal businesses of Nortel will be sold. We are in the process of having stalking horse bids for the remaining principal businesses by the end of Q3, and therefore, depending on transaction closing, it could be Q4 2009 or Q1 2010, but the principal businesses will be sold.

With regard to the question about remaining patents, no process has been put forward yet to deal with those. We basically had to sell the assets first, because every time you sell those assets you create a complicated equation about what patents need to go, what field-of-use licence needs to exist and the like, so the goal is to sell the assets first and then turn to maximizing value for the remaining patents. At this stage we're reviewing a number of options, but no process has been put forward yet for the remaining patents.

We will, as required by law, have to get the monitor, the courts, and the creditors to approve whatever process we go forward with. I understand the uncertainty question and its timing as to when we can give you a more fulsome answer as to what will be the ultimate disposition of those patents.

Mr. Anthony Rota: So what you're telling me is that we don't know where those patents are going to go or what value they're going to have, and then they'll just be divvied up by whoever is in line with a precedent.

● (0945)

Mr. George Riedel: What I'm saying is that there are a number of options we're looking forward to analyzing on how to maximize the value of those patents. What that implies in terms of structure and ownership and value is a piece of analysis we haven't finished. When we do finish that work and we have sold the assets, we will then come back to the monitor and the courts and say, here's the process we would like to go forward with to maximize the value of that intellectual property and then be able to give you a more fulsome answer.

Mr. Anthony Rota: When you went to the government requesting some help, there were four points you made. They didn't agree with the proposed plan you had come up with, which was the main objection. They mentioned there was no overarching threat, which I think is a concern. Nortel is a major Canadian company. That whole industry was under threat, politically tarnished. That's just picking winners and losers and saying we don't want to associate with a certain company; that seems to be the impression I've got from what the government told you.

You mentioned about the auto industry. The industry that Nortel is in is not in the same predicament as the auto industry; that is what we were told. Those sound like almost inflammatory words, but I was wondering if you could give us an overview of what was asked of this Conservative government and what reasons were given why you were turned down, a little bit more specifically, because these seem like words that are not specific; they're not going into detail. I wonder if you can give us more detail on why you were turned down.

The Chair: Briefly, Mr. Riedel.

Mr. George Riedel: Let me focus on the sustainability question. I think it all turns on the point that we weren't interested in seeing a business that we couldn't get adequate returns on—i.e., not a bailout. So if we looked at the plan and looked down the track and asked if this is a business we can sustain if we do invest, I think there was significant concern given the industry structure, given the scale, the migration, and some new technologies. It really turned on sustainability.

The Chair: Thank you very much.

Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you for appearing before us.

I don't think I've had a really good explanation yet. I think a lot of people might want to have that same explanation. Could you explain to us quickly in layman's terms what CDMA and the LTE mean?

Mr. Richard Lowe: I'll do my best.

The transaction involves the CDMA business. CDMA is a particular type of technology for cellphone usage. It's predominantly used in North America. It was actually originally developed by Qualcomm in the United States and adopted by a number of the major operators in North America—in Canada that included Bell Canada and Telus, and in the United States Verizon, Sprint, U.S. Cellular, and a number of others. So that technology is what you use on your cellphone. The actual business we're selling is a combination of the assets, the employees—about 2,500 employees—and the customer contracts that go with those customers we have predominantly in North America. That business is pretty much the whole thing that will go with that transaction.

When we talk about LTE, it is really not a business, because there are no contracts going with the transaction. They are assets associated with development of next generation technology. So with any of these technologies as your CDMA—if any of you have a BlackBerry, you're using it for voice and for data transmission—the next generation technology, called LTE, will offer much broader bandwidth on those same devices, and over time it will replace the capabilities of the CDMA networks and people will overlay them.

So in layman's terms, that's what we're dealing with here.

Mr. Dave Van Kesteren: Is CDMA somewhat redundant? Is it going the way of the dodo bird, or is it still current? Or are all these patents you're talking about improvements to CDMA?

Mr. Richard Lowe: It is a maturing technology. The overall market capex is declining at around 10% to 15% per year over time. I still expect that the CDMA technology will exist in the world as a dominant voice technology out through the middle of 2015 to 2020. So it's not going to go away any time soon, but most of the work that's going on now is really enhancement to the existing technology as opposed to fundamental development.

• (0950)

Mr. Dave Van Kesteren: I'm right to assume, then, that LTE is rather current. And if that is the case—and you've testified there really were no research grants given your company since 2001—were most of the technologies that surround LTE, at least the ones that you use, developed by your company since 2001?

Mr. Richard Lowe: The development of LTE technology began in around 2006 and 2007. Some of the underlying patents supporting the technology dated back probably to 1998 and 1999, but the development work by and large has occurred in the last two to three years. We're spending about \$140 million this year on that technology.

Mr. Dave Van Kesteren: So the demise of Nortel was not due to the fact that it lagged in technology or anything of that nature, because it sounds to me this company is very current and that the technology it's developing is at the leading edge.

Mr. Richard Lowe: As Mr. Riedel said, the question was not around the capability of our technology; it was the sustainability of our entity that was brought into question by our customers. You can have the greatest technology in the world, but if your customer is unwilling to purchase the technology as a commercial product from you, then you're left with an investment without any return.

Mr. Dave Van Kesteren: Mr. Kramp, did you have a question at this point? Maybe I can hand it over to you.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): Well, I have a number of questions with time.

I would like to touch on the pension issue before I slip over to another point. Regrettably, our provincial government, which bears the responsibility for the pension liability, is underfunded. I think we all recognize that. We as a government are going to have to take a very, very serious look into prospective legislation as we move forward. In the past, we lived under the impression that the companies were too big to fail, whether it was U.S. steel, auto companies, or Nortel. Well, that reality and bubble has been burst. As such, we definitely have to look not just at what is there now but also at where we're going to go in the future.

I say that personally because I have over 3,000 retirees in my riding alone, and the impact has been very, very, very severe.

However, what I'm really concerned about right now, given that we have other witnesses coming in today—obviously RIM included—is that I'm somewhat confused by some of the statements made by both of the other parties. Following the stalking horse offer put in by Siemens, how many Canadian bidders were actually there at that particular time for Nortel assets?

Mr. George Riedel: You go through a qualified bidding process. There's a set of requirements—signing an NDA, providing public financials—to get a qualified bid. There were three qualified bids or bidders in the process: Ericsson, MatlinPatterson, and Nokia Siemens.

Mr. Daryl Kramp: So specifically at that point, RIM was not a bidder. Am I correct?

Mr. George Riedel: That is correct.

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

We'll go to Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

You said you had spoken with the federal government and held 13 meetings concerning a restructuring plan. I'm more interested in the Investment Canada Act component. What's important to us, as my colleague Mr. Bouchard said, is to protect Quebec's interests. Ericsson has a research centre in Montreal and Nortel has one in Ottawa. We don't want to undress Peter to dress Paul, that is to say to transfer jobs from Montreal to Ottawa or those from Ottawa to Montreal. All we're hoping for is that Ericsson will retain what it has.

You said that one of your objectives was to protect 2,500 jobs at Nortel, but that there's no obligation. Under the act, the minister could require that the jobs in both Ottawa and Montreal be protected under this transaction.

Have you discussed the Investment Canada Act with the federal government?

[English]

Mr. George Riedel: We have had discussions to present the analysis of the value of the assets being transferred. Yes, we have.

● (0955)

[Translation]

Mr. Mario Laframboise: In your presentation, you said that this transaction was worth \$140 million and that it should not be subject to the act. That's your book value. Let me tell you that your book values have caused a lot of problems in the past.

I think the actual value is much greater than the one you've carried on your books. In your opinion, the act shouldn't apply, but there haven't been any discussions. Has the government told you it could use this act?

[English]

Mr. George Riedel: My understanding is that the government has been clear that the test is the book value test.

[Translation]

Mr. Mario Laframboise: It's the book value and that's what you're maintaining. The text of the act includes other criteria than book value. It's important to understand and that you understand us as well. During this transaction, did you talk about head offices with Ericsson? Did you discuss job retention? Did the Ericsson people tell you that the corporation intended to redistribute its staff across Canada, that it had made new arrangements by transferring, for example, employees from Montreal to Ottawa?

[English]

Mr. George Riedel: I'll give a three-part answer, then I'll let the Ericsson folks comment directly.

The day they announced the transaction in their investor briefing, they did comment that there were no plans to consolidate operations between Montreal and Ottawa. Again, that's their public statement. You'll get the chance to talk to them later. So that's our best understanding about their desire between locations.

As Richard Lowe mentioned, they have in fact committed to take 2,500 employees as part of this transaction, a large number here in Canada.

To your first point about the legal guidelines we've been given to test for the threshold, currently it remains book value.

[Translation]

Mr. Mario Laframboise: I repeat: we can come back to what citizens may think about your book values. That's why we're entitled to ask you this question. I'm surprised that you're surprised we're asking that the act apply your transaction. If I understand correctly, in your view, the act shouldn't apply based on any consideration.

[English]

Mr. George Riedel: I'm simply guided by the law. And the way the law reads today—correct me, counsellor—that's the interpretation.

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

Monsieur Laframboise, merci.

We'll now go to Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to the representatives from Nortel for being here this morning.

My riding is Kitchener—Waterloo, and my constituents and I have a particular interest in seeing that we continue to have a strong and vibrant high-tech sector in this country and continue to see leading-edge innovation and research and development undertaken in this country.

I want to focus my questions on the auction process, on the one hand, and also this important issue of the LTE patents. We'll start with that one, the LTE patents.

You described, in response to an earlier question, the transaction that's in the process of being completed as primarily a CDMA transaction, but there were some LTE patents as part of that. Is that correct?

Mr. George Riedel: No. It's a CDMA transaction with LTE development and a licence for LTE patents, but no LTE patents are being sold as part of that transaction.

Mr. Peter Braid: Okay.

You currently own LTE patents.

Mr. George Riedel: That is correct.

Mr. Peter Braid: Of the LTE business, then, if you could just help me understand this, what portion of the business has been bundled with this transaction, what portion of the LTE business is remaining, and will that remaining portion be part of a potential subsequent transaction that might be of interest to companies in Canada?

● (1000)

Mr. Richard Lowe: If I could answer that, Mr. Braid, I don't want to call it a business, because again, there are no commercial contracts associated with LTE. But in regard to the assets that are being transferred, it is the majority of the research and development individuals associated with the LTE development in North America. There is a small part of the resources located in Dallas, Texas, that is not part of this transaction. That could be part of a subsequent process. In addition, because we are licensing the patents on a non-exclusive basis, the patents associated with LTE will remain behind with the estate, and they could be part of a subsequent process.

Mr. Peter Braid: Thank you.

Could you help me understand the distinction between licensing the patents through the transaction and actually selling them?

Mr. Richard Lowe: The patents that are licensed allow the buying party to utilize the software development and the algorithms that exist within the development regime, but the patents themselves can be subsequently sold.

Mr. Peter Braid: So Nortel still owns the patents as they're being licensed.

Mr. Richard Lowe: That's correct.

Mr. Derrick Tay: There's one additional aspect that we need to understand, which Mr. Riedel touched on at the beginning. While Nortel Canada owns those patents, licences have been granted worldwide to the other Nortel entities, so Nortel Canada is not in a position to simply deal with these patents, to simply deal with this in complete disregard of the rest of the world and in complete disregard of the insolvency processes going on in the rest of the world. So it's an integrated issue.

Mr. Peter Braid: Very good.

What was the business rationale for licensing the LTE patents as opposed to selling them outright?

Mr. George Riedel: Again, I'll go back to my statement about maximizing value. Every time we get to an asset transaction, it creates an equation around intellectual property—patents that get assigned to businesses, patents that get licensed. The rationale was quite simple: the buyer—remember where we were—the original buyer, the stalking horse buyer, NSN, that framed this transaction did not value those patents because it already had a rich collection of LTE development technology as well. Therefore, in our opinion, it wasn't going to give sufficient consideration to selling those patents with part of those assets.

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

Mr. Masse.

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

To follow up with the LTE technology, perhaps you can explain what the applications are, what could change for the devices, and the uses that this type of product can do for the market and also for services.

Mr. Richard Lowe: Sure. The LTE technology that is being developed worldwide is an open protocol, an international standard. It's being developed by the third-generation partnership project called 3GPP. There are at least seven companies developing this technology to an open standard. That's the first thing I'd like to say.

The second thing is that the modulation scheme that's being used allows a lot of information to be transmitted over relatively narrow bandwidths of spectrum. If you can stuff more information into a particular segment of spectrum, then you get a lot of spectral efficiency. As people are using their iPhones and different devices that are consuming considerable bandwidth, having a very efficient modulation scheme is very important and is commercially attractive to operators, because they can sell that value into the marketplace.

Mr. Brian Masse: So it will also affect other devices that are used, for example, for public safety? As long as it's information based and moving, then it's going to actually have an application there as well?

Mr. Richard Lowe: There is encryption technology that's actually part of the standard, so public safety is an application that could be developed. Much as with CDMA, there are public safety applications, as with other types of air-interface technologies.

Mr. Brian Masse: Okay. Now, with regard to the development back in 1998, as you mentioned, how much money has Nortel plowed in to get to this point, to reach this level?

Mr. Richard Lowe: On LTE specifically? The majority of the development dollars, as I said before, were spent in 2008-09. We've spent maybe an additional \$50 million between 1998 and 2006, and then we've spent about \$300 million since then on the technology.

Mr. Brian Masse: So you've really seen this a probable way out of your situation. What you've suggested to me, through your previous testimony, is that you haven't made a profit since 2002 to return on the SR and ED credits, but there are other programs available. Then, in the last hour you went from \$50 million to over \$300 million of investment, despite shedding lots of jobs and struggling to make ends meet as a company. You made a massive investment into this at the eleventh hour.

• (1005)

Mr. Richard Lowe: I guess I would put it this way.

As with any technology, there is an ebb and flow of investment. Most of our investment between 1996 and 2006 in fact was with the CDMA technology. As that technology matures and is replaced by the next generation, the investment in CDMA goes down and the investment in LTE goes up. This is actually a natural ebb and flow.

So I wouldn't characterize it as an eleventh-hour investment.

Mr. Brian Masse: Well, maybe that's not the right characterization. I think it's just highlighting the importance of this breakthrough.

You're suggesting right now that the book value is only \$149 million in terms of what you're packaging. If that's the case, why would Ericsson pay over a billion dollars for it?

Mr. Richard Lowe: Again, as I said earlier, it's one thing to invest in technology and be granted or accorded kudos by the community for your technology. It's another thing to commercialize the technology. In order to do that, you need people willing to buy the technology.

It became pretty apparent to us over the last 12 months that while our major customer operators really appreciated our technology and what we had done, given our situation as Nortel, they were not prepared to purchase this technology from us.

Mr. Brian Masse: Right, and I understand that, but it seems like quite a deal. If you think it's worth only \$149 million U.S. and you get a billion dollars for it, that's quite a discrepancy. Why would Ericsson bid so high for something that you believe is so low?

Mr. Richard Lowe: Again, to come back to George Riedel's points, the market value is based on certain intangibles, which is how Ericsson would likely view it. You would have to speak with them directly, but likely they would view the evolution of their customers in the network and how they would utilize this current technology, CDMA, and the future technology to grow their business because of the scale they have, the international stature they have, and the strong balance sheet they have.

Mr. Brian Masse: Thank you.

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

Thank you, Mr. Lowe.

Mr. Lake.

Mr. Mike Lake: Thank you.

I want to come back to patent licensing. I'd like to get a little bit of clarification around that. Originally the commentary was that the patents were all being sold, and then there started to become some clarification around the fact that the LTE patents were being licensed.

Is this standard practice, selling patent licences for even an ongoing company?

Mr. Richard Lowe: George may want to elaborate at a macro level, but it is natural in our industry to have significant cross-licensing. People typically will license across one another so that nobody is found to be at a burden from a licensing point of view. Ericsson has patents that we license from them, I have patents that Qualcomm licenses from me. It's all part of the normal industry process to have patents and cross-licensing, because it encourages the globalization of international standards.

Mr. Mike Lake: Might we expect to see further patent licences on LTE being a part of future auctions?

Mr. George Riedel: Again, to go back to what I said earlier, we haven't laid out a process for how we're going to monetize the value of that intellectual property. We're looking at a range of options. We do have the obligation to come back to the monitor and the courts, once we get to that point, to lay out those processes so that they can approve that.

Mr. Mike Lake: But just for clarification, any future patent licences that might hypothetically be included in auctions would be different in the sense that they wouldn't include the employees who were working on the patents that are a part of this transaction? Is that correct? A certain number of employees who were Nortel employees will become, under this transaction, Ericsson employees, employees who are working in research and development on LTE?

Mr. George Riedel: I'd like to make sure I understand your question. There are 2,500 employees who, when this transaction closes, will become Ericsson employees. They will not be part of future asset sales.

Mr. Mike Lake: It's asset licensing that I'm thinking of, not sales, in terms of licensing patents. If you were to license patents in the future, there would not be employees, talents, attached to the licensing of those patents?

• (1010)

Mr. George Riedel: No.

Mr. Mike Lake: So it would be a different circumstance.

Mr. George Riedel: Correct.

Mr. Mike Lake: How will the way in which you treat licensing now affect the value of owning the patents in the future? It's not just the dollar value but the practical value to a company that would buy the patents.

Mr. George Riedel: Again, let me put the world into two buckets, if I could.

First, for those assets that we're selling—CDMA, LTE, Enterprise, and the like—the buyer is going to want a set of patents that are predominantly used in those businesses and licences to a field of use to continue to operate with the rest of the technology. So that's bucket one.

Bucket two is the remaining 3,000 patents or thereabouts that we have opportunities to monetize. How we do that is still an open question that we're in the midst of analyzing, then having to come back to the courts to approve.

Mr. Mike Lake: To wrap up, I'll go in a bit of a different direction.

A lot of the commentary early on in the process talked about RIM being shut out of the process. I want to give you an opportunity to clarify, when it comes to comments around the confidentiality terms and things like that. Maybe you can explain how RIM was treated within this process, particularly in the context of confidentiality and why decisions were made the way they were.

Mr. George Riedel: It's a two-part answer. I'd refer back to what I said in terms of the court document yesterday. The monitor and the courts were satisfied that anybody who wanted to participate in the process and met the criteria was able to. The courts have found that there was no shut-out phenomenon. I think that's a useful phrase.

Secondly, from a practical standpoint, the standard NDA that we've had others sign up to—that is Ericsson, MatlinPatterson, Nokia Siemens—was the same model we were seeking to get RIM to sign up to.

Mr. Derrick Tay: For clarification on that, as Mr. Riedel said earlier on, the court process allows for anyone who's unhappy with any aspect of the process to come to court. In fact, many parties did come to court, including MatlinPatterson, and the process was adjusted to accommodate whatever concerns they had. That option was always open to anybody who had trouble with the process.

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

Madam Coady will be the last member today.

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): Thank you very much, Mr. Chair.

Thank you very much for being candid in your remarks and for being here today.

I'm going to make a quick overview. I believe this discussion we're having today is all about people. It's about the current employees, it's about potential future employees, it's about the pensioners and the people who helped Nortel get to where it is today, and it's about the people of Canada and their investments in innovation and future jobs for our country. I'd put that in this context.

I heard you say earlier today that you had a number of meetings—I believe you said 13—with the Conservative government on this very issue. You put forward a plan, and they came back and said basically that the industry is not at risk, that they didn't believe in going forward with you. If they had done that, what do you think the outcome would have been? You obviously went to them with a plan. You obviously had an idea of where you wanted to take this company, and you asked 13 times for assistance. Could you describe what you thought would have happened?

Mr. George Riedel: Go back to the structural challenges that this business faces. You need scale. It's simple, it's straightforward; you need scale. The solution would require some form of consolidating transaction. Is it an acquisition? Is it a partnership? Is it a merger of some type? You actually need that for this business to survive going forward. If you have to speculate about support in going forward, it would lead to where we are today, meaning safe hands for both people, as you point out, and for customers, partners and creditors, to see a brighter future.

Ms. Siobhan Coady: Your plan to government was to do just that, to achieve that scale?

Mr. George Riedel: We had two different plans. We had an “on our own”, because mergers and acquisitions are never too easy to predict or control. And then, if we could find a partner, what would that look like? So there were two versions of what we were trying to seek.

Ms. Siobhan Coady: Do I have more time, Mr. Chair?

Coming to the next set of questions, this is about the patent issue that colleagues have been talking about. Now that we know the patents are not being sold—we understand that they're being licensed—what's going to happen to the IP resulting from the continued development of those patents? And what's going to happen to the employees? I think you've established what's going to happen to the employees, but there will be revenues generated by these licences and we haven't talked about the enhancements to these patents and the go forward from that perspective.

Mr. George Riedel: Right. The patents have a long life. Unlike some of the businesses, particularly post-filing where there was great pressure, the patents actually have a value that will continue for quite some time. What we're trying to do is develop a fact-based approach to come back to the courts and the monitors and say, here's how we would go forward to monetize and maximize the value of these assets. Therefore, do we keep some? Do we sell all? We don't have that answer yet.

•(1015)

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

Thank you very much, Madam Coady.

Before we suspend the meeting, I'd like to ask Nortel if they could provide this committee, over the course of the next number of days

or the next week, with information on the use of SR and ED tax credits, of the use of EDC bonding facilities, or any other form of financial assistance, not only since 2001 but over the last number of decades, or the last 30 years. If Nortel could provide that to the clerk of this committee, Madame Dumas, she would distribute that to members of this committee. It would be helpful information that would help guide us in our deliberations.

Mr. George Riedel: Mr. Chairman, we'd be happy to do our best to pull together that information.

The Chair: Thank you very much.

I'd like to thank our three witnesses for appearing.

We'll suspend for 15 minutes and reconvene at 10:30.

•(1015)

_____ (Pause) _____

•(1030)

The Chair: Good morning to everyone.

[*Translation*]

Good morning, everyone. We're here pursuant to Standing Order 108(2) and the motion adopted by the committee on Friday, August 7, 2009, to study the proposed sale of certain Nortel Networks assets.

[*English*]

I'd like to welcome our witnesses. We have two representatives from Research in Motion in front of us today. We have Mr. Mike Lazaridis, who is the president and co-chief executive officer; and Mr. Robert Crow, who is the vice-president of industry, government and university relations.

Welcome to you both.

We'll begin with a 10-minute opening statement.

Mr. Mike Lazaridis (President and Co-Chief Executive Officer, Research in Motion): Thank you.

Mr. Chair, honourable members, deputy minister, colleagues, and friends, thank you for inviting me to join you today. I am president and co-CEO of Research in Motion Limited. I founded RIM with my friend Doug Fregin while we were still students. This year we are celebrating the 25th anniversary of RIM and the 10th anniversary of our flagship product, BlackBerry.

After 25 years of building a global technology company, I know the wireless telecommunications industry extremely well. This includes the suppliers of wireless network infrastructure. It is not widely known, but in addition to building great smart phones, RIM owns and operates one of the world's largest Internet protocol networks connecting to more than 400 networks globally. As a result, Nortel is well known to me and at one point was even a strategic investor in our company, so I was especially saddened by Nortel's demise. What was once Canada's crown jewel in technology failed as a business and is now being chopped up and sold off like so much cordwood.

As in most failures of large companies, the mistakes that led to Nortel's insolvency were made many years ago. Only recently did the company run out of business momentum, but by the time there was serious talk of saving Nortel last year, it was far too late to save it in its current form. A global financial crisis and its huge debt load were the final straws.

None of this is meant to suggest that Nortel was not then or is not now of value. To be sure, Nortel has a few operating divisions with good business prospects and, more importantly to Canada, a collection of intellectual property and teams of great researchers who produced it. The teams and intellectual property were built up over many years, and much of that occurred right here in the Ottawa area.

Some of the IP is associated with Nortel's legacy businesses and will be of little value over time. However, Nortel's intellectual property and workforce devoted to next-generation wireless research known in the industry as LTE, or long-term evolution, is nothing short of a national treasure that Canada must not lose.

Let me tell you why LTE is so important. LTE is by far the most widely supported architecture for the next generation of wireless networks. LTE will provide faster data speeds and better customer experiences than current networks today. This will enable governments and the private sector to deliver more and better services over wireless networks, including those required in times of national emergency and crisis.

LTE will also be a very big commercial opportunity for the entire industry, including infrastructure suppliers, handset manufacturers, and application developers. Bell, Telus, and Rogers have all announced plans to deploy LTE when it becomes available. So too have Verizon wireless, AT&T, Vodafone, and many others internationally.

There has been a lot of speculation that RIM's primary interest in Nortel's assets is its LTE research workforce and intellectual property. I can confirm that this is true. In fact, we were engaged in intense negotiations with Nortel over a number of months to acquire a number of LTE assets and associated research staff. These discussions started before Nortel filed for bankruptcy protection in January, and it continued with an expanded scope afterwards.

We at RIM want to continue the legacy of Nortel's great LTE research personnel by combining their next-generation wireless work with our own and integrating them with our R and D division. If we are able to do this, the ability to commercialize LTE products in the future will remain in Canada with a Canadian global leader.

As experience shows, in our industry and others the most important research programs are performed in close proximity to headquarters of global leaders, and the overall impact of such research is greatest in countries whose companies retain the rights to commercialize the resulting discoveries. That impact is measured not only in jobs, exports, and earnings, but also in spinoffs, community investments, and philanthropic support of education, health, social services, and the arts.

• (1035)

How our discussions with Nortel failed to produce a good outcome for RIM and for Canada is another sorry story in the

debacle that is Nortel. Suffice it to say that Nortel failed to bargain in good faith and failed to honour promises made to RIM on many occasions. Without regard for these promises, Nortel made deals with Nokia Siemens Networks and then with Ericsson that render Nortel's assets in LTE of limited value to RIM or to any other firm.

When we later tried to enter the auction for the entire wireless division in an effort to preserve the value of these assets, Nortel delayed and demanded a condition that would have prevented RIM from offering to acquire the important LTE assets. This condition was irrelevant to the other bidders but not to RIM. I simply could not agree to it.

Those of you who have visited me in Waterloo will remember the model Avro Arrow that always sits on my desk. By sheer coincidence, this year is the 50th anniversary of the cancellation of the Arrow program. Whatever anyone may think, good or bad, about the decision to cancel, one fact is clear. The failure to salvage the valuable intellectual property and to maintain the workforce from the abandoned project was a strategic error. By discarding the intellectual property and dismissing the workforce, Canada threw away a significant beachhead in the future of aviation that could have benefited our citizens for many generations to come.

Fifty years later, we consider the disposition of another beachhead built by Canadian ingenuity. Let us learn from our history and not make the same mistake again.

The current government fully understands what happened. In May 2008, speaking on its behalf, the then minister of industry stated, and I quote:

When it comes to decisions on whether foreign purchases represent a net benefit to Canada, my bottom line is this: Canada must retain jurisdiction and control over technologies that are vital to the future of our industry and the pursuit of our public policy objectives. We will not accept loss of jurisdictional control to another party.

Mr. Chair, in my view, the Nortel transaction as currently structured is not in Canada's best interest, and I believe it is incumbent upon the government to examine it thoroughly with every resource at its disposal, but we also should try to find a solution that can work for the parties and for Canada, because a win-win solution may be possible.

To this end, I believe that the Minister of Industry should initiate a four-way discussion among the government, Nortel, Ericsson, and RIM. Minister Clement's stature is such that he may well be able to fashion, over the next few weeks, an outcome that serves the interests of all parties and of Canadians. Given such an opportunity, I can assure you that RIM would engage with the other parties in a most constructive fashion.

Thank you. I look forward to your questions.

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

We'll have about an hour of questions and comments from members of this committee, beginning with Madam Coady.

Ms. Siobhan Coady: Thank you very much. We appreciate your being before this committee today and your intervention in these discussions and the information you're going to provide. We appreciate that and we appreciate RIM's being a Canadian company. It's a leader in the world today. So thank you for that.

I have a number of questions concerning the transactions and what has occurred, for clarity purposes. I'm going to start by asking a simple one. How did you participate in the sale process for Nortel's wireless assets, and did you participate specifically in the stalking horse bid process?

• (1040)

Mr. Mike Lazaridis: Those are very good questions.

We started working with Nortel earlier than the bankruptcy process. We realized there were some assets there that we were interested in, and we started good faith discussions with them that came very close to completion.

We were surprised by the bankruptcy announcement, but we didn't give up and we continued working with their staff and their senior management, and we expanded the scope of the purchase because it was being offered during the bankruptcy procedure. Again, we thought we came close, and then we realized that there were other parties involved and other assets being sold and that the way those assets were sold critically limited the value of the LTE assets we had been pursuing for months with Nortel executive management.

Ms. Siobhan Coady: Going further, can you talk about the stalking horse bid process, how you were or were not involved, specifically?

Mr. Mike Lazaridis: Sure.

The best way to think about the stalking horse process is that it's a baseline created by the first bidder, and then other bidders have to build on top of that without changing it. And that's the critical piece: without changing it.

Unfortunately, the stalking horse bid was structured in such a way that it critically reduced the value of the LTE assets to us and to other companies. When we realized that had happened and decided to enter the bidding process, the same process caused a standstill, so that if you entered the bidding process by signing the NDA, you had to enter a standstill and could not bid on more than one asset at a time. Of course, the whole value to us was the LTE assets, including the workforce, the research technology, and the patents. If we had signed that agreement, we would not have been able to purchase both at the same time.

Ms. Siobhan Coady: I'm going to ask you to suppose you had been successful through that process. What value do you think you would have brought to Canada, to the employees of Nortel, to the pensioners, to everyone, including RIM, if you had been successful in the process?

Mr. Mike Lazaridis: I'm a great believer in high technology and I'm a great believer in science and research and development. For

those of us who are really involved in science and research and development and who understand its true potential, we realize there are these seeds that need to be nurtured before they can be planted. That's one of the reasons I've been so passionate over the last decade about investments in science and technology.

If someone were to ask me, why did you invest in quantum computing, why did you invest in theoretical physics, why did you donate a quarter of a billion of your own funds to these pursuits to help Canada and Canadian academics and institutions; and can you give us concrete examples of how that's going to help, that would be very difficult for me to answer—although in the last nine years or nearly a decade that we've been doing this there have been some glimmers of where that technology's going to benefit us and the world. But what's key is the researchers, what's key is the people, because they're the ones who understand the value of the technology; they catch a glimpse of the vision of where this is going to take us, where it's going to lead them and their company and their country. It's very, very important for us to get a sense of that and to participate in it.

So the people are absolutely important. The work they've done is absolutely important, and the way they've protected that work is absolutely important. As for where that will lead us, I could speculate, but what I can tell you is that the whole world is switching to LTE. It will be the most standardized global wireless infrastructure ever created. And the investments will be huge, and so will the opportunities. We just want to make sure that before we give up that technology to another country, to another industry, we analyze this transaction thoroughly to make sure it's in the best interests of our industry and country.

• (1045)

Ms. Siobhan Coady: You've asked publicly that this be reviewed under the Investment Canada Act. We talked to Nortel this morning, who said they didn't think they met the thresholds required under the Investment Canada Act. Can you talk about why you think it's so important to review it under that?

Mr. Mike Lazaridis: Much of that is actually explained in detail in my brief. I'm not an expert on the act. What I can tell you, though, is that the transaction is a very large one. I can tell you that the players who participated in the process thought it was a very important one, and they bet large amounts of money on it. That should be enough for us to sit down and think about it.

I would also state that if you look at how prevalent BlackBerry and wireless communications are among current governments, law enforcement, and the military around the world—there are over a million BlackBerrys being used by that sector alone—you will start to get a sense of how reliant our countries, our governments, law enforcement, and the military will be on this technology in the future.

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

Thank you, Madam Coady.

Monsieur Bouchard.

[Translation]

Mr. Robert Bouchard: Thank you, Mr. Chairman.

Thanks to you as well for being here. First, I must tell you that we of the Bloc Québécois are open to discussing the Ericsson-Nortel transaction and even another transaction concerning you which might have been conducted. We want to ensure that this kind of transaction has positive impact in Quebec. We want Quebec to come out of this without a loss or to benefit by it. Ericsson and Nortel currently have operations in Quebec and we hope they will stay there.

Do you have any investments in Quebec, whether it be your headquarters or a research centre? You could also talk about your investments across Canada to inform the committee. What operations are you carrying on in Canada, more particularly in Quebec?

[English]

Mr. Mike Lazaridis: Thank you very much for that question.

We don't currently have offices in Quebec. We do support university research there.

What I can tell you is that as RIM started to grow very, very quickly, we were surprised that we outgrew the ability of our local population and institutions to supply us with high-quality personnel. We started to grow, and you could see how our offices grew into Toronto and into Ottawa, and our offices will continue to grow as we seek personnel. So it's very possible that we will have offices in areas of great technology, and certainly Quebec has a great history and tradition in technology.

What I think is very, very important that we understand is that being a leader in a technology, especially at the R and D stage, being involved in a global standard, has allowed Nortel to have a seat at the table of the standards body and in the standards process. That is very, very critical, because they have shaped the technology; they have contributed to and helped shape the technology we're all going to rely on in the future. I think it's critically important that Canada continues to have that position and to have that seat at the table. It's not just one company and one city, but this is important for all of Canada, because the whole world will be going to the 4G technology; and when it does, the last thing I want is to be excluded from the seat at the table.

[Translation]

Mr. Robert Bouchard: In the Ericsson-Nortel transaction, Ericsson is committing to retaining 2,500 Nortel jobs in Canada, including in Quebec. We know your intentions regarding the price you would have been prepared to pay, but if you had acquired Nortel, what would your commitment have been with regard to the number of jobs to be retained in Canada and Quebec, since Nortel has employees in Quebec as well?

• (1050)

[English]

Mr. Mike Lazaridis: I think it's clear that we would have continued to grow the investment that Nortel has pioneered. There are excellent employees and high-quality talent there today. Some of them, of course, are leaving the company as we speak.

It's important that we realize that many of the customers Nortel had are also our largest customers today, companies like Verizon. It would have been very easy for us to continue working with those customers and making sure that the technology and development of those products would continue to lead in the industry. We would actually have been able to increase the value of those assets, to increase the value of that technology, because we and major suppliers are already selling to the large customers Nortel had. We would have helped the brand. We would have continued those investments and certainly those people, because without the people, all these assets have no value.

[Translation]

Mr. Robert Bouchard: Would you have been prepared to commit to any figures? We're told that Ericsson is committing to retaining 2,500 jobs. Did you have any aims regarding rationalizations or consolidation of operations in order to cut operating costs? By that I mean payroll and staff cuts. I would like you to talk about commitment and about the prospective number of employees.

[English]

Mr. Mike Lazaridis: RIM has over 12,000 employees today, and over 5,000 of those are in technology. We found in the past that it was difficult for us to find really good people in technology and be able to grow as fast as we needed to grow to keep up with the market, the opportunity, and our customers. So certainly the prospect of having that large number of high-quality talent was very attractive to us.

To be clear, we weren't really given an opportunity to get involved and look at the documents and information. We're here because we feel we were excluded from the bidding process. So our intentions are honest and clear. When we take something on, we grow it and make it successful for the benefit of everyone. We just weren't given an opportunity to really understand the transaction or the details. We weren't allowed to do that until we signed the non-disclosure, and unfortunately the non-disclosure took away all the value for us to enter the bid.

The Chair: Thank you very much.

Merci, Monsieur Bouchard.

Mr. Braid.

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

Welcome to Ottawa, Mr. Lazaridis and Mr. Crow. It's great to see you again.

I want to start by understanding this issue of earlier discussions between RIM and Nortel. You indicated that you had entered into discussions with Nortel. Can you give us an approximate idea of when those discussions started?

Mr. Mike Lazaridis: The discussions started months before they filed for bankruptcy.

• (1055)

Mr. Peter Braid: From your presentation, it sounds as if you were on the cusp of a deal. Can you put it into percentage terms how close you were?

Mr. Mike Lazaridis: We were close a number of times, and in fact we were so close that we were discussing announcing the deal a few days after we thought we had a handshake.

Mr. Peter Braid: Were you aware at the time that there was a possibility of the alternate process, the auction process?

Mr. Mike Lazaridis: Yes.

Mr. Peter Braid: But you were still surprised when that route was ultimately taken. Is that correct?

Mr. Mike Lazaridis: There were two aspects to this. First, we didn't know they were filing for bankruptcy when we began the process and thought we had reached a deal. Remember, they weren't selling off their assets at the time. This was based on discussions we had with them, and they thought it was a good idea. But once they filed for bankruptcy, of course, more of the assets became available and we immediately increased the scope of the transaction.

Mr. Peter Braid: You had full opportunity to consider participating in the auction process, but you had concerns about the way it was structured. Is that correct?

Mr. Mike Lazaridis: No. I want to be absolutely clear here. We had a deal and were pursuing that deal, and then the bankruptcy procedure surprised us. That allowed us to open the scope of the deal, so we discussed a much larger deal with Nortel at the time. We felt we had an agreement, but that's when we were informed that they were pursuing other agreements with other companies.

Mr. Peter Braid: I see. What do you think prevented or stopped the imminent deal that it sounded like you had from actually occurring?

Mr. Mike Lazaridis: Well, they didn't honour their commitments to us. They changed the deal dramatically, and the more they changed the deal as time went on, all the value that we were interested in started to vanish.

Mr. Peter Braid: You mentioned that you had concerns about the NDA and that it was a bit of a showstopper as well.

Mr. Mike Lazaridis: We had signed NDAs with them. I believe we had signed two different NDAs with them—

Mr. Peter Braid: As part of your earlier discussions?

Mr. Mike Lazaridis: —in order to begin the discussions and to complete the transaction. What surprised us was when we realized that much of the value had been given to the stalking horse bid. At that point we decided that we needed to enter the larger auction, because it was clear to us that we couldn't complete the transaction as originally agreed to.

When we went to become a bidder, we were given a new NDA, and this NDA had a standstill provision in it, which made no sense in a liquidation event, that we could only bid on one asset and no other assets for a period of a year afterwards. It just made no sense, because they knew what we were negotiating. We almost had a deal. So this new NDA, the provision in it, made it impossible for us to continue in the bid process, because by signing it we'd be giving up the asset that we were interested in.

• (1100)

Mr. Peter Braid: What specifically caused, then, the value of those potential assets to significantly decrease in your estimation?

Mr. Mike Lazaridis: By licensing broad rights to the intellectual property assets and providing broad sub-licensing rights, the best way to describe it is if you found a house that met all your needs and you were very interested in it and started working on an agreement of purchase and sale, and in the final hour you discovered that the owner had given a lifetime lease to another party and then had given them sublet licence for that property. What benefit would there be to you to continue purchasing that house?

Mr. Peter Braid: Do I have time for one more question?

Finally, given your presentation, your testimony, what I feel is new information today, have you considered participating in any of the court processes that are part of the overall process involved in this transaction?

Mr. Mike Lazaridis: We investigated that, but we were advised by our legal counsel that we wouldn't be successful in the U.S. under the terms that were already put in place. We felt that we were snookered.

The Chair: Thank you, Mr. Braid.

Thank you, Mr. Lazaridis.

Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair, and thank you, gentlemen, for appearing.

Who actually created the non-disclosure agreement? Who set that agreement and put it in front of you?

Mr. Mike Lazaridis: My understanding is that it was Nortel's U.S. counsel.

Mr. Brian Masse: Okay, so let's be clear on that: it was Nortel's U.S. counsel that set up the blocking, or the change of reference.

One of the things I'm concerned about—and I have raised this issue and I think there's enough evidence for this to actually be reviewed under the Investment Canada Act—is that, interestingly enough, Nortel believes what it's selling has a book value of around \$149 million U.S., after receiving an offer of over \$1 billion. I find that a stretch. What's the asset worth to you in terms of your analysis? Is it the \$149 million, or is it something different?

Mr. Mike Lazaridis: We've clearly, publicly, told you our belief of the value of those assets, based on our public bid. I would find it hard to believe that all those assets and all the rights to the other assets—and that's the key—are only worth \$150 million.

Mr. Brian Masse: You'd have to wonder, as an Ericsson shareholder, if that's the real value, if Nortel is saying they got \$1 billion for a \$150 million transaction.

In terms of national security, this is a very new clause, something I've been after since 2003, when there was the issue over China Minmetals Corporation and whether we should have non-democratic state governments owning Canadian companies. What I'd like to know is, in terms of the BlackBerry and the encryption, how important is that for its applications and how important is that as a feature to actually sell that in the market in Canada but also abroad?

Mr. Mike Lazaridis: Without question, it is important to understand how important security technology is. The technology that we use, of course, is public key elliptic curve technology. We've been using it for years, and it's been one of the core competitive advantages we've had in the BlackBerry and why it's so widespread in government use, military use, and law enforcement use.

It's interesting you should mention that, because last year we purchased another great Canadian company called Certicom. It was a Canadian company purchasing a Canadian company, a Canadian company purchasing a Canadian company that had already licensed a lot of their technology and had already been using a lot of their technology. It looked like a perfect match, and yet it was still reviewed by the U.S. under national security conditions before the transaction could complete.

Mr. Brian Masse: That's interesting, because it's a very unusual case where you have another state government review foreign purchases internally. Over here, I'm hoping that this is triggered as well. I think it merits it.

Also, it's important to note that there's no monetary threshold for the national security review. So that people are aware, the minister has two separate processes. He has the net benefit to Canada clause, and that has been tested recently. We've seen U.S. Steel, for example, where the Canadian government had to bring them to court because, even in spite of conditions being put on them, they've pulled back from those conditions. Separate and independent from that is the new national security provision that's available.

I want to switch quickly to another gear with regard to branch plant development versus that of home plant development, research and design and so forth. Where does most of that take place in terms of patent development and then bringing it to market? Does it take place in a home plant or does it take place in subsidiary or branch plants?

Mr. Mike Lazaridis: That's a good question.

In my experience with RIM and other organizations that I've cooperated with in the past, much of the R and D and much of the innovation happens near their headquarters or in their country of origin, mainly because there's a historical condition there. There's also, in many cases, financial advantages to that. I think that in itself is an important point, because most of the people end up being concentrated near headquarters. It's simply much more efficient that way. Obviously, much of the innovation and much of the work will be done near headquarters or in their country of origin.

I think it's also important to understand that when you think of net benefit you can't only look at the accounting numbers, because there's all the value in the technology, there's all the value in the spinoffs, there's all the value in the continued innovation by those individuals within the country and within Canadian companies. You really need to expand the net benefit. You also have to look at what

the net benefit is to those companies, the other companies, should that technology have a change of ownership. And how does that affect the local industry as well? That's also very important.

• (1105)

Mr. Brian Masse: During the testimony of Nortel, it became evident that the LTE technology from 1998...they claimed it was a smaller project, around \$50 million when it went into development. Then in the last couple of years, despite not being able to have access to SR and ED credits, they spent over \$300 million. Does that speak to the importance of this LTE technology, that the company would invest so massively into this to bring it to conclusion? Is that the real reason they would do it, or was it timing? What type of other comparative could there be in terms of that massive investment in R and D despite not being available for any tax credits? Is that a normal situation in your industry?

Mr. Mike Lazaridis: There are two or three questions there.

The first thing I'd like to say is that investing in R and D is absolutely critical to the success of the high-tech industry, so it shouldn't surprise people when I mention that last year we invested \$700 million in R and D. That's the first thing that's important.

Secondly, a famous researcher observed that for every year that you invest in a critical technology—that becomes critical over time—the amount of investment you need to catch up to all those cumulative investments from another company, if you start today, becomes an order of magnitude greater. In other words, if you started ten years ago, your investment may seem small, but today if someone tried to get in and invest and compete with you, the investment would be massive. That's why those investments are important.

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

Mr. Garneau.

Mr. Marc Garneau: Thank you, Mr. Chair.

Thank you, Mr. Lazaridis and Mr. Crow, for being here today. Thank you for your presentation at the beginning. I think you were very candid about the facts relating to this and in giving us your personal insights on the importance of high technology to the future of Canada.

I want to make sure with my questions that I fully understand the situation. I'm going to ask you some questions that are a bit candid in the sense of trying to make sure that I understand what we're talking about.

Would it be correct for me to say that basically what RIM, in its approach to Nortel, was looking for was to acquire the wireless assets, the CDMA and the LTE, but the patents for both technologies? Would that be a correct assessment of the situation?

Mr. Mike Lazaridis: In the end, that was what we offered.

Mr. Marc Garneau: Would it be correct to say that the reason you came away not satisfied was that in the end, Nortel had decided it would license the LTE technology to the winner; and of course, that also meant that the people associated with it would be going to the winning bidder, and that this would leave only the option thereafter, if Nortel chose to or decided to do some other licensing or even selling of the patents, that that was not an acceptable alternative?

• (1110)

Mr. Mike Lazaridis: Yes, that dramatically reduced the value of the LTE assets to us.

Mr. Marc Garneau: I'm going to ask you this again. You don't have to answer this, but I would be interested in knowing. Supposing the situation is the way it is now, does RIM see any value for its future in still considering to bid for licensing or even to acquire the patents if Nortel makes that kind of offer or puts that on the table?

Mr. Mike Lazaridis: At this point, based on the information we have—that is public—those assets have very limited value to us going forward.

Mr. Marc Garneau: Including the patents?

Mr. Mike Lazaridis: Yes.

Mr. Marc Garneau: Okay.

My colleague from the NDP raised the issue of national security, and I'd like to follow that up a little bit more because I didn't quite understand the details. You talked about elliptical curve technology—if I took that information down correctly. Could you elaborate a little bit more on your concern in terms of a threat to national security from Canada's point of view?

Mr. Mike Lazaridis: Much of this is in our brief. It's a very complex issue and it's very detailed in there.

What I can tell you is that there are many aspects of this. One is that being involved in the standards process is absolutely critical for future success in a technology—and it's really important for Canada to be involved in that. The second thing to realize is that this is a wireless IP network. Just as we protect our land-based IP networks at our borders with firewalls, this opens us up to a wireless access point that will be available across our country everywhere—anyone could connect to it. There are going to have to be some very carefully designed security technologies and standards built into this type of technology to make sure it is used for positive means and that it can be used securely by our industry, public citizens, government, and law enforcement.

Mr. Marc Garneau: Thank you. And if I have a chance for one more, when you negotiated or when you were talking to Nortel, in your bid, which I think was reported as \$1.1 billion or thereabouts for the assets, plus other assets, which I'm assuming were the patents for LTE, did you speak about your position with respect to specific intentions on the jobs of the Nortel people who would be involved in this transfer?

Mr. Mike Lazaridis: The first thing that's important here is that we were given very little time. Once we learned that the rights to the assets were given away with such broad terms, we had very little time to react. Nortel knew what we were interested in, and they were very interested in our acquiring those things. Then, as more and more surprises arrived, we realized that more was available, so we

expanded the scope of our offer, expanded the scope of the purchase. We did not expect that in the end we would have to make such a large bid in a situation where we were precluded from purchasing what we started our proceedings with Nortel with in the first place.

The Chair: Thank you very much, Mr. Lazaridis and Mr. Garneau.

Mr. Lake.

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

Thank you, Mr. Lazaridis.

I want to come back to this process again. For clarity, are you contending that Nortel deliberately jiggered the process in such a way that it would exclude RIM for some reason?

Mr. Mike Lazaridis: No, what we're saying is that during this entire process Nortel knew exactly what it was we were interested in and in fact, on several occasions, both before and after the bankruptcy announcement and proceedings, came very close to consummating a deal—so close that we were exchanging e-mails about a press release within a matter of days. What I'm saying is that in a situation where they knew what we were interested in, for them to say, “You were free to bid”, where signing an NDA that had a clause in it with a standstill for other assets...it just seemed almost disingenuous. But I'm not in any way suggesting that there was anything done that way; it just seemed that way.

• (1115)

Mr. Mike Lake: Was the process set up in such a way in the end, even though it may not have been something that RIM liked, that in your view would have benefited Nortel stakeholders?

Mr. Mike Lazaridis: I can't see how wiping out the value of their intellectual property assets with the first transaction could benefit anyone.

Mr. Mike Lake: Why would they do it, then? Why would they set it up in a way that hurt you and hurt them?

Mr. Mike Lazaridis: I don't really know why. All I know is that it benefited the stalking horse bidder.

Mr. Mike Lake: I would imagine you had discussions with them about how this process was going to hurt you—several discussions, I would think. Did they in any way try to explain a rationale to you, and specifically what would that rationale have been?

Mr. Mike Lazaridis: It appeared at first they didn't understand the implications of some of the things they were declaring to us. What's important here is that they did understand what we were talking about. We made it very clear to them on several occasions the value of what we were interested in and why we were interested, what the value was of what we were interested in. So you are right that we had several discussions. We made it very clear to them. We even thought they understood exactly what we were interested in, because we had a deal with them for what we were interested in. So it was clear to them what we were intent on purchasing. It was a very unpleasant surprise to us to discover that in fact they had changed the agreement in such a way that it took away the value of what it is we were originally interested in and had believed we had a handshake on.

Mr. Mike Lake: You've said several times, or indicated, that you had a deal or were very close to a deal. Was the deal far enough along, or was it concluded in such a way, that you feel you could start taking legal action?

Mr. Mike Lazaridis: I think we did consider that. I'm not sure. I have to be very careful in matters of that type because I want to make sure we don't prejudice ourselves for any future dealings at that point, but we did consider it.

Mr. Mike Lake: You considered it, but in the end you have decided not to?

Mr. Mike Lazaridis: No, I'm just saying that we did consider it at the time. Again, I have to be careful. We haven't finished evaluating all our options to date. Much of this has happened very quickly, and that's one of the reasons we're here. We just want to make sure we don't rush into anything that we're going to regret in the future. I don't see any need for this rush.

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

We're now going to go to Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you, Mr. Chairman.

I want you to know how much the Bloc Québécois respects your business. You, your associates and partners are well established in Canadian communities.

I'm going to start by citing an example from the world of sport. We're pleased that a new team is being established in Ontario, provided the Montreal Canadiens continue to be a top performing team. In this entire Nortel-Ericsson transaction—and you are a player... I quite like the conclusion of your presentation this morning, where you say this: “[...] I believe that the Minister of Industry should initiate a four-way discussion among the government, Nortel, Ericsson and RIM.”

Ericsson is solidly established in Montreal, Nortel in Ottawa and you in Waterloo and Toronto. What is the basis for your conclusion that you could offer the other parties full cooperation and perhaps come to an equitable solution for everyone?

• (1120)

[*English*]

Mr. Mike Lazaridis: That's a very good point. I've always believed that what blesses one can bless everyone. It's very important we understand that we're all in this together as Canadians. It's very important we understand the value of investing in cutting-edge technology and innovation in this country. I think we've understood that. The whole country and all the provinces are very much involved in investing in innovation, research, and education. It's a very important thing for us to do.

It's also important we understand that much of what has happened has happened. All we're asking is that before we rush to get rid of things that we believe are vitally important to Canada's future interests, we get together in a room—the government, Ericsson, Nortel, and RIM—and make sure that those benefits stay with Canada and are available for Canadians and Canadian industry to take advantage of in the future. That is what I think is very important.

[*Translation*]

Mr. Mario Laframboise: I know you're not making it public this afternoon, but do you have a concrete proposal to make to the government, to Nortel and to Ericsson? Have you already considered a proposal that might benefit all the parties?

[*English*]

Mr. Mike Lazaridis: If we had, I think everyone would have been happy to enter into it.

We need to have this discussion to make sure all of us understand what the opportunities are, what the assets really are, what's going to happen to those assets, and what losing those assets or control of those assets is going to mean to our industry and our country. That's why I think it's very important to have this meeting.

[*Translation*]

Mr. Mario Laframboise: Do you sincerely think that all the parties could get what they want out of it, Ericsson, Nortel, the government and your business?

[*English*]

Mr. Mike Lazaridis: I sincerely believe that if the government gets involved and brings these parties together, and these parties work in good faith negotiations, the outcome will at least be thorough. Regardless of what happens, we will all leave that meeting or those meetings better informed and better understanding the implications. Whether we accept them or not and are able to reach an agreement or not, at least we'll know that we've done the due diligence necessary before we give away such important valuable assets. That's the key.

The Chair: Thank you very much.

We'll now go to Mr. Kramp.

Mr. Daryl Kramp: Thank you, Chair, and welcome, gentlemen.

Mr. Lazaridis, you mentioned earlier that the terms of the stalking horse bid really denied you the opportunity to bid effectively in a manner that would benefit RIM, and yet when Nortel was here earlier today, they said to us that the courts allowed an opportunity to either object or modify the terms of the bid. Did you exercise any option in this manner or discuss this with the court?

Mr. Mike Lazaridis: This was largely a U.S. procedure, largely handled in the U.S.

I think what's critically important here is that the bid itself did not present a barrier to us. What presented a barrier to us was that to become eligible to make a formal bid required us to sign an NDA that had a clause in it that we call a standstill clause. This meant that we could only make a bid on one asset at a time, and that once you made a bid on one of the assets, you were precluded from making a bid on other assets for a period of one year. That seems a bit absurd when you're going through a liquidation process, where everyone's trying to rush to a conclusion as fast as possible.

You have to understand that to the other bidders it was an irrelevant clause, because they got what they wanted. But Nortel knew exactly what we were interested in, and that bid precluded us from entering the bidding process, because if we did, we couldn't bid on the assets that we were interested in.

• (1125)

Mr. Daryl Kramp: Without giving away anything in our conversations or deliberations, why particularly was it irrelevant to the other bidders but not to RIM?

Mr. Mike Lazaridis: Because they were interested in other assets. We needed rights to two of those assets, and the way it was split up and the way the bidding process was set up, we couldn't go for both those assets at the same time.

Mr. Daryl Kramp: Right. Did you voice objection with the courts somehow, either in a letter or personal contact or representation?

Mr. Mike Lazaridis: No, we believed it was too late.

Mr. Daryl Kramp: Thank you.

I have one other question. You made reference today to concerns about our national security, which any nationalist...and you obviously are a proud nationalist, and we're pleased to see that. I think we all recognize that this is a concern for each and every Canadian. Do you have any specific information, other than general terms or thoughts, as to where specifically this type of technology either will be and/or can demonstratively be proven to be a threat to our national security?

Mr. Mike Lazaridis: First of all, much of this again is covered in our brief in detail.

What I think is important and what we're suggesting again is that it is very important to us to make sure that we do due diligence on what has happened here and make sure that we understand all the implications and future implications of this transaction as it has been consummated or announced. That's what's important, because it's very natural—it's almost standard procedure in other countries—to check for these things on transactions of this magnitude that especially include fundamental R and D and technology that's going to be used in future international standards, that is going to be deployed widely within the country, and we need to understand what the implications are.

Again, I want to bring back something I said before. When we bought Certicom, a Canadian company buying another Canadian company in the same province, 100 kilometres away, it was still subject to the approval of the U.S. under national security concerns. So if that transaction was important to them, how come this is not important to us?

Mr. Daryl Kramp: Are their national security concerns based on international standards or based on simply domestic standards?

Mr. Mike Lazaridis: It was on international standards. Certicom technology was going to become the future international standard. Elliptic curve technology was the future.

Mr. Daryl Kramp: Okay. Totally hypothetical here, if this situation were reversed and you were buying Ericsson, how do you think Sweden would be reacting to this, from your perspective, based on the international standard?

Mr. Mike Lazaridis: The scrutiny would have been intense.

The Chair: Thank you very much for those very good questions.

We're now going to go to Mr. Masse.

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

I'm hoping you can confirm or clarify this if it's not correct. One of the things—I think I understand it correctly—with regards to SR and ED credits and going back to Nortel's ramp-up of investment into LTE in the last year, despite not being able to take advantage of the credits, is that I understand you can actually carry forward those tax credits to another year of profit and go back and apply them later on. Is that correct or is that wrong?

Mr. Mike Lazaridis: That is correct.

Mr. Brian Masse: Now, was there any discussion with regards to Nortel? Is that part of the package you guys had discussed: access to those tax credits?

It would have been an interesting question to ask Nortel at that time—just thinking of it now—whether or not that's even part of the Ericsson deal, as to whether or not those tax credits are transferrable. Do you have any knowledge of that?

• (1130)

Mr. Mike Lazaridis: I'm not a tax expert, but what I can tell you is that if they were available, of course, we would try to obtain them, as any business would. I don't know if they're part of this. I don't even know what the status of those tax credits is.

Mr. Brian Masse: Okay.

Maybe, Mr. Chair, I can add that question to your previous question for the researchers to bring back to the committee: the eligibility of access to the ownership of those tax credits.

The Chair: We'll get the researchers and the Library of Parliament to look into it and let members of the committee know.

Mr. Brian Masse: Thank you.

I'd like to switch again, Mr. Chair, back to the potential human loss of this.

What has happened, in terms of RIM, in terms of spinoffs? What has come out of your company from having the research and development at its core institute? What has that meant to other types of Canadian businesses? Can I have some snapshot of that, please?

Mr. Mike Lazaridis: Well, the first thing that happens when you have the kind of growth that we've been blessed with—I mean, you're talking about more than a decade where your average growth is 80% a year—of course, is that it really helps the local economy, and then it starts generating taxes to help the entire country. I think that's important.

The second thing that happens is that all the local businesses and suppliers and then all the suppliers in that country find themselves in a position to be supporting and supplying. Remember, we also manufacture a large number of our BlackBerrys here in Canada, which is quite unique in this business, in this industry, and it helps that environment. But we've also had lots of spinoff technologies. You know, there have been companies, there have been individuals, just like at Nortel, who have left the company and started their own. We've witnessed a number of those. We're also witnessing a lot of other companies who have found that building on top of the BlackBerry platform has been very, very successful for them.

And then, of course, you know—I think this is something we forget—the cellular pioneers in this country, who bet on BlackBerry ten years ago or more, have had great success in the wireless digital age that we find ourselves in today. I mean, a lot of other countries and a lot of other carriers would be envious of the kind of success they've had.

So it has definitely supported the widespread industry in Canada.

Mr. Brian Masse: Okay.

I want to switch to one other gear here again, because I have limited time. I do want to find out about the LTE technology, as it's rolled out.

Can you explain how that would take place or whoever that's going to take place with? I can imagine it's going to be an incredible advantage. Will this device create a pent-up need? Will it be difficult for any provider to keep up with demand? Will it be rolled out to, I guess, a prioritization? What will happen, as it starts to break through and emerge, not only to the consumer market but also to government services and other operations that governments provide?

Mr. Mike Lazaridis: Well, this wireless technology, and BlackBerry specifically, is already playing a very important role and has found itself in widespread use for law enforcement and government use as well as industry use and personal use. So that's already happening.

Today's 3G networks, which by many standards would be seen as early—you know these are just the early days—are already succumbing to the incredible demand for capacity and use. So we're already at a position where we realize we are underestimating the potential take-up of these digital wireless services for all services, whether they're personal, whether they're e-commerce, or whether they're law enforcement, military, or government. We underestimated the need for the capacity.

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

Mr. Mike Lazaridis: I have just one last thing.

The Chair: Go ahead, very briefly.

Mr. Mike Lazaridis: That is why we need fourth-generation technologies, and LTE gives us an opportunity to meet those needs in future.

The Chair: Thank you very much.

Mr. Lake.

Mr. Mike Lake: I just want to come back to a couple of things you've talked about.

First, you mentioned at the end of your testimony that you thought there should be a four-way discussion among the government, Nortel, Ericsson, and RIM. You've obviously had extensive discussions with Nortel, and Nortel has had 13 meetings with government officials.

Now, when was the last time you met with the minister or the government?

• (1135)

Mr. Mike Lazaridis: Which minister is that?

Mr. Mike Lake: The Minister of Industry, regarding this issue.

Mr. Mike Lazaridis: This week.

Mr. Mike Lake: Okay. So you've been talking to the minister as well.

Have you reached out to Ericsson in any way to talk to them as well and explore opportunities, potentially?

Mr. Mike Lazaridis: My staff has reached out to all the parties and has continued to reach out to all the parties. Some have been successful, and others have not.

Mr. Mike Lake: Okay.

I'm just going to transition—we're limited on time here—to this national security question again. I'm still having a hard time getting my head around how this technology would represent a national security issue.

I use a BlackBerry, as most of us do. My wife would say I'm horribly addicted to it. It has the Rogers name on the bottom. As you probably know, the Rogers network was set up by Ericsson back in 1984, and they continue to maintain that network now, I believe exclusively. I believe they have several Canadians working in R and D that contribute to that network. Are we facing a national security risk in any way, in your view, by using BlackBerrys on the Rogers network?

Mr. Mike Lazaridis: I would argue that if you don't use BlackBerry—sorry for the plug—you may be facing a national security issue, because we design security into our products. It was not designed into the networks. It is critically important that we understand where these networks are vulnerable so that we can build it into the standards going forward. This is our opportunity with the 4G technology.

Mr. Mike Lake: But I would imagine that for a business, as you're developing technology with the view to selling that technology around the world, it's in your business interest to make sure that the security features are built in, and further, that governments choosing to use those technologies around the world would make their business decisions based on the national security features built into the technology.

Would that be accurate?

Mr. Mike Lazaridis: Certainly you would expect that to be the case, but that has not, sadly, been the case in the past.

Mr. Mike Lake: I'll move to one last thing. The big question, I think, heading into this for a lot of people was why RIM never made a bid. I think you've talked about that a little bit in terms of some of the limitations to your making a bid. But in terms of the stalking horse process, if RIM had made the stalking horse bid, would you not have defined the parameters, in a sense, that all of the other bids would be defined by or judged by? Would it not have been one way around this to kind of negotiate a way to make the stalking horse bid in the first place?

Mr. Mike Lazaridis: We have to be very careful with 20/20 hindsight. The important thing was that we already thought we had a deal for the assets under the terms that we found acceptable. Then, when the auction was opened up and there were the other players, the stalking horse bid had already been made by NSN. So we couldn't change it. That's the key thing.

Remember, we felt we were done. We felt we had a deal. Then it just completely changed.

The Chair: Thank you very much, Mr. Lake and Mr. Lazaridis.

Mr. Rota.

Mr. Anthony Rota: Thank you, Mr. Chair.

Thank you for being here today.

This morning we heard a lot of statements regarding scale and how necessary it is to have a certain amount of scale in this industry to have credibility, an ability to produce, and have your product on the market.

It sounds like a silly question, but do you believe your company has the scale to take on Nortel Networks and the assets that they have?

Mr. Mike Lazaridis: That's a very interesting question, and I want to be clear in my answer.

The first thing you have to understand is that it's not scale, it's quality and innovation and ability to service your customer. Those are the number one most important things. If that weren't the case, RIM would not be the number one smart phone supplier in North America. So that's important.

Mr. Anthony Rota: I needed to hear that, because—

Mr. Mike Lazaridis: The second thing is, yes, we do have the scale today to be able to support this R and D and make sure it benefits our country.

Mr. Anthony Rota: Very good.

It was mentioned earlier that you worked with the minister this week. Had RIM worked with the minister or this government prior to the change in the agreement? Obviously you've worked since, because you met this week, but prior to the agreement taking place, had you worked with government officials or the minister to make it happen or to make sure everything was in place?

• (1140)

Mr. Mike Lazaridis: I would not say that we worked with the minister to make sure anything happened. We kept him up to date because we felt that it was an important Canadian issue. In some cases we seek their guidance, but that's about it.

Mr. Anthony Rota: It almost sounds like there was a conspiracy in place, and I hate to use that word, but I'm going to ask a question about promises that were made by Nortel.

Obviously you felt that you had a deal, you got to a certain point, you were ready to go, and all of a sudden the agreement changed somehow. Licensing seems to be one of the ways out of the agreement. Do you believe that might be one of the ways the deal was changed enough so that maybe there was an out to the agreement you had?

Mr. Mike Lazaridis: Yes, it's my belief that there is enough room in the current situation to make sure that if all the parties got together, we'd at least have an opportunity to come up with something more palatable to all the parties.

Mr. Anthony Rota: In a press release issued on July 20, your company announced that, based on the preliminary review, "RIM [was] prepared to pay in the range of U.S. \$1.1 billion, subject to due diligence and the entering into of appropriate ancillary agreements, for the CDMA and Long Term Evolution Access businesses and certain other Nortel assets".

What are those other assets that you were interested in?

Mr. Mike Lazaridis: I think we were fairly clear on that: the LTE assets and the LTE patents as well.

Mr. Anthony Rota: But no other assets, no hard assets, no commitments that the company would have that came with the corporation?

Mr. Mike Lazaridis: When you read it, there was the purchase of the actual business, which was not contemplated originally because that was never offered to us before they entered bankruptcy. Then, as I said, once they entered bankruptcy, the scope changed and increased because there was more available and they were more interested in selling more. We increased that scope again, but then when the stalking horse bid came in, it was a much bigger business purchase. So we said yes, we would put in \$1.1 billion on that bid, based on due diligence, because we didn't have much time, but we also still wanted that piece that we were negotiating for, together. So that's the extra piece that's mentioned in there.

The Chair: Thank you very much.

I want to close, as chair, with one final point before we suspend.

You've indicated that RIM was precluded, as part of the auction process, from bidding on both assets, what you call the LTE assets and other certain LTE assets, at the same time, in the same auction process, but the courts have decided to separate these two assets into two separate auctions. They did this to maximize the money raised from the disposition of Nortel's assets so that Nortel creditors and pensioners could get as much money as possible for their bonds and for their pensions.

To me, there seems to be a bit of an inconsistency here, because your colleague Mr. Balsillie has argued that under one court-supervised bankruptcy proceeding in the southwestern United States, at Phoenix, the auction be awarded to the highest-dollar bidder, that the successful bidder be allowed to be a foreign buyer, and that the successful bidder be allowed to move the business outside the country. Yet on the other hand, at another court-supervised auction proceeding in the northeastern United States and here, you and your colleagues believe the auction should be split up, that the auction be awarded not to the highest-dollar bidder, that the successful bidder not be a foreign buyer, and that the successful bidder not be allowed to move the business outside the country.

You've put our government in a very difficult position, because foreign direct investment is a very important part of the Canadian economy, and we as governments need to be consistent about FDI rules and about the applications of those rules. As chair, that's a point I want to make.

I thank you both for spending the time, on very short notice, to appear before our committee.

I will suspend this meeting for 30 minutes.

•(1145) _____ (Pause) _____

•(1215)

The Chair: Good afternoon. It's 12:15 and we are coming out of suspension.

[*Translation*]

Good afternoon, everyone.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Friday, August 7, 2009, we are studying the proposed sale of certain Nortel Networks assets.

[*English*]

Good afternoon to everyone. We are here today pursuant to Standing Order 108(2) and the motion adopted by this committee on Friday, August 7, to study the proposed sale of certain Nortel Networks assets.

We have in front of us four representatives from Ericsson Canada Inc.: Mr. Mark Henderson, president and chief executive officer; Monsieur Michel Peladeau, director of finance; and Monsieur Paul Schabas and Monsieur Richard Corley, legal counsel for the firm.

Welcome to you all.

We will begin with a ten-minute opening statement.

Mr. Mark Henderson (President and Chief Executive Officer, Ericsson Canada Inc.): Good afternoon.

[*Translation*]

Good afternoon.

Mr. Chairman, my thanks to you and your fellow committee members for this opportunity to appear before you today.

[*English*]

We're here to discuss Ericsson's acquisition of the assets from Nortel and how we believe it will benefit Canada. I and my

colleagues have already been introduced, so we can go on from here. I'd like to take the first few minutes to talk about Ericsson's presence in Canada.

Ericsson in Canada began operations in 1953 and has gone on to become one of the top innovation companies in this country. In fact, over the past decade we have invested more than \$2 billion towards R and D in this country.

We currently employ 1,900 people across the country, including 1,500 at our Montreal facility, which is one of Ericsson's largest R and D centres outside of Sweden. The remainder of our employees are based in Mississauga, Ontario, and in Vancouver, British Columbia. Once the acquisition is complete, we will employ approximately 800 more people in Canada, and our investment in R and D in this country will grow accordingly.

Our Canadian employees have contributed over 330 patents to Ericsson over the past quarter century, and we are confident that with the addition of Nortel's competence in Ottawa as a result of this acquisition, this level of innovation will continue.

Throughout its history in Canada, Ericsson has built much of the vital telecommunications infrastructure in this country. We have been the exclusive supplier of wireless technology to Rogers for the past 25 years. We also supply telecommunications solutions to Bell, Telus, and other Canadian operators, and to utilities in Quebec and New Brunswick, and have been *the* trusted supplier to the Government of Canada and the Department of National Defence.

As well, we are currently working with a number of Canada's new entrants into the wireless market. In fact, just this week we announced a major contract with DAVE Wireless, in which Ericsson will be supplying a wireless network in key markets across Canada.

Ericsson's history in Canada has shown that we have worked hard over decades to build a significant customer base, with a focus on growing innovation, job creation, and telecom leadership. We are committed to continuing this dedicated effort towards innovation and in providing leading-edge solutions to our customer base, both existing and new. In short, our commitment to Canada is strong and long-lasting.

As you know, Ericsson has entered into a purchase agreement to acquire substantially all of Nortel's North American CDMA business and certain LTE assets for \$1.3 billion U.S. on a cash and debt-free basis. The deal is a result of an auction initiated by Nortel, which was closely supervised by the bankruptcy courts in both Canada and the U.S. The auction was open to all qualified investors, including Canadian investors, and was designed to maximize value for Nortel and its stakeholders. The auction was for a specific group of assets and number of employees predetermined by the court process. The auction process was determined by the presiding judges to be fair to all.

The Nortel CDMA business covered by the agreement is successful from both technological and profit perspectives, and it is our intention that this will continue. It will operate largely as a separate unit within Ericsson, led by its current management, headed by Nortel's president of Carrier Networks, Canadian Richard Lowe, who I believe appeared here earlier today.

While the CDMA business unit is a leading provider of network equipment to wireless carriers in this market, CDMA technology is experiencing a gradual decline as it's replaced by the next generation of wireless technologies, including LTE, or long-term evolution. These next-generation technologies provide faster data speeds, enable new broadband services, and enhance the consumer experience overall on mobile devices.

As it's these LTE assets that seem to have generated the greatest interest in the acquisition, I would like to clarify the nature of the agreement with respect to LTE technology.

There are two components. First, we will employ approximately 800 Canadian Nortel employees, of which approximately 400 are directly involved with LTE development. Second, we are licensing certain LTE patents on a non-exclusive basis. To be clear on the latter point, we are not purchasing any LTE patents from Nortel; we are simply licensing them on a non-exclusive basis. Nortel will remain the owner of its LTE patents and will be free to license or sell them to other companies, should they choose to do so. Therefore, these patents remain in the ownership of Nortel. These assets and rights being acquired are extremely complementary to Ericsson and upon completion of the acquisition they will make Ericsson one of the leading wireless technology and service providers in North America.

•(1220)

In response to comments in the press about national security, I note that CDMA networks, as we heard earlier today, are based upon common international standards, which means that the technology is widely shared in the industry. Consequently, we don't see national security concerns applying to this acquisition.

The approximately 800 Canadian Nortel employees who work in these areas, both CDMA and LTE, will be employed with substantively the same pay and benefits and based in the same locations. We do not anticipate any layoffs or major changes in the day-to-day work of these employees.

We see this acquisition as an opportunity to continue the tradition of excellence in innovation, with Canadian technology jobs being preserved and ultimately more being created, to continue Ericsson's significant investment in Canadian R and D, and to sell made-in-Canada technology solutions to our customer base around the world.

While the book value of the acquired assets is below the threshold under part IV of the Investment Canada Act, it is nevertheless the case that the proposed investment will benefit Canada. For example, the proposed investment affords an opportunity for Nortel's research to join Ericsson's global research force and to share knowledge and best practices with Ericsson Canada's researchers. It will assist Ericsson to keep Canada at the forefront of technological development with respect to next-generation wireless technologies such as LTE.

The benefit of this transaction will help fulfill the government's goal of attracting foreign direct investment in order to increase Canada's productivity. Ericsson will employ the approximately 800 Nortel employees in Canada defined by the court-approved auction. Ericsson's R and D facility in Montreal is one of its largest worldwide and is one of the top R and D firms in the country.

Ericsson has been a trusted supplier to this market for almost 60 years and will continue a high level of customer service to its existing and new customers. Ericsson has every intention to continue its presence in Canada, and the proposed investment will help ensure that Canada remains a very important part of Ericsson's global strategy.

Finally, Ericsson's history in Canada demonstrates a sustained commitment to carrying out not only sales but also high-level R and D that contributes to Canada's long-term prosperity and productivity. As a result, we believe this is a good opportunity for Nortel, for Ericsson, and certainly for Canada.

Merci beaucoup. Thank you again for this opportunity to speak to you. We'd be happy to answer any questions you may have at this time.

•(1225)

The Chair: Thank you very much, Mr. Henderson, for those remarks.

We'll have about an hour of questions and comments from members of this committee, beginning with Mr. Rota.

Mr. Anthony Rota: Thank you, Mr. Chair.

Thank you, Mr. Henderson, and thank you all for coming this afternoon.

The CDMA architecture is an architecture that is, let's say, in its dying days or is losing popularity; it's being replaced. What are your plans for the technology and how do you plan to use it? How do you see it being used over the next number of years as it phases out of use, basically?

Mr. Mark Henderson: Thank you for that question.

To back up a bit on global standards—and I think we heard a bit of that today—the mobile telephony world has basically been split into a global standard, which much of Europe and Asia have been on, but North America has continued down the road of having two main standards: one CDMA and one GSM.

As it becomes apparent that the CDMA technology is mature and will slowly be phased out, from our perspective and what we've seen from the past when other technologies are weaned out of the market—and we've had examples in the past of another technology that used to be here in Canada called TDMA—even though the technology is being overlaid with a more advanced platform, that existing technology continues to operate in the market for quite a few years and is basically sunsetted out of things. The idea here is that because the CDMA customer base is so attractive and is large in North America, that presents an opportunity for growth to Ericsson if we continue to support these networks as they're growing and, hopefully, bring new technological solutions to that customer base when those solutions are required.

Mr. Anthony Rota: So as the CDMA architecture or technology fades or goes, the jobs and servicing of that technology will remain in Canada.

Mr. Mark Henderson: The service jobs—the 800 employees, as defined in the auction process—are really one of the key values of what we are taking on. They are absolutely essential to retaining the viability of that technology out in those markets.

In the past with Ericsson, it has been the case that when technology was sunsetted, because you had that competence in the company, you started to disperse jobs into new lines of technology so those jobs were maintained and grown.

Mr. Anthony Rota: Very good. Thank you.

On the other hand, there are Nortel's LTE assets and the technology involved, and you're licensing it. I'd like you to elaborate a little on that, because there have been some questions this morning about licensing it when Nortel is the owner. You're basically leasing the technology from Nortel, and we're not sure about the future of that company. So how do you rationalize leasing from a company that you're not sure is going to be there much longer, and what happens when that company is dispersed or disappears?

Mr. Mark Henderson: It's a complicated area, the way this has all been defined and how, through this stalking horse process, the assets, patents, and employees have been framed very tightly in a box. A good analogy is that it's a box of apples. You go into the store and say you have an interest in those apples because you need to make some pies. You say you'd also like to buy some pears. They say, "No, today we're only selling apples. Tomorrow you can buy pears." When you ask if you can buy the farm as well, they say, "No, the farm stays here."

So on the use of the technology, the patents are basically perpetual. Because this is a new innovation, the technology will live for years and years to come. The patents are licensed, so the ownership is retained by Nortel. As we heard today, I don't think they've gone through the process of deciding how those patents will be owned in the future—who will own the farm. But that is the benefit of licensing them—perpetual use of that technology. Because it's licensed on a non-exclusive basis, other companies are free to make those same agreements.

Mr. Anthony Rota: That's interesting.

As far as employees go, you have an existing employee base in Montreal.

Mr. Mark Henderson: Yes.

• (1230)

Mr. Anthony Rota: You don't have a large employee base here in Ottawa. Will you maintain both centres and retain the same number of employees, or will you be looking at merging them at some point and having one large centre where all the research is done?

Mr. Mark Henderson: Today we have two research and development facilities. One is in Vancouver, with about 200 people, and that deals with primarily IP and router-based technology. In Montreal we have 1,500 employees running a number of multimedia and network-based programs.

There are good reasons why those facilities are there. One's in Montreal because of the longevity of the facility there. It's one of our crown jewels in Ericsson's global development strategy. We have a very tight affiliation with a number of universities in Montreal, including McGill and École Polytechnique, and universities in Ontario and Vancouver. We draw competence from this university system.

The types of development being done in Montreal are quite different from the competence we're getting in Ottawa. Of course, that competence in Ottawa has also been built up from an ecosystem of educational platforms. Our statement has been that we will not integrate these research and development hubs. They will run as separate entities, and there's a reason for them to be in those areas.

Mr. Anthony Rota: So you see them both growing separately, and the existing jobs basically remaining in place.

Mr. Mark Henderson: That's correct.

Mr. Anthony Rota: Very good.

The Chair: Please be brief.

Mr. Anthony Rota: I'll stop here because my question is a long one.

The Chair: Okay. Thank you very much, Mr. Rota and Mr. Henderson.

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: Thank you, Mr. Chairman.

Thank you very much for being here to testify before the committee this afternoon.

We of the Bloc Québécois are in principle in favour of the transaction, but we want to ensure that it is fair with regard to Quebec jobs. We also want the transaction to be in the best interests of the Quebec population.

Earlier my colleague asked you a question concerning the research centres. He told you that Nortel has a research centre in Ottawa and one in Montreal. You also have your headquarters in Montreal.

Could the acquisition of Nortel put a brake on the development of your research centre in Montreal and your North American headquarters?

[English]

Mr. Mark Henderson: The quick answer to that is no. As a matter of fact, we feel that this will actually enhance our base in Montreal.

I think I need to say a few words about Ericsson globally. It's a very old company, developed in 1876. You can tie a lot of parallels between Nortel and Ericsson from that perspective. The company has been in Russia since the time of the czar, in China since the turn of the century, and in many countries for many decades.

The one fact about Ericsson is that it has never, ever left a market. We operate in 170 countries today and we are the world's leading telecommunications provider. Even in the worst times in telecom—and I'm thinking about the earlier part of this decade when a lot of the equipment vendors, including Ericsson, were cutting their staff by almost 50%—the research and development centre in Montreal was maintained as it was, static, and even growing with assignments because of the competence and the products that we develop in Montreal and the importance of the ecosystem we have here in North America.

I think this acquisition and the fact that we basically will be increasing our R and D spending in Canada by up to 50% make this an even more important facility for Ericsson, part of Ericsson's global strategy for development, and should, I would say confidently, allow us to bring more assignments into Montreal.

Thank you for your comments about its importance in Quebec.

• (1235)

[Translation]

Mr. Robert Bouchard: When a business the size of yours acquires another business, Mr. Henderson, there's always a rationalization or consolidation plan. That's what I saw when Rio Tinto bought Alcan. At its Montreal headquarters, it removed one level of responsibility. I believe 400 management positions were eliminated.

You have no doubt thought about that and you no doubt have a plan. I'd like to have some information on that rationalization or consolidation plan that might be developed once the transaction is completed.

[English]

Mr. Mark Henderson: Thank you. I understood that comment from earlier today as well.

I think one of the things we have to keep in mind with the auction process—the assets, personnel, and technology that Ericsson is picking up—is that these assets are a result of years of deep restructuring inside Nortel. These kinds of reductions and streamlining have been done, as we know, year over year. It's our opinion that these resources and these jobs are critical. They are the cream of the crop. They are absolutely essential to maintaining and growing the business that we're taking on and to integrating into the other business of Ericsson. I think we've stated publicly that this is not about layoffs; this is about employing those 800 people in Canada and making sure we're focused on growth.

We're obviously very interested in the business. We're paying a lot for the business. After all, in the end it is a business, but we will maintain these jobs.

[Translation]

Mr. Robert Bouchard: If I understand correctly, you don't have a plan for consolidation, rationalization or job cuts. Instead you seem to have a plan to increase staff. You talked about adding 800 jobs to what there already is in Canada. Is that correct? Based on your estimates, where will those 800 additional jobs be established?

[English]

Mr. Mark Henderson: I think we've talked about where the jobs are, but I know that approximately 550 of these are in Ottawa, 46 in Toronto, another 50 in Calgary—I'm sorry, I'm adding these up quickly—and about 60 in Montreal. So they are spread across the country in a number of regions.

[Translation]

Mr. Robert Bouchard: There are 400 employees in Ottawa. You are adding another 100 or so and you'll be distributing others to various locations, for a total of 800.

[English]

Mr. Mark Henderson: Yes, the total number of employees is calculated at approximately 800. Of those 800, as I said, about 500 are in Ottawa. They're supporting the LTE development activity in Ottawa, some of the CDMA activity in Ottawa, and the rest across the cities are supporting primarily the CDMA business, the ongoing legacy business of CDMA across the country. That's why they're in those cities.

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

Merci, Monsieur Bouchard.

We're now going to Mr. Lake.

Mr. Mike Lake: Thank you for coming before the committee today.

I'm just taking a look at your opening statement. Obviously you've talked a lot about the benefits this deal will have for Canadians. In particular, I note here that you've said you see this acquisition as an opportunity to continue the tradition of excellence in innovation, with Canadian technology jobs being preserved and ultimately more being created.

Can you speak to the part about more being created, where you see that coming in this picture?

• (1240)

Mr. Mark Henderson: I think it's a matter of scale. Ericsson has many large R and D centres around the world. It happens that the facility in Montreal is one of our largest. However, R and D and these centres compete with each other for assignments. As technology is standardized, licensed, and starts to be developed, depending on the competence, the quality of the facilities, the way the innovation is produced, Ericsson globally assigns R and D projects out to the these centres.

We fight very hard here in Canada to make sure that from a cost perspective we are competitive with other R and D centres around the world, and I would say that federal and provincial tax credit programs really help us grow those R and D jobs and maintain those jobs here in Canada.

But as we start to add competence like this, competence that really has to do with long-term evolution.... Ericsson already is spending an enormous amount of money on long-term evolution; I think we are the leaders in developing that technology. This is an added part of the portfolio that we've put in place, but it makes research and development and the work we'll do here in Canada even more important, so that draws additional assignments, additional resources, additional work into Canada.

That's what I meant by growing that.

Mr. Mike Lake: You mentioned university partnerships in answer to one of the questions from a colleague here. Canada leads the pack, I think, in terms of university research, but we've had some challenges commercializing that research. I'm interested to hear a little bit more elaboration in terms of your partnerships with universities that you were talking about.

Mr. Michel Peladeau (Director of Finance, Ericsson Canada Inc.): I might be able to answer that one.

Mr. Mark Henderson: I'll let Mr. Peladeau answer that one.

Mr. Michel Peladeau: For university research, Ericsson in Canada has been very active. We're investing in the University of British Columbia; we have invested some money with Waterloo University in Ontario, and the University of Montreal, the Polytechnique. We have some chairs we're funding at Polytechnique or Concordia, if I'm not wrong, and we're also funding different projects with the help of Prompt Inc. in Quebec. So we have many initiatives and we're investing a lot of money with universities in Quebec and across Canada.

Mr. Mike Lake: I'm going in a few different directions here because I want to get a full picture of your presence in Canada.

You touched on the Rogers network. Can you elaborate a little bit more in terms of your long-term relationship with Rogers and your involvement in that network?

Mr. Mark Henderson: You know, when I said in my opening statement that Ericsson started in 1953, obviously that wasn't with Rogers. I mean, in the sixties and seventies the company was involved in a number of businesses, including telephony switches that carried toll traffic internationally; it put in power cables below the sea to link P.E.I. to the mainland; it installed horizon-based radar systems on the frigates for the Canadian navy.

But in 1984, when the first wireless licences were handed out in Canada, that's when we struck this partnership with Cantel, at that time, to deploy that network 100% coast to coast. That has been a fantastic story for Ericsson. That's a relationship that exists to this day, 25 years later. We know that the innovation and the technology that comes to market through that network makes it one of the leading telecom providers in this country, and we are its sole partner when it comes to the wireless network equipment.

If I could tie that together even more, there are a couple of things I think I have to say.

In 1989 there was another network put in coast to coast for Rogers. It was called Mobitex. It was a very early mobile data technology. It was totally developed by Ericsson, it was sold to Rogers, and we put it in coast to coast. And there was also a coast-to-coast network put in the U.S. That Mobitex network, that technology, is the one that the very first RIM pagers were built upon. The first little chicklet, I mean, was completely Mobitex technology. So there's quite a technological tie between not only Rogers but Research In Motion and some of the things that have happened in this country.

In 1984, when the licences were handed out, it was also decided to put in an innovation cell in Montreal. It really started with about 45 to 50 people, and really, on the start of that partnership, it has become one of the top research and development companies in the country.

So we're very proud of what has been accomplished here and we're quite proud of our relationship with Rogers over these 25 years.

• (1245)

Mr. Mike Lake: I have a final quick question here with regard to the number of Canadians you employ. You went through the numbers, but what number or what percentage of those would be actual R-and-D-focused employees versus other areas?

Mr. Mark Henderson: In Vancouver, we have about 190 people in research and development. Again, that was an acquisition—a U.S. acquisition—that Ericsson made, but the research and development is being conducted in British Columbia out of that innovation cell.

In Mississauga, it is mostly the sales and marketing, terrestrial engineering, and project management. There are a couple of hundred people there, or a little bit less.

And then regarding the components in Montreal, I'll let Mr. Peladeau answer in French.

[*Translation*]

Mr. Michel Peladeau: In Montreal, we have approximately 1,500 employees. The distribution is approximately 600 employees in research and development and about 700 in a services group. Other employees will be added as a result of the acquisition, as Mr. Henderson said, approximately 180 of which will be in a research group in Vancouver.

The Chair: Thank you, Mr. Peladeau.

Mr. Masse.

[*English*]

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

Thank you, gentlemen, for appearing today.

To follow up from that, are those specific numbers for people that involve specifically engineers in field research, not service?

Mr. Mark Henderson: The splits in Montreal?

Mr. Brian Masse: Yes, in your numbers, in terms of your engineers who are employed across Canada, how many are actually doing real field research versus service?

Mr. Mark Henderson: Okay.

[Translation]

Mr. Michel Peladeau: It's mainly the field research, our service group, that does that in large part. That's what we call on-site customer support. They also do FOAs, first office applications—I don't know the expression in French. These are people who go on site. As I mentioned, a group of about 700 employees do service. It's not the entire group that does field research, but a large number do.

[English]

Mr. Brian Masse: That's different from hard research, but I understand that.... Here's what I want to get to right away, though, and I think it's important. I know that you noted in your submission here that the book value is less than what you're purchasing it for. Maybe just explain to the public, you know, why it is that you're paying \$1.3 billion for something Nortel claims is only worth \$149 million.

Mr. Mark Henderson: First of all, I'll make one comment. In acquisitions of this nature in the technology field, it's quite common to see purchase prices and book value vary by a factor of 10. I would say that's quite a common practice. I think we have to remember that although the book value assets are calculated the way they are, we heard commentary today that there's a lot of other intrinsic value that's put behind those, including the existing CDMA business, that entire customer base. Even if it's a maturing technology, it represents an opportunity for growth, not only now but for bringing new technological solutions to that customer base.

I think we also have to remember that the first stalking horse bid was already at \$650 million, so it was a competitive bidding process. The parties walked into that room and they walked the price up. If the goal is for Nortel to redeem the value for the stakeholders and really get the maximum out of this, they did a good job that day, but we felt that this is the value we put on this business.

Mr. Brian Masse: That's why I think it's a little bit difficult. The Investment Canada Act actually has enterprise value right now as the threshold. It's \$312 million right now and it hasn't been changed to date.

Let me make sure I understand how this arrangement will work, because it came a little more to light today that Nortel is leasing this to you. For how many years, or is it permanent? I guess the way it works now is that if you're RIM or somebody else, then either you've got to purchase the actual right from Nortel, if it's later on auctioned off, and then you have to get a release from them now and they get access to that equipment, or the LTE, or maybe they don't. Alternatively, then, RIM and everybody else has to go to you to get access to this LTE technology. Lastly, who's going to do the subsequent research on that? Is Nortel abandoning all that? Or do you then do the subsequent research and then have rights to all that's developed off the subsequent research that has been done on LTE?

• (1250)

Mr. Mark Henderson: I'll make a couple of comments, first on the Investment Canada Act. I believe, because this is a sale of assets

and there is no enterprise, that it's not explainable under that part of the act either. But I'm not counsel—

A voice: That is the case.

Mr. Mark Henderson: When it comes to patents, it's a very good question: how long is the term of the lease of the patent? I said earlier I think it's perpetual, but I could be wrong. Maybe Richard could address that.

Mr. Richard Corley (Legal Counsel, Ericsson Canada Inc.): It's very important to understand that with a licence to technology, unlike a lease on a house, the fact that one person has a non-exclusive licence doesn't preclude another person from using that same asset. The fact that Ericsson has a non-exclusive licence, by its nature, means that RIM can have the same non-exclusive licence.

Mr. Brian Masse: But do they go to Ericsson to get that, or do they go to Nortel?

Mr. Richard Corley: No, they go to Nortel.

Mr. Brian Masse: This is almost like how cab licensing is done.

Mr. Mark Henderson: We don't become a licensee. We get to use the technology but—

Mr. Richard Corley: Nortel retains the patent, and all that Ericsson has is the ability to use the patented technology, and Nortel is free to sell that, to licence it to as many other people as it wants, but controls that patent in the future.

Mr. Brian Masse: The problem, I guess, for someone else then is that now you have all the scientists, engineers, research labs, and all the expertise to expand the technology, which is exclusive then to you. You don't have to share that with someone else who goes and gets a licence from Nortel. Is that correct or incorrect?

Mr. Richard Corley: The nature of patents and the whole purpose of the patent system is to have sufficient disclosure in the patent itself that others who are skilled in the art can take that information from the patent and make use of it.

Mr. Brian Masse: To answer my question, though, you now have all the employees and the infrastructure that has created the LTE, and if RIM or somebody a year later, company X, goes to Nortel to get that, they can only get the original patent, and you would have any advancements past that because you have the rest of the infrastructure that has now been passed off since that time, and you have no obligation to provide any of that back to the new entrant.

Mr. Mark Henderson: After the acquisition is complete and the employees are part of Ericsson, if new patents are developed they will be Ericsson patents.

Mr. Brian Masse: I think that's what I'm trying to clear here. I don't want the interpretation to be out there that later on, a year later, somebody else can simply pick up this technology right away and be in the market. This is really high stakes, because what you're getting, just as important as the current technology information, is the research and development of the minds of those employees who have created that.

Mr. Mark Henderson: Exactly. And I think there was a valid comment earlier that we have to understand that these technologies, LTE included, are based on open standards. It's why these patents are openly licensed. It's not just Ericsson that is developing LTE; there are many vendors out there that are competing. This is the global telecommunications market for the world.

The Chair: Thank you very much, Mr. Henderson and Mr. Masse.

Madam Coady.

Ms. Siobhan Coady: Thank you very much.

Thank you for joining us here today. We know of the good work that Ericsson does do in the country. Thank you for taking the time to come visit us today.

I have just a few questions around the process of how this all transpired. Were you engaged in discussions with Nortel, prior to the stalking horse, for the CDMA business or for the LTE assets?

•(1255)

Mr. Richard Corley: Ericsson is and has been involved in ongoing discussions with many parties, but it's subject to confidentiality and non-disclosure agreements.

Within the context of the stalking horse bid, it is a matter of public record that Ericsson, together with two other parties, was involved in the auction process and complied with the court-mandated requirements to complete the auction to maximize the value of the Nortel assets.

Ms. Siobhan Coady: Did you have concerns around this process, in particular the non-disclosure agreements or anything of that nature, leading into the stalking horse bid?

Mr. Mark Henderson: Not that I am aware of. I mean, there was a solid process put in place. Obviously it was a very closely monitored activity in both the U.S. and Canadian courts.

We were one of a few companies that complied with all the agreements that had to be signed to participate in the auction, and that's the way the process was run.

Ms. Siobhan Coady: Okay.

Going back to Nortel, they've worked with hundreds, if not thousands, of companies in the Canadian innovation system—if I could call it a system—offering both technical as well as management expertise and knowledge. Is it your intention that you will follow through on some of that kind of activity?

Mr. Mark Henderson: Again, I can talk about what we have done here over the many years we've been in the market—the jobs we've created, the innovation, the billions of dollars that have been invested in innovation here in Canada, the affiliations with the universities, the community service that we've done. Of course the

focus is to grow all of that, but I think our past speaks for itself, and it bodes well for what we intend to do here in the future.

Ms. Siobhan Coady: Thank you.

We heard this morning from Nortel about the future offerings they may have, including one in short order, within the next six or eight months. Are you planning to participate in future offerings of Nortel assets or patents?

Mr. Mark Henderson: I won't comment on any particular asset, but any asset that we feel is complementary and advantageous for us to look at, we will look at.

Ms. Siobhan Coady: I want to move on to the LTE assets and the patents around those assets. I think my colleague was asking some very interesting questions about patent improvements and how you're going to move forward on those patent improvements. Of course you have the employees who are driving those, and one of the key values here is those employees.

You purchased both the CDMA business as well as the LTE assets. Do you see one as being more valuable than the other? Do you have anything in the process that you think will drive this forward in terms of patent improvement?

Mr. Mark Henderson: CDMA, as I think we discussed, is something that's existing in the market and is maturing. It's a technology that needs to be maintained, because it is a large telecommunications service, especially in North America.

So those patents are there, they're done, and I don't think there's work to do on patent improvements when it comes to CDMA technology. For LTE, again, I'm maybe not the patent expert, but when a patent is registered, a patent is a patent. It stays a patent, and the patent doesn't change until someone makes a new patent.

So if we are licensing the use of those patents on a non-exclusive basis, certainly any other company is capable of doing the same. If we have that competence and expertise within Ericsson, which is really important to us—we spend so much on LTE, this is such a great addition to that global research workforce, and it's based here—then if new patents are created, of course they would be registered under Ericsson.

The Chair: Thank you very much, Mr. Henderson and Madam Coady.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair, and thank you, witnesses, for appearing before us on what is proving to be a somewhat complex file. You've certainly shed light on many of the mysteries that surround it.

I have a line of questioning, but first, in your last round with Ms. Coady you said that you would be possibly bidding on some assets in the future. We understood from RIM that you had to wait a year for that. Is that not the case?

•(1300)

Mr. Richard Corley: It's my understanding that there is no such restriction that is applicable, so we obviously don't have any knowledge of whatever arrangements may have been offered to RIM.

Mr. Dave Van Kesteren: Thank you.

You've also mentioned—and I appreciate this too—the significant tax advantages that we've put in place as a government, making Canada a very good place to invest. Can you comment on the domestic economy and the state it is in, and what your plans for Canada in the long haul are in relationship to the position the economy is in?

Mr. Mark Henderson: I can make a general comment about the economy. It's interesting to us that it appears that the recession is such, as we've seen lately in the paper, that it seems to be flattening and we're looking at a period of growth, even if it's going to be long and slow growth.

The wireless industry has been a rather robust industry over the years. I think even in this climate that we've seen over the past few months, people will give up a lot of things before they'll give up their cellphones. They'll stop doing a lot of things. As a result of that—and I think our financial results show this—we have been able to maintain an extremely good financial position in the market. It doesn't mean that we're not cognizant of the fact that we're part of the food chain and we could see an impact from this later on, but obviously it's absolutely paramount and always has been paramount to Ericsson that we have a strong financial position, because it's only through that that we get to be masters of our destiny and take the decisions we need to take and not have others take them for us.

Because it seems like the overall growth in the wireless industry has not decayed even through this recession, when it comes to R and D and future development here in Canada, I would say it remains very robust, static, and we hope for growth.

Mr. Dave Van Kesteren: Very quickly, have you taken advantage of any of the SR and ED credits in the past, and if so, how?

[*Translation*]

Mr. Michel Peladeau: I'll answer the question.

As Marc mentioned, Canada is very competitive in Ericsson's world. It's a very good country for R & D tax credits and other provincial credits. Ericsson has taken advantage of those credits over the years until last year. It took advantage of all the credits that were available.

[*English*]

Mr. Dave Van Kesteren: There's another question that I think really needs to be asked too. If the proposed sale of the assets of Ericsson are blocked by the Government of Canada, what message do you think that would send to the international community regarding Canada's openness to FDI?

Mr. Mark Henderson: On FDI, I don't think that would be a great message. We think that one of the net benefits to Canada, as I pointed out in my opening, is just that, that it supports a lot of government initiatives to enhance and attract foreign investment. I don't know how it would affect other multinationals, but I think we would be extremely disappointed.

We would be disappointed at the loss of this great competence that we have access to Ottawa and how it's going to be able to enhance our ability to increase our R and D and innovation spent in this country by as much as 50%, and I think we would be very disappointed that we would lose access to a customer base that

provides an area of growth for Ericsson not just now but in the future, as we want to bring this new technology to market.

Mr. Dave Van Kesteren: Do you want to make a comment on the whole process that took place? Was the bidding process fair and transparent?

Mr. Mark Henderson: Yes, that was part of my opening remarks. It was a process that was driven to derive value. It was certainly closely monitored in the U.S. and Canada. Obviously, for all parties involved, the process was followed. I think it was deemed by the presiding judges to be fair to all, and we agree with that opinion.

● (1305)

The Chair: Thank you, Mr. Henderson.

Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Gentlemen, thank you for appearing before the committee. We need some clarification and I'm going to afford he you the opportunity to give it to us in a moment.

In his presentation, the president and co-chief executive officer of Research in Motion was quite tough. I'm going to quote two sentences:

Suffice to say that Nortel failed to bargain in good faith and failed to honour promises made to RIM on many occasions. Without regard for these promises Nortel made deals with Nokia Siemens Networks, and then with Ericsson, that rendered Nortel's assets in LTE of limited value [...]

We're told this is a process in which the assets go to the highest bidder. The president and co-chief executive officer of Research in Motion tells us that negotiations might have reduced the value. Is that true? How do you see that?

[*English*]

Mr. Richard Corley: From our perspective, the process was indeed one of the most rigorous and rigorously fair processes we've been involved in with the bankruptcy courts in both the U.S. and Canada. Every effort was made from our perspective to try to maximize the value, and I think that has been reflected in the fact the purchase price went up from an initial price of \$650 million to \$1.13 billion. Those efforts were very successful.

We have no knowledge of negotiations involving RIM; we were not party to any of those things and therefore have no comment on them. But we can say that from an Ericsson perspective, Ericsson and the other three parties did go through the process, and certainly from Ericsson's perspective, there were no impediments and everything seemed to be done to facilitate the realization of the maximum value of those assets.

[*Translation*]

Mr. Mario Laframboise: When he tells us that Nortel entered into agreements with Nokia and Ericsson and that he is in negotiations with Nortel, that means that Nortel was probably negotiating with your business, Nokia and RIM. Is that how it happened?

[English]

Mr. Paul Schabas (Legal Counsel, Ericsson Canada Inc.): I think it's important to note that once the bankruptcy proceeding began, the matter was supervised by the court and by a monitor appointed by the court, and that it was open to RIM, just as it was open to Nokia and Ericsson, to appear before the court at any time. It was open to any of them to make their own offers, which could have been the stalking horse offer.

At no time did RIM participate in any of the court proceedings. It could have come and objected or made submissions with respect to the appropriateness of the box of apples, to use that analogy. It didn't do so. It has never done that. It has only come here today to complain about the process. It clearly made a choice not to participate and not to seek changes or a different form of auction or an auction for a different basket of apples.

[Translation]

Mr. Mario Laframboise: Was it Nortel or the court that chose to go to an auction?

[English]

Mr. Paul Schabas: Well, the court decided on an auction process, and the auction process is determined by who makes the highest bid. But the court also heard submissions on, and made determinations as to, what would be subject to the auction. If RIM didn't like that, or if anybody didn't like what was going to be auctioned, they could have gone to the court and spoken to that issue.

[Translation]

Mr. Mario Laframboise: Could Nortel have opposed and used the auction, or was it the court that decided?

• (1310)

[English]

Mr. Paul Schabas: Any of the parties can object. They're represented by counsel and can make submissions on that.

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

[Translation]

Thank you, Mr. Laframboise.

Mr. Galipeau.

Mr. Royal Galipeau: Thank you, Mr. Chairman.

[English]

Thank you very much for appearing before us today.

Mr. Henderson, many of the current Nortel employees who would become Ericsson employees if this deal goes through live in Ottawa-Orléans, which is the constituency that I have the honour to represent in this place. Therefore, it's very important for me that we hear how this deal touches the real people, the ordinary men and women who are watching these proceedings, either at home or right here in the gallery. If I were to put myself in the shoes of the many Nortel employees living in Ottawa-Orléans, how would my life change as a result of this deal?

Today you made a very eloquent presentation. I was a bit nervous when I saw the word "intention" in the fourth paragraph on the last page. You say, "Ericsson has every intention to continue its presence

in Canada and the proposed investment will help ensure that Canada remains a very important part of Ericsson's global strategy". I noticed that in response to the questions after that, you were a little firmer on intentions. Is Ericsson prepared to make a commitment to the current Nortel employees who live in Ottawa-Orléans and elsewhere in Canada that Ericsson will seek to maintain their jobs in their current locations?

That's my question for now, Mr. Chairman.

Mr. Mark Henderson: First of all, in terms of the employees and your constituents, I understand. The employees who will be joining Ericsson will, I think we've said, be certainly offered substantially the same pay and benefits. Of course, after operating in Canada for so many years, we feel that the compensation and benefits within our company are feature-rich and obviously competitive in the industry. I think there will be no question about that.

Our statement earlier, I think, says that this is all about employing those 800 people, that we will employ those 800 people. They will be managed in general by the management that's there today, headed by Richard Lowe. Their activities will remain exactly where their locations are today. I would think, particularly in Ottawa, as I said, there's something around the ecosystem when it comes to an innovation cell, when it comes to universities, when it comes to facilities, when it comes to lifestyle. There are a lot of intrinsic things that make us maintain a facility in a certain place, so I believe that's our commitment.

If you think about the employees across the rest of the country, for the most part, as I said, they're there to support and drive the sales of the existing CDMA business. Then you might think, in the future, if that's maturing, what will happen to these people four or five years down the road? I think it's our commitment to do everything we can to make sure that those jobs are maintained, that growth is here, and that if we bring new technological solutions, who better to sell our technology solutions to this new customer base than the people who have had those deep relationships with those customers for the last so many years? That's our hope.

The Chair: *Merci.*

We now have Mr. Masse.

Mr. Brian Masse: Thank you, Chair, and thank you again, gentlemen.

One of the things you mentioned during your presentation was that you had \$2 billion in research and development over the last decade in Canada and from the SR and ED and the other tax credits. How does that compare to your global operations in terms of percentage?

Mr. Mark Henderson: We think the investment in innovation in Canada represents around 5% of Ericsson's global R and D spent. When the acquisition goes through, that percentage will go up a little.

• (1315)

Mr. Brian Masse: You said earlier it would double.

Mr. Mark Henderson: I think the global research and development budget for Ericsson is 33 billion Swedish kronor.

Mr. Brian Masse: Is that per year?

Mr. Mark Henderson: That's \$5 billion.

Mr. Brian Masse: Nortel testified today that prior to 1998 they had put only around \$50 million towards this LTE technology, but in the last couple of years they had really ramped it up to more than \$300 million in research and development. They can't take advantage of the SR and ED tax credit right now, but it can be carried over, as you know.

As part of this agreement, do you get a chance to carry over that tax credit, or will it remain within Nortel?

Mr. Mark Henderson: I think the short answer is that we don't get the carry-over, but I'll let Richard explain why.

Mr. Brian Masse: Thank you.

Mr. Richard Corley: It's because of the nature of this transaction. We are buying assets, we're not buying the enterprise; therefore, there's no opportunity to take advantage of those tax credits.

Mr. Brian Masse: So whenever Nortel becomes profitable again, they can apply for the SR and ED tax credit. Thanks. That's very helpful, because it was new to the whole spectrum of things.

Here's the quandary that's evolving to a certain degree. I've never heard anything negative about Ericsson not living up to its agreements, but I've been around here long enough to hear companies promise they're not going to do this and that. In fact, we even have agreements through the Investment Canada Act that are supposed to be binding. Then we have to go to court when companies don't live up to their expectations, and so forth. I'm not suggesting that's the case for you, but we have to believe that in this case.

We're really coming to the conclusion that, if this goes through, you will have an advantage on breakthrough technology that's quite significant—and good for you for getting into the competition, seeing that, and taking advantage of the situation. But the problem is that the other competition will have to buy the old stuff from Nortel.

One could argue that licensing it out as opposed to selling it outright would actually lower the book value, because if somebody else wanted to get the patents they would be able to do so, but they would get an empty shell. They wouldn't get the workers, the infrastructure, and all those things. They would have just the patent itself. Alternatively, if you made a breakthrough on top of the current patent right now and patented that, they would have to go to you to get licensing for that.

Am I correct on how this is playing out?

Mr. Mark Henderson: It's true that if Ericsson creates a patent and we decide to license someone, we provide the licence. On the financial details behind that licensee agreement, there could be a financial portion of it or there could be a trade.

People interested in these kinds of patents are from other companies that are developing this technology as well. They have their own patents, and we'd like those patents, and that's kind of the way the market works. They move all over the world. The idea is that it's based on open standards, so no one is put at a tremendous disadvantage due to patents, and we're able to take these

technological solutions and bring them to the market as quickly as possible.

Mr. Richard Corley: I'd like to add to that.

On the future for Nortel—and I have not spoken to Nortel about this—I observed in the newspapers that there have been discussions about Nortel taking the patents it owns, licensing them, and using them as a basis of revenue going forward. So on the patents that have been licensed to Ericsson, because the ownership is retained by Nortel, they could license them to each one of Ericsson's competitors and have that as a source of revenue. So that is quite different from the vision you had of hollowing out Nortel, because they would have this as a future revenue stream.

Mr. Brian Masse: It will be that way for the LTE stuff, because you now have all the really important things. You have the mechanisms to advance the technologies. If next year you come out with a breakthrough, good luck to me trying to sell this product that's out of date or doesn't have the same capacity when you've already advanced the LTE to a really good level—and good for you. I'm just trying to make sure we have what's at stake here. I'm thinking from a consumer angle. We would have had this situation anyway under Nortel, to a certain degree, if it hadn't gone the way it did.

So you're right that somebody else could buy your LTE patent, but it would be worth a lot less because you wouldn't have the people. Every single day after the sale went forth, it would be worth less, because by then you'd be running in a new direction to improve the technology.

Thank you.

● (1320)

The Chair: Thank you, Mr. Masse.

Mr. Braid.

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

Thank you very much, gentlemen, for being here this afternoon.

I'd like to start by continuing one of the major themes from today, the importance of LTE as the next generation of wireless. Today's proceedings have been very helpful. One of the things we've had confirmed is that the patents have been through the proposed arrangement and the deal will be licensed to Ericsson as opposed to being purchased outright. Was it your choice to lease as opposed to purchasing, or was that Nortel's?

Mr. Mark Henderson: I'm afraid I don't know if I have the answer to that.

Mr. Richard Corley: It was a function of the process. We heard this morning from Nortel that through the negotiation of the stalking horse bid, the stalking horse bid involved the licence to use those patents rather than an outright purchase. That was in the box of apples, to use Mark Henderson's analogy. It was a licence. I think it's important, again, to note the distinction between a non-exclusive licence and a lease or a purchase that gives exclusivity. This is a non-exclusive right that can be shared by an infinite number of other people.

Mr. Peter Braid: Very good. Continuing with the low-hanging fruit, if you will, on the LTE patents you had indicated that you were also developing LTE technology. Can you compare how you were advancing LTE technology versus Nortel, from a market comparison perspective?

Mr. Mark Henderson: I think there's a couple of good comments around that.

First of all, for Ericsson the global spend on LTE development is quite a bit larger than what we're picking up here. This is a complementary set of competence and resources and patents for licensing, but our R and D spend for LTE is quite a bit larger than that. We have commitments and contracts. I think Verizon was one of the ones in the U.S. that have chosen to move to LTE. It's a huge network, and Ericsson is one of those suppliers. So the development and innovation for LTE with Ericsson is paramount, and we are marching down that road very quickly.

I think there was a great comment this morning from Nortel where, although they had worked on this technology and developed this technology, when they went out to the customer base they said, "That's great, we like what you have, but you'd better put those assets in safe hands." I think what we're seeing here is exactly that, because we are considered the leader in LTE today.

Mr. Peter Braid: Turning to the auction process quickly, Mr. Corley, I believe you indicated that Ericsson also signed an NDA as part of the process, but you do not have a standstill arrangement as part of the NDA. RIM was here earlier, and they indicated that they did have a standstill as part of their NDA and that was of great concern to them. Can you comment on why there would appear to be this difference?

Mr. Richard Corley: In a word, no, but as my partner, Paul Schabas, had pointed out, if RIM felt this was a real impediment to their providing a bid that would add value, the obvious thing for them to do would have been to go into court to say to the court that they objected to this form of NDA as it was preventing them from making a bid. The court would have taken anything, again based on our experience, that reduced the value they were going to get for the assets very seriously. I have to ask the question, why didn't they go to court and object to that if that was a concern? This was a court-supervised process.

Mr. Peter Braid: Lastly, as you know, RIM officials were here earlier, and Mike Lazaridis is a highly respected business person in our country. As he concluded his presentation, he suggested that all the key parties, the key stakeholders, get together for a discussion on this issue. Would Ericsson be open to that?

•(1325)

Mr. Mark Henderson: I think what we've said here is that we really do consider the process as it was conducted to be very closely monitored by the courts in the U.S. and Canada. There were companies at the table bidding that obviously went through the proper hurdles to be at the table, and the presiding judges have deemed the process to be fair to all. I think we need to finish our work on the box of apples before we take any other discussions.

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

Thank you very much, Mr. Henderson.

Monsieur Garneau.

[*Translation*]

Mr. Marc Garneau: Thank you, Mr. Chairman.

Thank you all for being here today.

I would like to start by congratulating you on your commitment here to Canada. The business definitely has a very impressive track record since 1953. It's a business that I often have the pleasure of crossing paths with. I believe it is located on the Décarie Autoroute underneath the 40. I see it every time I go back to Montreal.

I would like to ask you for some clarification.

[*English*]

I have one question. You mentioned, Mr. Henderson, that you would regard any further Nortel assets being offered up.... You would consider bidding on them if it were complementary to your business. If the patents currently owned by Nortel are put on the block, is that something that would be of interest to you?

Mr. Mark Henderson: It's a difficult question to answer. We already have the right to use the patents we have the licence to. If new patents came up that we thought were strategically important, I guess we would have to look at those.

I guess buying a patent means you can cross-license to somebody else. But again, because these technologies are built on such open standards and there are so many big companies working in these technologies, developing this intellectual property—not just the people who are developing the networks, like Ericsson, but the handset manufacturers, and how they work with the open standards—it is really to the benefit of the industry to keep licensing as open as possible, to cross-license.

So I guess there are a lot of conditions around it that we would have to consider before we'd say we have to go in and buy that licence. I mean, if we could just license on a non-exclusive basis, that would probably be the tack that would be the most—

Mr. Marc Garneau: I want to pick up on something Mr. Van Kesteren asked a little while ago. It was referring to a comment that I believe we understood from RIM, that they were told that part of the auction conditions in bidding was that they would not be able to bid on other Nortel assets for a period of at least one year. That seemed to be something that I think I understood and that has been reported in the media. You were a bit surprised to hear that a few minutes ago. I was wondering if you could possibly—not today—get back to us and let us know whether that was a condition imposed upon you as part of your compliance with the bidding process.

Mr. Mark Henderson: I think we can let you know today.

Mr. Marc Garneau: Right now?

Mr. Mark Henderson: Yes.

Mr. Marc Garneau: Okay.

Mr. Richard Corley: We know it was not a condition of the bid we were putting in. And if, as we said previously, it was something that any party felt there was any problem with—the process or conditions—that's why you have a court-monitored process, to go in and raise those concerns with the court and have the court consider and address them.

A number of parties, I would note, during the course of this process, including some of the bidders who participated, did have concerns with the process. They went to court, they raised those concerns, and the court modified the process. So it is very clear that there is a protocol for doing this, and it's not through the media.

Mr. Marc Garneau: I understand that there is a protocol. I'm just a bit concerned that maybe there's a different set of instructions associated with the bidding process for the two companies. I'd like to clarify it. Obviously somebody is perhaps wrong on this, and I'm just curious about that.

On the issue of national security—that's been raised—your take on it is that it is not an issue. Could you elaborate a little bit on it?

● (1330)

Mr. Mark Henderson: That has been out in the press a lot. We've tried hard to look at this from a number of different points of view. I think we struggle with the comment. First, we talk about our history, our years in Canada, what we've done, the innovation, the amount of investment, the fact that we were suppliers both to the government and to the Department of National Defence. This sale is a sale of solutions-based products. This is not a services-based deal. We provide software in boxes, and the operators operate. Our interaction with these networks is very tightly controlled, and our involvement with these networks is very tightly controlled.

The fact that we've talked of just recently, that the telecom market in itself is very much based on open standards, that this intellectual property is heavily cross-licensed around the world, and I guess the fact that these LTE assets we have on a non-exclusive basis—they're open to everybody else.... So we struggle to find where that comment is from. But having said all that, we are certainly willing to sit down with any member and go through that discussion, because we should put this to bed.

The Chair: Thank you very much, Mr. Henderson. Thank you very much, Mr. Garneau.

Before we suspend for 15 minutes, I want to note that a lot of our discussion today has focused on the sale of Nortel's licences for these patents.

Go ahead, Mr. Galipeau.

Mr. Royal Galipeau: Mr. Chairman, I just want to assure Mr. Henderson that I don't plan to give away my cellphone, but to be clear, I wrote on the home page that it is the property of the taxpayers of Canada. I'm sure all my colleagues at this table also wrote that on their home page.

The Chair: Thank you, Mr. Galipeau.

I want to close by noting that a lot of discussions focused on the sale of these licences for these patents from Nortel. I note that Research In Motion paid Visto Corporation, a U.S.-based company,

\$270 million to use its patents, and paid NTP Inc., also a U.S.-based company, \$612 million for licences for technology patents such as Wi-LAN that allow the BlackBerry to function. I note that if a third party in the United States had made representations to the U.S. government to prevent that sale on the basis of national security or other national interest concerns, it would have precluded these BlackBerrys from actually working, both in the U.S. and possibly elsewhere as well.

I just wanted to put that on the record.

I want to thank the four witnesses from Ericsson for appearing today.

We will suspend for 15 minutes.

● (1330)

(Pause)

● (1340)

The Chair: *Bon après-midi à tous.* Good afternoon to everyone.

[*Translation*]

We are here pursuant to Standing Order 108(2) and the motion adopted by the committee on Friday, August 7, 2009 to study the proposed sales of certain Nortel Networks assets.

● (1345)

[*English*]

We're here today pursuant to Standing Order 108(2) and the motion adopted by this committee on Friday, August 7, 2009, to study the proposed sale of certain Nortel Networks assets.

We have in front of us three representatives from Industry Canada: Mr. Richard Dicerni, the deputy minister; Madame Marie-Josée Thivierge, assistant deputy minister of small business and market-place services; and Madam Helen McDonald, assistant deputy minister of spectrum, information technologies and telecommunications. Welcome to all three.

We will begin with a 10-minute opening statement and then go to 50 minutes of questions and comments on the part of members, so that we can go in camera at 2:45 for a discussion of where this committee will go.

Without further ado, Mr. Dicerni.

Mr. Richard Dicerni (Deputy Minister, Department of Industry): Thank you, Mr. Chair.

Further to your remarks that you would have us for only 60 minutes, I think my opening remarks will be 60 seconds, so there will be more time.

I would like to thank the committee for the opportunity to appear today in my capacity as deputy minister of Industry Canada and also as director of investment under the Investment Canada Act. I am here with my colleague Helen McDonald, who is the ADM of the spectrum, information technologies and telecommunications sector; and Marie-Josée Thivierge, the ADM of small business and marketplace services, but more importantly, the ADM responsible for the administration of the Investment Canada Act.

I would note we are constrained, including Madame Thivierge, in regard to what we can say about any particular case under the Investment Canada Act.

[*Translation*]

This confidentiality issue was previously addressed last year, when Mr. Prentice appeared before the committee to discuss another transaction. Despite the minister's interest in addressing the issue in detail, he unfortunately could not do so. Those same rules apply today to the case you discussed earlier this morning.

[*English*]

With that caveat about confidentiality pertaining to the Investment Canada Act, my colleagues and I are open to your questions.

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

Before we begin with Mr. Garneau, I want to point out to members of the committee that a letter has been distributed to you, dated March 13, 2008, from the senior associate deputy minister and director of investments at the time, Mr. Paul Boothe, to the then industry minister, Jim Prentice, outlining the restrictions on the minister and department in commenting about any specific case.

I asked Mr. Dicerni to provide that to our committee so we would all understand that while he comes here in the interests of transparency, he is under statutory restrictions when it comes to what he can and cannot comment on, as per the advice provided to the minister and deputy minister by the department.

Without further ado, we will begin with Mr. Garneau.

Mr. Marc Garneau: Thank you, Mr. Chair.

Good afternoon, Mr. Dicerni, Ms. McDonald, and Madame Thivierge. Thank you very much for coming here this afternoon to answer our questions.

Prior to beginning I spoke to the chair, and I'd like to raise one issue, the different interpretation of the rules associated with the auction process, whereby a representative from RIM said they were told clearly they would not be allowed to bid within a year on any future Nortel assets that might be put up for sale, whilst that is not the interpretation Ericsson had. I would like to ask for a way to clarify these two different opinions.

The Chair: Thank you, Mr. Garneau. I think that's helpful, and I'll ask the analyst and researchers from the Library of Parliament to do the research on that and to clarify that seeming discrepancy.

Thank you.

Mr. Marc Garneau: Thank you, Mr. Chair.

This morning we heard from a Nortel representative that there had been a series of meetings between Nortel and the Government of

Canada—13 was the number that was mentioned to us—between October 2008 and June 2009. I'm not sure at whose instigation they were. My first question is whether or not members of Industry Canada were involved in any of those discussions.

• (1350)

Mr. Richard Dicerni: Very much so. We maintained a fairly ongoing dialogue with Nortel, as did other agencies of government, particularly EDC.

Mr. Marc Garneau: Thank you.

You may have heard the testimony this morning in which the representative from Nortel essentially summarized the reaction of the government to these discussions. They suggested that they had come forward with a plan that might have helped resolve the situation that Nortel was in, but that firstly, the plan was viewed not to be credible, not to be sustainable; secondly, that Nortel was viewed to be—to use the term used by the Nortel representative—a tarnished company; and thirdly, Nortel was not viewed to be a company under threat in the same sense as GM and Chrysler were.

I was wondering what your comments would be with respect to those comments.

Mr. Richard Dicerni: Those are comments that Nortel made. They are not my comments or comments of any of my staff, I think. I know Nortel had many meetings with a number of people within the federal government. Along the line, people may have made some comments; they may have interpreted some comments. I don't want to spend my time on characterizing those comments one way or the other.

To the substance of your point, over the course of that period of time, there were a number of plans. There was a base plan, which involved selling one of the business units. There were also other elements. As markets changed, in the context of discussions with us and with EDC, when they were putting up one particular business line and they weren't getting the response from markets that they thought they would get, the plan evolved. At a certain point, for example, they were discussing a strategic merger with another company. At another point in time they would have discussed selling another business. During these various meetings, we constantly sought, as did EDC, to get more information so that there could be some due diligence. Some of the questions we were raising were the same as the ones that surfaced this morning, such as the sustainability of the business or whether the customers were willing to buy into their strategy.

I would add that at that point in time markets were extremely turbulent, and I can understand why their strategy was evolving. So I would hesitate to say we had one plan that was tabled in October and that stayed the same throughout that period of time.

Mr. Marc Garneau: Thank you.

The Liberal Party is working on a specific strategy for the high-tech sector because we recognize how important it is to the future of Canada. Certainly, we would all agree that Nortel had some very strong capabilities with respect to its accomplishments, its intellectual property, its personnel, and its commitment to R and D. Within the government, how was Nortel viewed in terms of a high-tech strategy, from your point of view?

Mr. Richard Dicerni: There are a few points.

One, we did maintain ongoing dialogue with Nortel. The executive vice-president of the company at the time, David Drinkwater, was a former colleague of mine at OPG. We had regular ongoing dialogue. We had this discussion, in part, because Nortel is and was at the time an important contributor. If we did not believe so, we would not have sustained that many numbers of meetings. We would not have sought to engage in further analysis to do further drill-down to understand what the business case was for the company going forward, who their customers were going to be, when they were going to bring these LTE patents on line. Those were all matters that we cared about, and that was the basis on which we sustained our discussions with them.

• (1355)

Mr. Marc Garneau: Thank you.

From that, am I to conclude that ultimately the government did not feel it was worthwhile trying to find a solution that would prevent the breakup of the company?

Mr. Richard Dicerni: There are two points.

I believe the minister is on the record as saying that in his view there was not a sustainable business case at that point that had been brought to the government's attention. Secondly, when Nortel did file in mid-January, it's important to note that at that point the company was not envisaging a breakup. The company was not saying it was going to break itself into little pieces. I think the CEO is on the record as saying he was hopeful that the company would emerge from this process a leaner, stronger, more focused company. Throughout this process in, I think, a number of months, that model of a restructured company was the operative model, so the auction that took place in the latter part of July was not necessarily the model that was on the table in mid-January.

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

Thank you, Mr. Garneau.

Monsieur Bouchard.

[Translation]

Mr. Robert Bouchard: Thank you, Mr. Chairman.

Deputy minister, thank you and the two persons with you for being with us here today.

Is it customary, in the acquisition process, sir, that businesses contact the Department of Industry to transmit information? Nortel had its value appraised at one point—I don't remember the exact amount—no doubt in order to exempt itself from the application of the Investment Canada Act. Ultimately, the purchase price amounts to more than \$1 billion. Consequently, in my view, the Canada Investment Act should apply.

Who decides whether the act applies? Is that determined on the basis of the book value or the price offered or submitted?

Mr. Richard Dicerni: I'm going to ask my associate Ms. Thivierge to provide you with additional information, but the final decision is made by the minister. It is the minister who must decide whether a transaction is subject to the act.

Ms. Marie-Josée Thivierge (Assistant Deputy Minister, Small Business and Marketplace Services, Department of Industry): Allow me to add that, under the Investment Canada Act, a transaction may be subject to review if it is above a certain threshold. In that case, the net benefit review threshold under the act is based on the book value of the assets concerned by the transaction in question. The regulations under the act clearly state that value is determined on the basis of the book value of the assets.

Mr. Robert Bouchard: In this case, does the book value exempt this transaction from the regulations?

Ms. Marie-Josée Thivierge: We can't discuss a transaction subject to the Investment Canada Act. I can talk to you in a general way about the terms and conditions that apply under the act and regulations, but I cannot talk about specific cases.

Mr. Robert Bouchard: The regulations are no doubt public. What do they say?

Ms. Marie-Josée Thivierge: The regulations clearly state that it is indeed the book value of the assets concerned that applies and that that value is taken from the financial statements of the Canadian business for the most recent fiscal year, prepared in accordance with generally accepted accounting practices.

• (1400)

Mr. Robert Bouchard: That would mean that, if for example the book value is less than the threshold for application of the Investment Canada Act, the minister would not have to make a decision. Does the minister have a certain amount of discretion?

Ms. Marie-Josée Thivierge: As regards the net benefit criterion under the act, the act prescribes a very clear threshold. If a transaction is above that threshold, it is subject to review.

Mr. Robert Bouchard: I see.

If the Investment Canada Act applied because the amount of the transaction was higher than the threshold, could the minister set conditions? Does he have that discretion? No, it's not a discretionary authority because the regulations stipulate it, but could the minister allow a transaction while setting two or three conditions? Does he have authority to set conditions?

Mr. Richard Dicerni: Hypothetically. The act provides that the investor makes undertakings and it contains specific criteria on the basis of which the department and the minister examine those undertakings to determine whether the country will be deriving a net benefit.

Mr. Robert Bouchard: Could someone give me those investment thresholds, after the meeting or later?

Mr. Richard Dicerni: Yes.

Mr. Robert Bouchard: Are those conditions made public, or do they remain confidential? What remains public and what becomes confidential in a transaction such as the one we're currently discussing?

Mr. Richard Dicerni: Hypothetically, the commitments remain confidential. That has applied since the act was passed in 1985. Since this involves business, business commitments and people who are investing in order to make businesses profitable, the confidentiality principle applies.

Mr. Robert Bouchard: So the Access to Information Act does not apply. If I sought under that act to obtain information on what was confidentially agreed upon, I wouldn't get it.

Mr. Richard Dicerni: That's correct.

Mr. Robert Bouchard: That means that what would be public would be what the business decided to make public on certain conditions.

Mr. Richard Dicerni: Those are the commitments the investor makes.

[English]

The Chair: Thank you. *Merci.*

Madame Thivierge.

[Translation]

Ms. Marie-Josée Thivierge: To clarify matters, all information communicated by an investor under the act is subject to the confidentiality clauses of the act. However, it does occur that, in the case of certain transactions, the investor chooses to make public certain commitments that it has made to the government. In some cases, it is left entirely to the investor's discretion whether or not to make public commitments that it might have made to the government.

The Chair: Thank you.

There are two paragraphs in the letter sent to Mr. Prentice last year

[English]

I just want to quote for the record, so everybody is aware. It says:

Subject to subsections (3) and (4), all information obtained with respect to a Canadian, a non-Canadian, or a business by the minister or an officer or employee of Her Majesty in the course of the administration or enforcement of this Act

—the act being the Investment Canada Act—

is privileged and no one shall knowingly communicate or allow to be communicated any such information or allow anyone to inspect or have access to such information.

The penalties, if I can just quote for the record, are:

Every one who contravenes section 36 or who knowingly provides false or misleading information under this Act or the regulations is guilty of an offence punishable on summary conviction.

So the civil servants in front of us today are statutorily restricted from making comments specific to this case. I just wanted to make sure that members of the committee are aware.

We are now going to go to Mr. Lake.

• (1405)

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

Thank you to the witnesses for coming today.

I want to talk a little bit about process, because there are lots of different processes involved and initials that have been used. Talking about CCAA first of all, could you explain the general context of CCAA proceedings and maybe specifically talk about what options the government would have to intervene in such proceedings?

Mr. Richard Dicerni: Once a company decides to seek protection, the government's responsibilities or capacity to intervene become quite limited, because there is a court of law that operates under established legislation. So once the board and management of Nortel, for example, decided to file, the government's ability to intervene became quite small.

Mr. Mike Lake: In terms of the Nortel-RIM agreement or non-agreement, whatever the RIM folks were talking about today in terms of handshake agreements that might or might not have taken place, does the government have any reason to believe that Nortel broke any laws when selling Nortel assets? I guess secondly to that, if laws were hypothetically broken, what legal remedies would RIM have?

Mr. Richard Dicerni: I am not competent to discuss if Nortel unfairly restricted RIM from bidding. As the Department of Industry, we have no independent views on that. The appropriate authority, I think, would be the monitor, who was appointed by the court, from Ernst & Young. I think that question could be best put to the monitor, who has the legal responsibility to oversee the process and maximize the proceeds from whatever course is taken.

I would note—and I said this to the RIM executives with whom we have met a few times—that there were a couple of windows where RIM had the opportunity, if they were not satisfied, to challenge the process. I believe for their own business reasons—because at the end of the day these are business decisions made by business executives—they chose not to.

Mr. Mike Lake: Can you speak more specifically about those windows?

Mr. Richard Dicerni: As the process unfolded, I think there were two critical periods. One was when Nortel established a stalking horse bid, because again I'm given to understand from information we've received from the various parties that indeed RIM and Nortel were discussing certain commercial transactions. Once the stalking horse bid was put on the table by Nokia Siemens Networks and Nortel, it proved more difficult, as Mr. Lazaridis testified this morning, to consummate what appeared to have been a transaction being very close to completion. I believe that the subsequent one was toward the latter part of June, when the process for going forward in terms of the auction was identified. If there were concerns, I believe there would have been a couple of weeks for the company to raise with the monitor, or courts in Canada or in the U.S., their view that bondholders, creditors, would not be receiving optimal value from the process or this outcome. But I believe, for reasons that I think Mr. Lazaridis explained this morning, they made a business decision not to pursue this.

• (1410)

Mr. Mike Lake: In terms of the Investment Canada Act, the procedures and processes involved are probably not something most Canadians are overly familiar with. There's a net benefit component and a national security test component.

Taking a look at the national security test component, because that has been talked about quite a bit today, what are some cases—maybe not specific to this case—in which it would or wouldn't apply?

Mr. Richard Dicerni: I will ask Marie-Josée to expand on that, but I have two comments on my part.

One, the Department of Industry is involved in a wide range of endeavours and activities, ranging from our involvement with the auto sector to the aerospace sector, marquee festivals, and the knowledge infrastructure program. Public security is not in our sweet spot; we are not the department with expertise relating to matters of national security. There's another department whose day-to-day, bread-and-butter activities involve national security, the Department of Public Safety. They are the ones we would turn to for guidance in deciding, or providing advice to our minister, in regards to what are and are not matters of national security.

Secondly, this clause dealing with national security is a recent addition to the Investment Canada Act. It was brought in as part of the budget implementation act, and therefore, there have not been many cases discussed under this heading.

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

Monsieur Masse.

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

I'm going to follow up on that because I think it's important for the public to understand this. By adding that amendment, we—the minister and the government—circumvented this committee process and the due democratic process, because we didn't have a study of these amendments at committee, we didn't have testimony from expert witnesses, and we didn't have a chance to make amendments. So we actually have a significant departure in the Investment Canada Act that has never been tested before and never been analyzed. We could have had all-party support; I've been supporting this initiative for many years.

We're left now with a couple of blank spots, and now it has been five months. Where are we with the implementation of this act? Are we actually following the act?

There are two things I need to know right away. First of all, have you moved the threshold from \$312 million to the \$1 billion? It's supposed to happen over four years, but where is that threshold right now? Second of all, is the national security review active and ongoing right now?

Mr. Richard Dicerni: Again, I'll ask my colleague to respond, but I have two points.

No, it's not at \$1 billion, and yes, it will evolve over four years.

Secondly, I take note of your initial comments dealing with the parliamentary procedures involved in bringing this amendment to pass, and I will forward those.

Thirdly, in regards to national security, there has been a draft regulation dealing with some general aspects of it, which I believe was released in July. There's a comment period of about a month, which I think closes on about August 10.

Marie-Josée.

Ms. Marie-Josée Thivierge: On your first point, although several of the legislative changes to the Investment Canada Act came into force when the bill received royal assent in March, as for the threshold, that provision is not yet in force. It requires regulation. The coming into force date will be set by the Governor in Council. So the threshold continues to be \$312 million.

Mr. Brian Masse: Thank you very much.

Will that will be made public later on as the threshold is increased, and the timetable for that?

Ms. Marie-Josée Thivierge: Correct. That's provided for in regulations.

Mr. Brian Masse: With regard to this situation here.... Actually, it's not even a situation, because you can't speak on a specific situation, which I understand and appreciate.

But the argument Nortel is using is that their book value is \$149 million. Now, the legislation also changed it from book value to enterprise value. Maybe you can explain that change a little bit.

Second of all, what criteria do you use to determine book value? They can have any book value they want; it's up to them to pull it out of the air. I think it's hard for Canadians and other people to accept something as \$1 billion when it's only worth \$149 million. There's a big chasm between the two.

• (1415)

Mr. Richard Dicerni: Marie-Josée will speak to the conceptual or methodological approach that is used, because we would really like to stay away from the specifics.

Ms. Marie-Josée Thivierge: To touch on your first point, on the enterprise value, you're right, the basis for calculating the monetary threshold where transactions become subject to the Investment Canada Act was changed in the last series of amendments to the Investment Canada Act. Now, that being said, the actual provisions related to the calculation of enterprise value are currently the subject of public consultations, so they're part of the regulations. So although the concept of enterprise value is in statute, the manner in which that enterprise value will be calculated, based on the different circumstances of a case, is now being consulted on and therefore is not in force.

Mr. Brian Masse: So we're back to book value.

Ms. Marie-Josée Thivierge: So we are currently still implementing book value.

To the second point or your second question, the regulations, section 3.1 specifies clearly what constitutes essentially the book value or the value of the assets that are subject to a transaction. What the regulations say is that this value needs to be reflected in the financial statements of the Canadian company for the most recent fiscal year, and they have to be audited financial statements. So depending on the transaction and depending on the assets that are in play in a transaction, the information has to be submitted based on financially audited financial statements.

One last point is that the regulations do say that in the event that such audited financial statements of the Canadian company are not available, other financial statements might be submitted.

Mr. Brian Masse: Okay. The reason it was switched to enterprise value, though, was probably for a situation just like this, was it not? I guess the difference is that there is the value of the company, but then there's the real potential value of the company; hence you see a situation evolve where you get something at a bargain basement price, but where the real value for someone else is significantly different.

Mr. Richard Dicerni: This was a proposal that flowed from Mr. Wilson's task force, which he felt would better capture the international environment as it relates to foreign direct investment.

Mr. Brian Masse: Thank you.

Do I have any more time, Mr. Chair?

The Chair: Go ahead.

Mr. Brian Masse: Just really quickly, then, when will the department date be officially triggered to analyze this situation as to whether or not it falls under this? You should be able to answer that. When does it happen; when the actual transaction takes place? When is the date for the minister to start to review whether or not it applies under the act, and how long does he have to respond?

Mr. Richard Dicerni: There are two points: one, we are in discussion with Ericsson, and two, there is no specific date.

Mr. Brian Masse: So there's only a date when it actually is triggered, then.

Mr. Richard Dicerni: We are in discussion with Ericsson.

Mr. Brian Masse: Okay, but if it is determined by the minister, I think it's 45 days, or something like that, that he has to report—

Mr. Richard Dicerni: There are legislated timetables. If it is deemed that a particular transaction/investment is reviewable under the Investment Canada Act, then there are timeframes of 45 and 30 days.

The Chair: Thank you very much, and thank you very much, Mr. Masse.

Mr. Dicerni, just to clarify some of the testimony that was given here, you mentioned that the new regulations concerning the monetary limit were in a public comment period right now, and that public comment period would end on August 10, in three days. I believe that is what you said.

Mr. Richard Dicerni: I'm sorry, I believe the national security regulation is the one that's—

The Chair: August 10, okay. And what about the regulations for the new enterprise value? Are those in public comment period as well right now?

Ms. Marie-Josée Thivierge: Yes, and in fact the regulations were published in the *Canada Gazette, Part I* on July 11, 2009.

The Chair: After the public comment period expires in three days, when will those regulations come into force?

• (1420)

Ms. Marie-Josée Thivierge: The normal process is that there's a phase of prepublication in part I. We receive submissions from people who have views on the regulations. There could be a follow-on publication again or, alternatively, a final publication. It really depends on what input is received from stakeholders.

The Chair: Thank you very much.

We'll go to Mr. Rota.

Mr. Anthony Rota: Thank you, Mr. Chair.

Thank you for being here this afternoon.

I'm just trying to clarify a few things in my mind. As far as the Investment Canada Act goes, does it have to be a complete sale of a corporation or an entity, or can the value alone of part of that entity trigger the act?

Ms. Marie-Josée Thivierge: The Investment Canada Act provides that it can be either a whole enterprise that is subject to a transaction, or control over assets of an enterprise. There are a number of provisions detailed in the act and regulations that define what an enterprise is.

The regulations that were made public for public consultations talked to the concept of the enterprise value when a whole enterprise is the subject of a transaction versus when part of an enterprise, such as a substantive asset, is part of a transaction.

Mr. Anthony Rota: There has been some discussion about book value and actual value of the part of the asset that's being sold or transferred. Can you clarify that? Is there any way of clarifying that?

Ms. Marie-Josée Thivierge: The Investment Canada Act is very clear about what the value of the assets is and how it needs to be determined for purposes of applying the threshold and determining whether or not a transaction is subject to the act. So it is in regulation. It talks about the asset value in the last audited financial statement of the Canadian enterprise. That's the basis upon which we currently establish whether or not a transaction is subject to the net benefit review under the act.

Mr. Anthony Rota: If we can make it a little more specific to the situation we have now, I've been looking at what has been suggested and how things have been playing around, and they haven't been overly clear. I'm drawing a picture in my mind and I want to know if this is a plausible outcome.

If you look at Nortel as it stands, it has a number of corporate tax credits and SR and ED tax credits sitting there—real assets—probably worth more than the company is worth if they had a profit. If a company like Nortel were to dispose of some assets so it could build up some capital, start turning a profit, and use those tax credits, it could conceivably start building again and become a viable company.

It has these assets, has leased them out, and has revenue. Under what's happening now, would creditors and pensioners still be on the line or owed the money if that company, like Nortel, were to resurrect and start turning a profit based on the remaining assets within that company?

Mr. Richard Dicerni: Obviously Nortel would be a much better position to comment on the adequacy of the various scenarios you've laid out.

Mr. Anthony Rota: But would they be in contravention of the act if they were to come through this and come out on the other side as a viable company?

Mr. Richard Dicerni: I don't understand how they would be in contravention.

Mr. Anthony Rota: That's what I was hoping you would say.

Mr. Richard Dicerni: I'd need to think through the hypothetical scenarios.

I just want to go back to one thing. When they filed—because one sometimes loses some perspective on this—the company said:

This process will allow Nortel to deal decisively with its cost and debt burden, to effectively restructure its operations and to narrow its strategic focus in an effective and timely manner.

That was in January. I just want to put that in context. I think there were some people within the company at that time who quite genuinely were thinking, hoping, and planning to use this period of time to restructure the company and come out at the other end.

• (1425)

Mr. Anthony Rota: So that process or intent didn't necessarily end as of January or this week, when this announcement was made.

Mr. Richard Dicerni: This is one part of their operations. They have many other parts. I believe Mr. Riedel testified that the company has not finalized its thinking on what it's going to do with the remaining patents.

The Chair: Thank you very much, Mr. Dicerni and Mr. Rota.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

I thank all of you for appearing before us today.

I have a question and I want to get it out of my mind. I suppose I could ask this to any of the deputy ministers, but is there another example of carriers and equipment conglomerates globally positioned? We had testimony before us today of the attempt by RIM to purchase what I would consider the carrying part of the industry. Are there other examples of that in the world today, where equipment makers like RIM also have that capability?

Mr. Richard Dicerni: I'll ask my colleague who interfaces with the telecom sector on a regular basis to respond to that.

Within the broad issue of these patents and 4G technology, there are a number of companies out there who are working on patents to develop the 4G generation of handsets and cellphones so that we can all do many more things on our BlackBerrys, cellphones, and so forth. Obviously, Nortel was one. However, as I think one of the Nortel people mentioned this morning, it's one thing to be getting kudos from the industry, but if your customers aren't buying, it's not commercializeable research.

Helen.

Ms. Helen McDonald (Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Department of Industry): I think you heard this morning about how important the fourth-generation LTE is. About every major player in the telecom equipment or telephone or telecom infrastructure business is trying to work on technology related to LTE. That would include Alcatel-Lucent, Ericsson, Samsung, NEC, Huawei, Qualcomm, and Nokia. There's a variety of six, seven, or eight big players in that space who are trying to build up their intellectual property in this area.

Mr. Dave Van Kesteren: For my final question, I want you to explain to us how common it is for companies to receive R and D tax credits. One of the arguments we heard this morning was that Nortel has received so much in that direction and has received so many tax credits that we pretty much owe it to ourselves to.... How common is that within companies to receive those credits?

Mr. Richard Dicerni: The research tax credit is very popular in Canada. There are billions and billions of tax expenditures used by companies that are involved in R and D in this country. Unfortunately, in order to capitalize on a tax credit you have to generate net income, and as the people from Nortel were mentioning this morning, they were having difficulty generating net income that would permit them to capitalize. The R and D tax credit that we have in this country, I think, is a very good one. It's a very generous one and is much used by a number of R and D companies to pursue their strategic goals.

Mr. Dave Van Kesteren: I'm done, Mr. Chair. If it's possible, I'd like to split my time with my colleague.

The Chair: Go ahead, Mr. Braid.

Mr. Peter Braid: Thank you, Mr. Van Kesteren.

Thank you, Mr. Chair. I'll be brief, only a minute or so.

I'll go to the issue of government funding and support for Nortel. Nortel officials were here earlier, as you know. They confirmed they haven't received any SR and ED funding over the past decade. First, can you confirm that that's the case? Second, what about IRAP funding?

•(1430)

Mr. Richard Dicerni: I don't think we or anybody in the Department of Finance or Revenue Canada could confirm that. I believe this is confidential information between the company and the tax man. You could ask their accountant and so forth.

In regard to IRAP, I could get back to you, because that is within the confines of the National Research Council, which administers the IRAP program. I can get back to you on that.

Mr. Peter Braid: That would be very helpful, thank you.

Do I have any more time?

The Chair: We have to move on. Thank you very much, Mr. Braid.

Monsieur Laframboise.

[Translation]

Mr. Mario Laframboise: Thank you, Mr. Chairman.

Thanks to the assistant deputy ministers and the deputy minister.

Mr. Dicerni, if I understood correctly, a transaction must meet three criteria: the amount of the transaction, which we discussed earlier, the net benefit and national security.

Mr. Richard Dicerni: There are two criteria that determine whether we are subject to the act: the amount of the investment and national security considerations. If an investor is subject to the act by reason of the amount of its investment, it must submit commitments that it intends to make in order to enable the minister to conclude that the country will derive a net benefit from the transaction.

Mr. Mario Laframboise: Consequently, the investment threshold is the amount that Ms. Thivierge mentioned earlier. We're amending the regulations, but it hasn't been done yet; studies will be coming. Under the current act, the book value is set at \$312 million.

Then there's the national security criterion. How does that work? Does each of the bidder businesses inquire with your department? It's fine if Nortel speaks with you, but do Ericsson, Research in Motion or other companies contact you?

Mr. Richard Dicerni: Most of these large businesses have excellent law firms that are quite familiar with the basics of the act and the criteria. When a foreign investor comes to Canada to invest, usually among the lawyers that it retains, there are some who are very familiar with the act. When it makes an investment, it contacts us to discuss the transaction.

Mr. Mario Laframboise: In a bankruptcy, do the courts contact you, or do they make decisions completely independently? I get the impression that in the case of a bankruptcy, they don't necessarily have any concerns related to the Investment Canada Act.

Mr. Richard Dicerni: When the bankruptcy court determines how matters will be resolved if an investor from outside the country acquires a business in the bankruptcy process, the act applies. There is a sequential procedure.

Mr. Mario Laframboise: If the minister decided the act applied for one of the two criteria, what would be the time frames? What would happen?

Mr. Richard Dicerni: The act provides that a decision has to be rendered within 30 and 45 days, unless the investor agrees to extend the review period.

Mr. Mario Laframboise: My colleague asked you a question about the conditions that could be included in an authorization. Once again we're talking about a hypothetical situation. You said that everything was confidential, but the minister could publicly state his requirements before making his decision. Has that ever happened?

•(1435)

Mr. Richard Dicerni: No.

Mr. Mario Laframboise: He'll never say, for example, that he wants jobs protected and that that's something important for us.

Mr. Richard Dicerni: Not under this act.

Mr. Mario Laframboise: Even the minister doesn't have the power to say so publicly.

Mr. Richard Dicerni: No. Every time we have the privilege of appearing before a committee such as yours, as officials, we prepare and do a lot of research to ensure that every point we make is based in fact. In that connection, I discovered a statement that Minister Manley made 15 years ago that concerned a matter about which someone was harassing him in the House. He answered that he would have liked to talk about it but that the act prevented him from doing so. So this has been a common practice since the act has been in effect.

Mr. Mario Laframboise: That means that what is made public is the two parties that agree, the business and the investor.

Mr. Richard Dicerni: It's mainly the investor that is ready.

[English]

The Chair: Thank you very much. I note that Mr. Manley sits on the board of Nortel Networks today, so things have come full circle.

We now go to Mr. Braid.

Mr. Peter Braid: Thank you again, Mr. Chair. I'd like to pursue one of the earlier discussion threads with respect to the Investment Canada Act and the threshold.

Madame Thivierge, you have confirmed for us and helped us understand that the net benefit test is automatically triggered, but only if the book value of the transaction is over \$312 million Canadian. How did we arrive at that number? What's the origin of that?

Ms. Marie-Josée Thivierge: Actually, its origin is in international agreements that Canada was party to, where at the outset the first threshold was established. Since then, there has been an annual increment, the formula of which is in legislation and regulations. So annually the threshold increases. Last year it was \$295 million. This year it is \$312 million, and next year we will see a new threshold, based on the economic factors that need to be factored into the formula to establish thresholds. An annual increment has been provided for.

That being said, with the amendments that were recently introduced to the Investment Canada Act, when the new threshold provisions come into force, that will be set. It will move to \$600 million, and then \$800 million, and then \$1 billion. That's provided for in regulations, but that is not in effect at the moment.

Mr. Peter Braid: And in your mind, are those thresholds and the current \$312 million an appropriate threshold?

Ms. Marie-Josée Thivierge: Those were the thresholds that were set as part of international negotiations. I would add that this \$312 million clearly, by law, applies to WTO countries. Non-WTO countries have a lower threshold prescribed in law, which is \$5 million for direct acquisitions.

Mr. Peter Braid: And this other process, where we will see an increase from \$600 million to \$800 million, ultimately to \$1 billion in four years, is that a Canadian initiative or is that also triggered as a result of the international agreements that are in place here?

Mr. Richard Dicerni: The government commissioned Mr. Wilson and four other panellists a couple of years ago to look at, broadly speaking, issues dealing with competitiveness in the country. Mr. Wilson tabled his report in June 2008. The government gave some thought to this report and subsequently introduced, as part of the budget implementation act that Mr. Masse referred to a little earlier, increasing the threshold in a progressive manner over the course of the next three or four years to reach the recommended level of \$1 billion.

Mr. Peter Braid: What thinking went into that recommendation that came out of the Wilson report to increase those thresholds?

Mr. Richard Dicerni: It is part of a broader thematic aspect in Mr. Wilson's report, which generally speaking the government endorsed, that in order to sustain competitiveness and productivity, it is important for Canada to attract foreign direct investment. It was the view of that panel that perhaps having a low threshold was a disincentive to attracting foreign direct investment, which Canada needs to continue to improve its competitiveness.

• (1440)

Mr. Peter Braid: Finally, Mr. Dicerni, as deputy minister you are, of course, responsible ultimately for administering the programs of Industry Canada, correct?

Mr. Richard Dicerni: That is a fair assumption.

Mr. Peter Braid: What programs are currently in place at Industry Canada, or perhaps even government-wide, that express this government's commitment to a strong high-tech sector, a robust research and development sector, and interest and support for innovation?

Mr. Richard Dicerni: The tax credit that we have spoken about is an important element of that arsenal.

Secondly, a couple of years ago the government released an S and T strategy. The strategy identified four key areas. The ICT sector was very much one of those. The establishment of that as a priority has subsequently guided decision-making in other areas, such as the attribution of centres of excellence for commercialization and research.

There was recently the knowledge infrastructure program, which is the infrastructure program for the post-secondary sector. I think there's over \$200 million of investments targeted to post-secondary education communities in and around the ICT sector.

The Chair: Thank you.

Please be brief, Mr. Dicerni, before we have to move on.

Mr. Richard Dicerni: And there are others.

The Chair: Okay, thank you.

The last member today is the person who asked us to call this meeting originally, Mr. Masse.

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

I just want to clarify. Do the tax credits that are going to LTE technology follow the SR and ED credits that haven't been applied for yet? They've put in \$300 million over that—at least that, at the very minimum, they've admitted today—in the last few years without being able to claim it. Does that move with the technology or does it stay with the company? Have we ever faced a situation like that before?

Mr. Richard Dicerni: I don't know.

Mr. Brian Masse: Maybe we can get that answer back from you at some point.

Mr. Richard Dicerni: Maybe somebody from...because we are not privy to all the documents that were submitted in court. The courts have sealed some of those documents pertaining to that deal.

Mr. Brian Masse: I can appreciate that, but Ericsson doesn't believe it is true. I'd like to figure out some new thing.

Mr. Richard Dicerni: We will give you as much as we can.

Mr. Brian Masse: The interesting thing we're going through here now, I think, is shedding some good light on why I think changes should come through Parliament for legislation as opposed to a budget bill. Who appointed Mr. Wilson's panel?

Mr. Richard Dicerni: The government.

Mr. Brian Masse: So the minister did directly, right? The minister appointed the panel.

Mr. Richard Dicerni: Correct. The Minister of Industry at the time, Mr. Bernier, and Minister Flaherty announced this panel.

Mr. Brian Masse: Okay. Now we have the billion-dollar threshold coming up. I want to make sure we're clear on that. That no longer follows international standards, right? We are now exceeding international standards on the threshold. Is that correct?

Ms. Marie-Josée Thivierge: I wouldn't say that.

Mr. Brian Masse: So every other nation in the WTO is going to move to a billion dollars in four years?

Ms. Marie-Josée Thivierge: I don't believe that, and I don't want to speculate on this, so I could come back to the committee in terms of the nature of the international negotiations. It was more about some principles being set and countries making sure that, whatever was the starting point of all of this, everybody agreed to it. After that, international law and trade obligations are such that the government, in changing any of its policy, would factor in trade obligations. But every country moving to the billion dollars, that was certainly not—

Mr. Brian Masse: Can we get back from you a comparison of what other nations are doing?

Ms. Marie-Josée Thivierge: Sure.

Mr. Brian Masse: It's information that we would normally get during a review process that's very interesting and important for us to have, like what Japan is doing, what Germany's doing, just to have an idea of where they're going to be at in four years.

What's coming to light here is that this is one of the most important technological breakthroughs—this LTE patent that we're hearing about today—but it barely meets the end threshold in four years in what we have. It's just kind of an interesting part of the whole story here. What we have to look at, as a governing body, at the end of the day is what triggers a review. This is the licence for a breakthrough, but it would barely break the threshold if it were four years, if this had been the billion dollars right away.

Mr. Richard Dicerni: Here is a quick point. The quantum has to be considered in the context of the legislation to which it applies. Different countries may have different triggers, may have different modalities to review foreign investment. We can give you the numbers on a quantum basis, but it has to be looked at in the broader context.

• (1445)

Mr. Brian Masse: Yes, can you share that with us? These are the things we would normally have as we go through these legislative changes, which I think are important for us to understand as parliamentarians, which now we're in a black hole on.

Really quickly—I know I'm running out of time here—if Nortel gets away with its argument and claims this transaction is only worth

\$149 million, and it later on hives something off, hives another thing off, and another thing off, do we start adding up to when they reach \$312 billion to trigger an Investment Canada Act review, and does the review happen on everything or just the last thing that triggered the review? This is different from what I've ever seen before. So what happens in this scenario?

Mr. Richard Dicerni: As the act works, it's the investor; it's not the seller.

Mr. Brian Masse: Okay, so it's a loophole.

Thank you.

The Chair: Thank you very much, Mr. Masse, for those questions. They were helpful.

[*Translation*]

Ms. McDonald, Ms. Thivierge and Mr. Dicerni, thank you for your evidence.

[*English*]

We're going to go in camera momentarily. We're not going to suspend; we're going to go in camera to further discuss the study that's on our order of the day.

I'd ask members of the public to leave the room so we can go in camera for the next 15 minutes.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.