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Chair

The Honourable Michael Chong

Standing Committee on Industry, Science and Technology

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● (0900)

[*Translation*]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Welcome to the 26th meeting of the Standing Committee on Industry, Science and Technology. Pursuant to Standing Order 108, we are here today to study the impending closure of Shell Canada's Montreal refinery.

[*English*]

We have three witnesses on our first panel: Mr. Oblath and Monsieur Houle are from Shell, and Mr. Rocheleau is from the Shell Workers Union.

We'll begin with opening statements from each of the two parties, beginning with Shell.

[*Translation*]

Mr. Christian Houle (Chief Executive Officer, Montreal East Refinery, Shell): Committee members, good morning. My name is Christian Houle. I am the general manager for Shell's refinery in Montreal East.

Sitting next to me is Mr. Oblath, the vice-president responsible for Shell's merger, acquisition and divestment activities, including those involving Shell's Montreal East refinery. He is a senior member of Shell who is here to provide information and answer your questions regarding the significant efforts made to sell the refinery, and provide a perspective on global refining.

I will provide information and attempt to answer questions regarding our plans for converting the refinery to a terminal, including the supply of gasoline, diesel and aviation fuel to meet the demand of our customers in Quebec, Atlantic Canada and parts of Ontario.

For the past 77 years, Shell has operated its refinery in Montreal East; that is 77 years of Shell and its employees contributing to the economy and community of Montreal East. Taxpayers, governments, employees, customers, suppliers and Shell have all benefited.

First, please know that this outcome is not our first choice. As my colleague Mr. Oblath will demonstrate, for almost a full year we tried hard to sell the refinery. We realize that its conversion to a terminal will have a significant impact on many people—our employees and their families, as well as those who live and work near the refinery who benefit from our operations. We recognize how difficult this is for all and sincerely regret having to take this step. This was not an easy decision, but unfortunately it was the only viable decision in the difficult economic climate in the refinery sector.

On the matter of supply, we do not agree with the assumption that the conversion of the Montreal East refinery to a terminal will result in interruptions of fuel supplies for our customers. Shell has experience converting refineries to terminals. Within Canada, for instance, Shell converted its Shellburn and St-Boniface refineries into terminals. We learned a good deal through those conversion processes and continue to have a strong presence in those areas as a major fuel provider. We will continue to reliably supply our customers with quality products.

We announced our decision in January. We have since then cooperated with requests from the provincial and federal governments, which asked us to delay dismantling the refinery until June 1 to cooperate with a special committee and consider potential bids.

I should note that by agreeing to the special committee process, we also delayed normal business processes including moving forward with regulatory permits required for the conversion.

Normal permit requests for demolition, construction and operation of terminal equipment are needed. A delay in permitting can cause supply disruptions. Also, Shell needs to start shutting down the refinery in the near future to ensure safety and asset integrity.

I now turn the floor over to my colleague, Mr. Oblath.

● (0905)

[*English*]

Mr. Richard Oblath (Vice-President, Downstream Portfolio, Shell): Good morning, committee members.

At Shell we are deeply conscious that our decision impacts our employees, their families, and others. In regard to our employees, we will treat them fairly, and we appreciate the professionalism they have shown throughout this difficult time.

I hope our attendance here today will provide you with a better understanding that Shell has made substantial efforts to sell the Montreal East refinery in a difficult economic environment and that its conversion to a terminal is necessary to supply our customers.

There have been numerous news articles and public statements regarding our announcement of this conversion. Many of them have been speculative and inaccurate. There are three key issues related to the attempt to sell the refinery: it was marketed to a large number of potential purchasers; a significant capital investment is required to continue to operate the refinery in a competitive and safe manner; and despite a year of effort from a large number of parties who were contacted, many of whom analyzed the opportunity in great detail, no offers were made to us.

We're not the first to end our refining operations in Montreal East. Despite significant challenges, we have continued longer than others.

The business climate has changed substantially, particularly in the past decade as global competition has increased. Several refineries in North America have been closed and a few converted in recent times. New refineries in other parts of the world are coming on stream with advantages that smaller, older refineries such as ours in Montreal do not have. Thus margins are lower as unit costs for a smaller refinery become higher.

Shell continuously reviews our refineries to understand the future investments needed to sustain safe, continuous operations. In the case of the Montreal East refinery, this analysis determined that some $600 million of capital would be needed in the near term, notwithstanding the $400 million in capital expenditures we have spent in the last six years.

Thus in July 2009 we publicly announced our intention to seek a buyer for the site, and more than 25 different parties were contacted or contacted us. From this group, 17 made serious inquiries regarding the site and its operations; six of these parties progressed to due diligence, where they were given very detailed information on the site and its operations. Unfortunately, no one, after this detailed analysis, concluded that the refinery warranted their investment, and this process did not result in one single offer.

As a result, in January 2010 we regretfully announced our decision to convert the refinery to a terminal. We wanted to give our employees proper notice of this decision and ensure we could maintain a supply of petroleum products to our customers.

The government asked us, and we agreed, to delay our conversion plans and work cooperatively with a special committee it had created to seek out potential buyers. The special committee is reported to have made more than 100 contacts. As a result of this effort, five of these parties conducted a more detailed evaluation of the site and had open access to discussions with the Shell personnel responsible for this transaction. Out of all of these, only Delek US, a credible refinery operator, came forward with a viable expression of interest. However, after constructive and good faith negotiations, Delek unfortunately withdrew from the process.

Several factors likely influenced decisions of these many interested parties over the past year, one of which was that any potential buyer had to be able to finance three things: a fair purchase price; the cost of approximately $400 million to $500 million of working capital; and another $600 million of capital investments that would be needed in the near term to sustain the site, keeping it operating in a safe and secure manner.

● (0910)

We understand that the special committee offered advantageous financing, acquisitions of shares in the prospective bidder, and direct cash grants that may or may not have had to be repaid. However, despite all of the extensive efforts made by the special committee, the Quebec government, and our employees, as well as the proposed incentives and investments, not one out of the over 100 prospective purchasers saw an acceptable future for this site as a refinery, and none presented us with an offer.

I would like now to hand the floor back to my colleague, Monsieur Houle.

[*Translation*]

Mr. Christian Houle: Thank you.

These are never easy decisions, and I hope you can see how thorough we have been during this process.

We are very proud of our 77 years of operating the Montreal East refinery and have always strived to safely provide top-quality petroleum products to our customers. Unfortunately, we could not justify the significant costs required to safely operate the facility as a refinery in the future, and potential buyers likely had similar concerns and so were unwilling to make the investment needed.

As explained, we recognize how difficult this is for the employees of the refinery and their families. Substantial efforts have been made, and a thorough process was undertaken to market the refinery to potential purchasers during the past year. The refinery requires a significant capital investment in order to continue operating in a competitive and safe manner. Despite the fact that more than 100 potential purchasers were contacted, and efforts were undertaken for a year, no offers were made.

I hope this information has helped put our decision in a clearer and more informed context for you today.

Thank you.

The Chair: Mr. Houle, thank you for your presentation.

Mr. Rocheleau, you have the floor.

Mr. Jean-Claude Rocheleau (President, Shell Workers Union): Ladies and gentlemen, I want to begin by thanking the members of the committee for studying the issue of the closure of the Montreal East Shell refinery.

For more than 12 years, I have been the president of the workers' union for this refinery, CEP local 121, which is affiliated with the FTQ. I have worked in the refining sector for 33 years. I am here because I believe that the Montreal East refinery can and should continue to operate, and that it can do so in a profitable manner while serving the Quebec market as it has done for 77 years.

As soon as Shell announced its plans to close the refinery a year ago, indicating that it preferred to sell the refinery, the union supported selling the refinery and protecting jobs.

I want to go over the reasons why the refinery should continue to operate.

First of all, it is profitable and has made money every year for the past 18 years, except in 2009, which was a bad year for the entire industry.

Second, it supplies a stable market with specific products that other refineries do not produce in large enough quantities, such as aviation fuel.

Third, it is directly responsible for 800 jobs and indirectly responsible for 3,500 jobs.

Fourth, it generates $240 million in economic benefits a year.

Fifth, the refinery has undergone upgrades and modernization over the years in order to meet Shell company standards, which are among the most stringent in the industry.

Sixth, closing the refinery could lead to the closure of its Suncor neighbour, which would mean that Quebec would lose two-thirds of its refining capacity.

Seventh, the disappearance of the Montreal East refinery would mean the end of the petrochemical industrial cluster.

Eighth, if the Shell refinery closes, Quebec will lose 25% of its refining capacity. What is worse, the entire aviation, civil and military fuel supply currently provided by the Montreal East refinery is at stake, not to mention the dependence with respect to importing.

That does not include the fact that any scenario put forward by the company based on the *on time, on spec* arrival by ship of refined products from abroad is the stuff of science fiction. The last three ships that arrived in Montreal were further proof of that. When ships do not arrive on time, it results in shortages at the pump, such as the one experienced by Quebeckers in June.

We are here because despite the fact that Shell received bids that satisfied the conditions set out in its February 16 document, no agreements were reached, contrary to the commitment to sell the refinery that Shell made to the workers, the community and the government.

Furthermore, even though the document put out by Shell on February 16 outlined the conditions under which it would sell the refinery, the company was not all that committed to selling. That is why the committee received confirmation from Shell on four different occasions, from Mr. Williams, Mr. Oblath, Mr. Rathweg and Mr. Marion, that it was prepared to sell if the conditions outlined in its February 16 document were fulfilled.

That confirmation changed the nature of the contract between Shell and the committee, such that if a buyer was prepared to do business with Shell under its terms, Shell had to sell its refinery to the buyer in question. That is the nature of the commitment undertaken by Shell that parliamentarians must consider today.

When Shell began the process to sell the refinery, it did not open the virtual data room, which brought together the refinery's financial documents and conditions of sale, until October 2009, and Shell closed it two months later in late December 2009. It was a fleeting period that should have opened the door to a serious process.

Despite rumours that certain companies were interested in buying the refinery, on January 7, 2010, Shell publicly announced its plans to convert the refinery to a terminal.

● (0915)

The union could not stand by in the face of such a senseless decision, both from an economic standpoint with respect to the 800 families directly affected and from the standpoint of the country's energy security. Our arguments are well-founded, and we have received considerable support from sincere non-partisan parties, initially from fellow union members but also from the Montreal East community. And I would just like to point out that Montreal East Mayor Robert Coutu is here today and has been steadfast in his support since the very beginning.

A coalition of more than 80 companies and socio-economic leaders was formed, and support has come rolling in from every political party, at the municipal, provincial and federal levels. Montreal's city council moved a unanimous motion, and governments sent letters to Shell in an attempt to delay the closure. And Shell delayed the closure for three months, until June 1. As early as February, we helped form a survival committee, chaired by Michael Fortier. It brought together union, municipal, provincial and federal representatives. As a member of that committee, I noticed that every time we took a step forward, Shell would raise the bar higher; I felt as though I had been invited to a silly dinner game.

Throughout the committee process, Shell engaged in doublespeak. On one hand, Steve Rathweg and Christian Houle told us that Shell preferred to sell the refinery rather than convert it to a terminal. On the other hand, however, local management at the refinery did everything in its power to dash the legitimate hopes of workers that the refinery would be sold. Just about every day for the past six months, supervisors and managers told workers the same thing: your RE/MAX agents committee will not find a buyer, it is impossible. If Shell could not find one, there were none. Then, when the committee managed to find five buyers, despite the extremely tight deadline, companies that Shell deemed serious and credible, companies it allowed into the data room, the line that management fed employees was that it would not go any further, that when the potential buyers saw the figures, they would not make an offer.

When two companies and practically a third made offers before the June 1 deadline, management told employees to stop operating one of the refinery's most profitable units, lubricating oils, and to stop protecting boiler 13, which had been shut down on May 18. Seventy-two hours after the offers had been made, management sent employees an email indicating that the two offers had been rejected. At that point, the ministers demanded an explanation from Shell regarding the lack of negotiations.

First, reassurance was given that Shell still wanted to sell, and steps were taken to submit a better offer that satisfied the conditions. And despite that, management continued to send out the same message within the refinery—Shell would never sell and the refinery was worth more than $1 billion to it, which was 5 to 7 times the amount it had told the committee. Certain supervisors and managers were so fervent in getting that message out that the union filed a harassment complaint.

Even though the sale process has ended, the doublespeak has not stopped. The local management has changed its tune and is now saying that the terminal will not be profitable, that the land and facilities are not configured for that purpose and that Shell estimates that the terminal will rank in the fourth quartile in terms of results.

It is our opinion that Shell did not really want to sell the refinery, contrary to what its commitments may suggest. Shell gave the Fortier committee a light pat on the back but never believed that the committee would succeed where it had not. What is worse, Shell probably thought that it would make the refinery so unappealing to buyers that no company would want it. When it was faced with a serious buyer, Shell ended up turning down an offer at the higher end of the range it had itself set. And that was no doubt to hide the fact that it had gone to great lengths to stop the progress of the Fortier committee.

● (0920)

Thanks to this parliamentary committee, we can now get to the bottom of the situation.

We still believe that the refinery can and should continue to operate, that our information shows there is still an offer on the table that meets Shell's conditions and that Shell will speed up the process of dismantling equipment. For those reasons, we have obtained an interlocutory, interim injunction from the Superior Court to stop Shell from rendering the refinery equipment unusable. That injunction is valid until September 10.

During that procedure, Shell submitted its terminal conversion plans, in which it indicated that it would remain open to any offer to purchase its Montreal East refining facility throughout the terminal conversion process. Therefore, according to the document Shell submitted to the department, Shell will be prepared to sell the refinery until the terminal conversion process has been completed.

Members of the committee, it may not be too late.

Thank you.

The Chair: Thank you, Mr. Rocheleau.

We now have one hour and five minutes for the committee members' questions and comments, until 10:30 a.m.

We will start with Mr. Coderre.

[*English*]

Mr. McTeague...?

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Just to be clear, it shows the time going to 12:30 with both witnesses. Am I incorrect in that assumption?

The Chair: Yes, you are. We are going to 10:30, and at 11 o'clock the second panel will commence.

Now we'll begin with questions and comments.

Mr. Coderre.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you, Mr. Chair.

Mr. Oblath, you came from Houston. I am glad to see you here, but you basically repeated word for word the letter written by Lorraine Mitchelmore, the president of Shell Canada. Shell could have saved itself some money, in terms of conveying its message, or saved on travel expenses. You are not required to repeat the same thing.

Mr. Houle, you started off on a bit of a bad foot by saying that safety is at risk because of this committee, as you do not have the time to complete the permit request necessary to dismantle equipment. I would point out that there is an injunction against the dismantling because you do not have the permits needed to go ahead.

Now, to the heart of the matter. Let us get down to business, whether you want to sell the refinery or not.

The reason we had to ask you to appear before the committee is that we have the feeling that someone is trying to pull the wool over our eyes. We have the feeling that someone is lying to us. We have the feeling that a lot of people worked very hard to make a sale happen, to save 800 direct jobs and 3,500 indirect ones. But today we will talk about saving the energy security of not only Quebec, but also Canada as a whole.

First of all, I would like to thank my colleague Dan McTeague because he got the ball rolling at the time with a motion. It was withdrawn to ensure a proper negotiation process.

Second, I want to thank all of my colleagues because there is no partisanship today: everyone agrees that we need to ask the real questions to figure out how to protect an industry and our nation's energy security. So this affects not only Quebec, but the entire country.

We want to know two things today: whether you want to sell and whether there is a buyer. It is not complicated.

So, first off, we just want to know....

● (0925)

[*English*]

Mr. Oblath, you were there for the last negotiation with Delek US, if the news is not speculative. Is that correct? You were there at the end in discussions with Delek US, to see if they were a buyer?

Mr. Richard Oblath: That's correct.

Hon. Denis Coderre: I'm a bit concerned, because at the beginning we were talking about asking for $150 million or $200 million to buy the refinery, and then we had a letter coming from nowhere last week, saying that you had to put in an extra $600 million. That's pretty scary. It means that our installation, that infrastructure, is in jeopardy right now, and you have to put in an extra $500 million of capital for the operation.

If we stick to the term sheet of February 16, is it correct to say that Shell Canada was ready to sell if we had an enterprise that was ready to put forward $150 million to $200 million?

Mr. Richard Oblath: I would ask, Mr. Chair, for a few minutes to explain.

The $150 million to $200 million was for the refinery itself. In order to run a refinery, you also need working capital, so any person would have to also acquire the working capital needed. That's in the order of $400 million to $500 million. There are continuous needs for refineries in terms of capital investment. We have invested $400 million in the last few years in the refinery, and the $600 million is our estimate of the needs to invest over the next few years, including the turnaround that we need to do very soon.

Hon. Denis Coderre: But if I may, Mr. Oblath, you're repeating again what the letter from Mrs. Mitchelmore was saying. The simple question is if I'm a company that's willing to buy Shell Canada, and you have the term sheet of February 16...

[*Translation*]

My question is not complicated. Under the terms of the conditions of purchase, was it just the $150 million and $200 million? If not, did you very clearly indicate in the documents that anyone interested also had to put in $600 million in capital?

[*English*]

It's as simple as that. Yes or no?

Mr. Richard Oblath: The term sheet was for the purchase of the refinery itself. Any party that has ever bought a refinery or looked at a refinery understands that there is a lot more cash needed in the near term for any refinery, especially working capital, and the term sheet did not hide that. Those are normal conditions of sale. There is nothing different. We were very eager. We're very sorry we couldn't find a buyer for the refinery. It's obviously our preference to sell the refinery; it has been for over a year.

Hon. Denis Coderre: So you're still willing to sell.

Mr. Richard Oblath: We are still willing to sell, but my colleague Monsieur Houle can explain to you that we're getting to a very critical point. We cannot run the refinery much longer before a turnaround. We need—

Hon. Denis Coderre: The question is this. If it's not dismantled, are you still willing to sell, according to the documents that your company tabled at the court? Yes or no?

Mr. Richard Oblath: If we have an offer, an expression of interest that is good enough to meet all of the needs of the refinery, the answer would be yes, but we are running very, very short of time.

[*Translation*]

Hon. Denis Coderre: I have one last question. Is it true, yes or no, that Shell said it wanted to get out of Quebec and the Maritimes and that when you were in talks with Delek US Holdings, you also wanted to sell your service stations because you no longer wanted to have any operations in Quebec or the Maritimes?

● (0930)

[*English*]

Mr. Richard Oblath: I cannot answer yes or no to that question. I can answer the question, Mr. Chair, but I can't answer yes or no. Can I answer the question?

If Delek US had put a large enough offer on the table and met the sales and purchase conditions there, we perhaps could have reached an agreement for the refinery only. They did not want to buy the refinery only. They asked whether we would be willing to sell the refinery plus the wholesale business plus the retail business, and we said if the offer was high enough, we would be willing to do that.

Hon. Denis Coderre: Did you offer that to them, or were they asking you for that?

Mr. Richard Oblath: They asked us.

The Chair: Thank you very much, Mr. Coderre and Mr. Oblath.

[*Translation*]

I will now give the floor over to Mr. Laframboise.

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

I am going to continue along the same lines. Initially, you were seeking to sell the refinery, and you were asking for $200 million, is that correct?

[*English*]

Mr. Richard Oblath: Yes.

[*Translation*]

Mr. Mario Laframboise: Did you receive an offer for the refinery, with a time extension, of $200 million?

[*English*]

Mr. Richard Oblath: No.

[*Translation*]

Mr. Mario Laframboise: After that, Mr. Oblath, once the discussions had ended, you set a deadline of June 30. In your press releases, you stated that there were no longer any discussions going on; however, Delek wanted to continue talking, did it not?

[*English*]

Mr. Richard Oblath: Mr. Chair, Delek withdrew from the discussions. I believe they're appearing later in this hearing and you can ask them.

[*Translation*]

Mr. Mario Laframboise: In your June 4, 2010 press release, you say: "[...] we are therefore implementing our plan to convert the refinery to a terminal." That was three days after the June 1 deadline.

You say that Shell had announced as early as January that it intended to convert the refinery to a terminal. As early as January, then, was it not already Shell's intention to convert the refinery to a terminal? Had the decision not already been made?

[*English*]

Mr. Richard Oblath: Mr. Chair, the decision had been taken because we could find no one who would make us an offer. We had no alternative.

Before we announced in July 2009 that we would seek offers for the refinery, we looked at various alternatives: to completely idle the refinery and not even turn it into a terminal; to sell the refinery; to convert the refinery into a terminal; or to continue as we were. We could not—

[*Translation*]

Mr. Mario Laframboise: Mr. Oblath, the Fortier committee was in place and had the support of the Government of Quebec. You yourself said in your opening statement that incentives for buyers, as well as a whole range of assistance measures, had been put in place for the purchase of the refinery. So, the sale of the refinery should have been your real priority, as opposed to converting it to a terminal.

By stating in your press release, only three days after, that you were moving forward with your initial plan to convert the refinery, you essentially set aside all the work and all the discussions that were ongoing with the Fortier committee, as Mr. Rocheleau so aptly pointed out earlier. Were you not the ones who demanded that the Fortier committee not be involved in talks with Delek US Holdings?

[*English*]

Mr. Richard Oblath: The committee was party to the discussions up until the committee ended.

● (0935)

[*Translation*]

Mr. Mario Laframboise: So, you never said that you no longer wanted the Fortier committee to take part in the discussions?

[*English*]

Mr. Richard Oblath: The purpose of the committee, as it was set up and as we agreed, was that should they find a credible buyer—and Delek US was a credible buyer—they would let the seller, Shell, and the buyer partake in negotiations to see if they could reach an agreement. The initial expression of interest from Delek on the evening of June 1 was completely inadequate; it was very, very low. The value actually offered for the refinery was probably of the order of a few million dollars.

[*Translation*]

Mr. Mario Laframboise: Delek US Holdings offered you $200 million. Did it make that offer after June 1?

[*English*]

Mr. Richard Oblath: Not for the refinery.

[*Translation*]

Mr. Mario Laframboise: Then was exactly was the offer for? Could you provide us with details?

[*English*]

Mr. Richard Oblath: I would like to point out that they never formally tabled an offer. These were expressions of interest. The final expression of interest that was discussed at the meeting on June 21, which I attended at their headquarters in Tennessee, included a value for the refinery that was probably around $110 million. There were other offers on the table for our wholesale business and potentially our retail business, although they never made a formal expression of offer to value our retail business.

In the offer for the refinery and for the wholesale business—and I'd like to state, Mr. Chair, that on two occasions we asked Delek, would you buy the refinery alone, and on both occasions they said they would not. So the offer they had discussed with us initially was for the refinery and for our wholesale business. If I look at the financing for that, the discussions, by the time they had increased their offer—all of the increases in their offer, by the way, were increases, apparently, in moneys coming from government entities or pseudo-government entities—these increases still did not reach $150 million to $200 million for the refinery alone.

[*Translation*]

The Chair: Thank you, Mr. Oblath.

Thank you, Mr. Laframboise.

Mr. Petit, please.

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you very much, Mr. Chairman.

Good morning, Mr. Oblath, Mr. Houle and Mr. Rocheleau.

First of all, I think it's important to point out that the employees of your refinery are the ones who will be most prejudicially affected by this situation. Of course, I'm referring to the 400 or 500 employees who will lose their jobs or may be displaced. It appears to be difficult to secure an official sale. We support your committee, but we don't know exactly what direction it is taking. Furthermore, there seems to be a second phase, and that worries me a little.

Mr. Oblath, I would like some additional details. Supposing that you convert the refinery to a terminal—I say "supposing" because that has not officially occurred yet. What exactly will you do with the employees? They want to know exactly what to expect. I would like to know what social and business plans you have in place for these employees. They will be the ones in difficulty, not you. You are going to keep your job, but they will lose theirs.

So, I would like a lot more clarification in that regard. This is an important question.

[*English*]

Mr. Richard Oblath: I think it's better answered by Monsieur Houle.

[*Translation*]

Mr. Christian Houle: Montreal East Refinery has 490 employees, 127 of whom are eligible for retirement. To date, 35 employees have quit because they found jobs in another industry. Two people have retired, and about 20 have been transferred to other Shell establishments. We have also held a number of meetings of a committee involving the government and the union whose goal is to help people find other employment. Among other things, the meetings instruct people on drafting résumés and going through interviews. We have organized "career days," brought in people from Hydro Québec, Japan Tobacco Inc. and Suncor, as well as City of Montreal representatives and people responsible for water treatment. In September, other companies will come, such as Come By Chance and Albian Sands. I am in touch with other Shell locations, mainly in Canada, but also in Qatar. We are looking into job opportunities for people who are mobile. I recognize that not everybody can be mobile.

We are putting in a lot of effort. We provide information sessions on benefits and pensions. Human resources are working hard on educating our employees. As the refinery's chief executive officer, I certainly want all my employees to find a solution by November 30. They could find this solution within Shell, in the future terminal, which will have about 20 or 30 employees. The goal is to continue working with the union and with governments in order to take care of our employees and their families. Without a doubt, this is one of my main priorities.

● (0940)

Mr. Daniel Petit: Mr. Houle, since Mr. Oblath has allowed you to speak about the employees on Shell's behalf, I would like to know when you began with the efforts you are talking about. When did you meet with the union? Did you meet with it on this issue?

Mr. Christian Houle: We began working on this when the official announcement was made on January 7, 2010. This followed a rather extensive process to find a buyer for Shell. Once we realized that no formal offer had come our way, we began right away putting together this kind of process in cooperation with our human resources and head office people.

Given that the decision was not made two years previously, it is true that not everything was in place in January. So, at that time, we had to begin inviting people and bringing organizations together to implement plans for helping them. So there is no plot, and nothing had been predetermined. To some, we might have looked disorganized at first, but that is because the final decision had only just been made in January.

After that, we put together the committee. Clearly, without a formal offer, we cannot put our conversion plans aside and work on the committee. We have to work on things in parallel. Since then, we have been working on conversion plans and projects.

Some items take time to order. So we started doing it right away in order to be able to get it done in time and not run into supply problems, since some operation units must legally be taken out of service in September. We have no choice. For safety reasons, the units must be shut down in September. We have reached the point of no return, and the units must be shut down.

Mr. Daniel Petit: Mr. Rocheleau, you heard Mr. Houle. Is it true that, since January of this year, you have held meetings precisely in order to discuss the future of the employees if the refinery is not sold and becomes a terminal?

Have you personally—or people in your union—met with Mr. Houle or Shell people, representing Mr. Houle? Have there been any meetings?

Mr. Jean-Claude Rocheleau: Yes. It should be noted that the adjustment committee we are talking about is legally required in Quebec. So it does not necessarily exist because Shell created it. The company was legally obligated to put together an adjustment committee. We take part in it according to the rules established in law.

I dislike, contrary to what we were told... They talk about the efforts they are making for the workers. However, I can tell you that Shell is not making any particular effort for the workers. They say that they have transferred people to other Shell locations. Shell is not making transfers.

I lived through the closing of an Esso station, and we were guaranteed jobs within Esso. We did not even have to apply. We did not have to do anything.

At the moment, Shell is telling its workers who have lost their jobs to apply for open positions, just like anyone else. If they get the job, good for them; if not, too bad. Nothing special is being done.

In addition, it was said that 127 employees are eligible for retirement. I would like to believe people are eligible for retirement, but that involves a 25% penalty, so there is no incentive for those workers to do it. In addition, while the provisions in our collective agreement allow us to keep people who are better than subcontractors, let us just say that Shell is now trying to do away with those provisions that allow us to keep our own people rather than dealing with subcontractors.

● (0945)

The Chair: Thank you, Mr. Petit.

Thank you, Mr. Rocheleau.

Mr. Godin.

Mr. Yvon Godin (Acadie—Bathurst, NDP): Thank you, Mr. Chair.

I would also like to welcome you to the Standing Committee on Industry, Science and Technology.

These are the important questions we are studying today. Does Shell want to sell? Is there a buyer?

You say that you are ready to sell. Do you have a potential buyer?

Mr. Oblath, you often said that offers on the table were not really formal but rather verbal. Let's imagine that a miracle happens today and Delek decides to make a formal offer on paper for $150 or $200 million for the refinery and $225 million for gas stations in Quebec and the Atlantic. Would this be an acceptable offer?

[*English*]

Mr. Richard Oblath: Mr. Chairman, I don't think it's appropriate for me to negotiate in a public forum. These are private negotiations between two parties. I don't feel I can answer that question directly.

Mr. Yvon Godin: Well, I think you cannot answer the questions because Shell doesn't want to sell. In my view, what Shell wants to do is simple. They have been in Quebec and they have been in the Atlantic for the last 77 years, served very well, made lots of money. Today they've found a way they can make more money: just bring the oil in and sell it to the sucker who has been buying it from your company for the last 77 years. If not, why are you questioning where the money's coming from? If Delek gets money from the government or gets it from somebody else, is Shell not happy if they get their money?

Mr. Richard Oblath: We would accept money from any legal source. The question is not our dispute over money. In the expressions of interest I have in front of me from Delek, these were not verbal offers; these were written expressions of interest. I have the sources and uses of funds. This is a typical thing requested by a seller to understand where a buyer can find its funds. The vast majority of the funds come from syndicates backed by the government or directly from the government—there's no problem with that. The problem is that the total number on this piece of paper is not high enough.

The Chair: Thank you, Mr. Oblath.

Mr. Coderre.

[*Translation*]

Hon. Denis Coderre: Mr. Chair, since Mr. Oblath is supporting his comments and his answers to our questions with a document containing very clear numbers, I would like him to submit this document, so that we can have a look at it. Given that this committee is in public session today, I think that it would be appropriate for Mr. Oblath to submit that document, so that we can do our work.

[*English*]

The Chair: That's not a point of order, but we'll take it up at the next opportunity. When Mr. McTeague has the floor I'll bring it up then, and we can decide as a committee if we're going to do that or not.

Go ahead, Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: Mr. Chair, I hope that I have not lost my speaking time.

[*English*]

We have to watch every minute around here.

[*Translation*]

You say that you are not here to negotiate with us. I agree with you. However, we are told that you are the seller, and the other party is the buyer. There are figures on the table. If the company asks you today what your conditions are and meets them on paper, are you still for sale? Do you mind if it is Delek?

If the Government of Quebec is prepared to let that company into the province, and if the Atlantic region is prepared to accept Shell selling this refinery, as it wishes, why not sell? You were welcome here for 77 years, but, according to Mr. Rocheleau, as you have not made any money in 2009, you told yourselves that it would be best if you left. The only reason is that Shell could make a lot more money a lot faster. That's the real reason, let's say so.

Otherwise, Shell should say that it has a plan, that it wants to sell the refinery and its service stations and then leave. You would be saying thanks for those 77 years, but you want to move on. It is not for you to worry if there is gasoline or not. Governments will take care of it or worry about it.

Do you really want to sell? Yes or no? If not, are you not just looking to get a profit out of it? You made people believe that you were for sale, but you are actually not. You want to bring us oil from elsewhere and rub our noses in it. That is what you want to do. Isn't that right, Mr. Houle?

● (0950)

[*English*]

Mr. Richard Oblath: Mr. Chairman, that's not true.

[*Translation*]

Mr. Yvon Godin: If the company makes you an offer, are you prepared to sell?

[*English*]

Mr. Richard Oblath: If any company that is a credible operator or refinery would want to buy the refinery alone or would make an offer for the refinery and other businesses at a suitable value, we would be sellers. We have not denied that.

Mr. Yvon Godin: Yes, but you're saying if it's a credible operator and all of that—why do you care?

Mr. Richard Oblath: Oh, we do care, Mr. Chairman. For instance, if we were to sell the refinery alone, which was originally our plan, we want to make sure that our customers are provided with fuel from that refinery.

Mr. Yvon Godin: If you feel that strongly, if you're a good citizen, why don't you feel that strongly about your employees you want to throw out the door?

Mr. Richard Oblath: The most difficult part of my job, Mr. Chair, is knowing that some of the decisions we take impact my fellow colleagues at Shell. This is not something taken lightly. There's no pleasure taken in the fact that some people are going to lose their jobs.

Mr. Yvon Godin: I've heard that story so many times from companies, that they feel so bad, they want to cry, when they close down and won't make more money.

Mr. Richard Oblath: Mr. Chair, we have a responsibility to a lot of different stakeholders. We have responsibilities to our—

Mr. Yvon Godin: To your shareholders, right?

Mr. Richard Oblath: And to our employees, and to the communities we serve in, and to the wider communities—

Mr. Yvon Godin: Then I ask again, if a potential company is ready to buy and the government has confidence in that company, everything has been checked and they could do a good job, are you ready to sell, yes or no?

Mr. Richard Oblath: Mr. Chair, we're ready to sell. I would point out that the company in question withdrew from the negotiations. We did not end those negotiations.

Mr. Yvon Godin: If they want to get back in it, are you going to open the negotiations again?

Mr. Richard Oblath: If they're willing to come back to the table and discuss with us an offer that is... They know exactly the numbers. During this meeting on June 21 we had very detailed discussions about the values needed. They know exactly the amount of cash they need. We would have discussions.

I would like to point out that we originally made a decision after looking for buyers and getting no offers in January. We then, at the request of the special committee and the governments involved, extended the timeline until June 1. It's now July. We're running out of time. We need to protect the fuel supplies coming into this part of the country, to Quebec, to Atlantic Canada, and to portions of Ontario. If we're in the position that we cannot transfer to a terminal and we have to shut our refinery for turnaround anyway, and if we're not able to find a buyer, we either have to then make a decision to convert to a terminal very quickly, or we are going to threaten the supplies for this region of the country.

The Chair: Thank you very much, Mr. Oblath. Thank you, Mr. Godin.

Now we're going to go to Mr. McTeague. Before we do, I understand, Mr. Coderre, that you've got a request for the members of the committee.

● (0955)

Hon. Dan McTeague: Mr. Chair, I think there has been some discussion around the table to extend this particular part of the meeting this morning by an additional 15 minutes to allow all members an opportunity to ask more than one question.

The Chair: Is it the wish of members of the committee to extend the meeting to 10:45?

Okay, it is agreed to do so.

Hon. Dan McTeague: Thank you, Chair. Thank you, witnesses.

The Chair: Now, are we going to deal with the issue Mr. Coderre brought up, concerning information that he wishes Shell to present to committee?

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, we are hearing all kinds of figures here. I really have the feeling that someone is trying to pull the wool over our eyes.

This is a public meeting, and Mr. Oblath is speaking quite openly, for which I thank him. However, he is also relying on a document in making his comments, and he says he has the figures in front of him. I would ask that he table that document so that committee colleagues are also able to have a copy, because this is an important issue.

[*English*]

The Chair: Thank you, Mr. Coderre.

Is it the wish of the members of the committee to request of Shell this information?

Go ahead, Mr. Van Kesteren.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): I think, in all fairness, we should give Shell an opportunity to respond to that first. There may be some information there that isn't ready for public disclosure or wouldn't be proper for public disclosure, so I think they should have an opportunity to respond to that first.

The Chair: Okay. Any other comments on this?

Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: I am prepared to hear what they have to say. He is referring to a document, and I agree with Mr. Coderre on this point. M. Van Kesteren said that this may be a confidential document that we have no need to see or that we should not have access to. However, let's not forget that we are talking about a company that has been operating here for 77 years. Stories have been circulating and the public has a right to know the truth. In my opinion, that document should be tabled with the committee.

[*English*]

The Chair: Okay, thank you.

I'm going to ask Mr. Oblath

[*Translation*]

or maybe Mr. Houle. Would it be possible to obtain the information requested by Mr. Coderre?

[*English*]

Monsieur Coderre, what specific information were you looking for from Shell?

Hon. Denis Coderre: The numbers you were talking about. You were saying the source—

The Chair: The source of the funds that Delek had made in its offer to Shell, or its letter of intent.

Go ahead, Mr. Oblath.

Mr. Richard Oblath: Mr. Chair, this is a document between Delek US... Actually, it's a document from Delek US to Shell, given to us during the negotiations. I will ask them after this hearing whether they're willing to release this document. It's a confidential document. Shell would certainly be willing to release it, but I think I owe it to Delek US, as it's their document.

The Chair: Thank you, Mr. Oblath.

Mr. Van Kesteren, you had a point to make?

Mr. Dave Van Kesteren: I just wanted to clarify what Mr. Godin said and make it clear that the issue isn't whether they're just using those remarks or taking those remarks for the presentation. The issue is exactly what was stated: that it's a legal matter. They should be offered the same courtesies we would offer anybody who has privacy issues.

The Chair: Thank you for that, Mr. Van Kesteren.

We have a motion on the floor to request the information, so if there's no further debate I'm going to call the vote on this.

Mr. Coderre.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, since Mr. Oblath has just told us that this document is from Delek US Holdings, we will direct our request to them. It is not a Shell document.

[*English*]

The Chair: Okay, so the motion is withdrawn.

We'll now proceed with Mr. McTeague.

Hon. Dan McTeague: Chair, thank you.

[*Translation*]

Thank you very much for being here today.

[*English*]

Mr. Oblath, I'm going to ask you a number of questions that deal with the much wider question of implications for the rest of Canada. You'll appreciate that after 17 years on a file you get a little nervous when you see the domino effect of supplier after supplier exiting the Canadian market in the hope that somehow they're able to find supply elsewhere.

You have both made reference to the fact that you need to shut this refinery down, that there is a period of time. Can you tell me specifically, when is your stop-processing date for crude, and how much crude do you have in storage?

● (1000)

Mr. Richard Oblath: I'll ask Monsieur Houle to answer that.

[*Translation*]

Mr. Christian Houle: The process units will start to shut down on September 13, and that will continue until about October 9. It takes several weeks to decontaminate the units. That may take until the end of October or November.

In terms of sales of crude, you have to go back in time by 30, 45 or even 60 days, because of tanker inventories in different countries. The final shipments will be purchased around the middle of August.

[*English*]

Hon. Dan McTeague: Okay, so let me then go to the next question. When do all non-branded businesses stop getting supply, your so-called customers, Mr. Oblath? When do we see an interruption in supply to independents, to the high Arctic, to the territory of Nunavut? And have you begun the process of abrogating or terminating your exchange agreements between you, for instance, and Esso in Dartmouth, the eastern passage refinery? Have you begun this process of cancelling the arrangement by which Shell stations are supplied by Esso in the Maritimes, and Esso stations, principally in the Quebec and Ontario regions, supplied by you will come to an end? When does that happen?

Mr. Richard Oblath: I'll have Monsieur Houle answer.

[*Translation*]

Mr. Christian Houle: As regards the conversion—the mechanics of it, in other words—we will be modifying our dock at the Montreal refinery and making offloading docks faster, in order to increase our offloading capacity. We will also be changing the piping and increasing the process safety of certain tanks, as well as changing the service function of certain refinery tanks. That is what I would call the mechanical side of the refinery.

In terms of supply, changes will have to be made. Some of our exports, based on imports, will no longer be justified. So, exports will be the first volumes to disappear. Furthermore, refineries generally have excess capacity. That is the case for our Sarnia refinery. That will supply us with a certain volume.

[*English*]

Hon. Dan McTeague: Monsieur Houle, could I just interrupt you there?

Sarnia processes 72,000 barrels a day. Your Montreal refinery produces 130,000. By my math, what you're producing in Sarnia is just about half of what you produce in Montreal. How are you going to continue to supply places like the Arctic and eastern Canada in your current base of non-branded dealers?

Mr. Christian Houle: I was not done, Mr. Chair; let me finish.

There are multiple components. You have the total sales, just to make a simple picture, of what we do today, and the data would be made of multiple sources. One of the sources is cutting the exportation, which will be reduced to zero, pretty much. Then the Sarnia refinery will supply fuel to the Montreal orbit, via Kingston and Toronto, and we will source the other product from imports and a blend

[*Translation*]

of domestic supply from Quebec refineries. Unfortunately, for the same reasons already given by Mr. Oblath, I cannot name names.

[*English*]

Hon. Dan McTeague: Monsieur Houle, I only have a few minutes. Let me ask very specific questions.

Are you in the process of seeking another supplier for the territory of Nunavut, for the coldest regions of this country, yes or no, and have you found one to replace the excess capacity created by the 130,000 barrels you process a day? Have you found a person to supply those regions today, yes or no?

[*Translation*]

Mr. Christian Houle: There isn't a yes or no answer. A process is currently underway. Firm agreements have been signed and others are about to be signed. There is no simple yes or no answer. In terms of supply, we will ensure that our clients receive quality products, just like the ones they are receiving today.

[*English*]

Hon. Dan McTeague: Monsieur Houle, I think you can appreciate—

The Chair: Thank you, Mr. McTeague. Thank you, Mr. Houle.

Mr. Braid.

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

Thank you to our witnesses and to our interested stakeholders for being here this morning.

Monsieur Houle, I would perhaps start with you, sir. Shell initiated this strategic review just over a year ago. In the press release announcing that review, and I'll read from it, it says that you will consider all long-term future options, which include the sale of the refinery and some associated downstream businesses, a joint venture, conversion to a terminal, closure, or continued operation. And then in your testimony this morning, you indicated that converting to a terminal was not your first choice.

In terms of the range of options that were on the table and that you announced a year ago, could you please rank them in terms of your preference?

● (1005)

Mr. Christian Houle: Mr. Chair, I think it's a question that I will pass to Mr. Oblath to answer.

Mr. Richard Oblath: Clearly, our first choice was to sell. There was no doubt in our minds. The minute we looked at our options, we immediately mobilized a team to try to sell the refinery. That started with one of my general managers in July of 2009, and we actively pursued that at that time. That was by far and away the best option we saw available to us.

Mr. Peter Braid: And the ranking of the remaining options, if you could, please?

Mr. Richard Oblath: Certainly shutting down the whole facility and not having product come through Montreal was way at the bottom. We did not think that was a viable opportunity when we looked at it.

As far as the other options, clearly, as we studied it—and remember, these studies were ongoing—the terminal option became the next-best alternative to selling.

Mr. Peter Braid: Mr. Oblath, you indicated that closing the refinery was probably the last option that you wanted to consider. Why is that, and what would the impacts be of closing the refinery?

Mr. Richard Oblath: Clearly, if there's no refinery and no ability to move liquids into the region, there would almost immediately be shortages.

Mr. Peter Braid: Further, Mr. Oblath, the press release speaks to, again in terms of the options, the sale of the refinery and some associated downstream businesses. Would that have included the wholesale components of the business?

Mr. Richard Oblath: We were open to offers for people to buy the wholesale business, or even to buy our whole business in the area. We would have been open, and were still... I mean, that's one of the discussions with Delek. We were still open to that opportunity if someone wished to do that.

Mr. Peter Braid: I'm changing gears now slightly and trying to wrap my head around some of the sums involved in terms of the cash required for the deal. You've indicated that you've already made significant investments in the refinery in the last six years—$400 million—and despite that, another $600 million is required.

I have a twofold question. First of all, the $400 million of investment that you made in the last six years, what have those investments been made in? Secondly, what's the purpose of the remaining $600 million in investments?

Mr. Richard Oblath: Mr. Chair, again I'll pass this to Monsieur Houle.

Mr. Christian Houle: I would say that in the last four or five years the major investments have been into new gasoline hydrotreaters for the new legislation on sulphur in gasoline, and also a new distillate hydrotreater, which is about $300 million, to remove the sulphur in the diesel. Also, we invested into a continuous—that may be a technical term—reformer. It's a profitability project to improve the yields in the molecules and the value of the yield in the refinery.

For the $600 million remaining in front of us over the next five years, it's made up of about $250 million of turnaround, and those are moneys you have to do maintenance in your processing unit after two years, four years, five years. So each unit has a different cycle for maintenance. The most obvious one is the catalytic cracking unit in September and the alkylation unit. It's about $50 million that we have to spend right now. Then in the springtime we have a crude unit in the hydrogen plant that needs to have a huge shutdown, which is about $70 million. So you have about $250 million of these kinds of moneys.

The remaining is money for process safety issues like control rooms. We do have to move control rooms to other locations for safety purposes of the people, especially based on BP toxicity and that kind of event. We do have a water treatment plant that is at the end of its life. So some vessels... We have derogation calculations for safety margins that can last a few more months, but they are at the end of their lives. That's about another $60 million for those.

We have a boiler that can go on like that for a while. We have a boiler on the catalytic cracker unit, which is $40 million, that is at the end of its life.

Those are basic units that are essentially at the end of their lives.

● (1010)

The Chair: Thank you, Monsieur Houle.

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chairman. Thank you all for being here today.

My first questions are for Mr. Rocheleau. You heard Mr. Oblath say earlier that Shell had not received an offer of $200 million for its refinery. You are part of the Fortier committee. One of the terms set by Shell for considering an offer was that the offer be between $150 million and $200 million. Is that correct?

Mr. Jean-Claude Rocheleau: As you know, the Fortier committee was forced to shut down on June 17. So, we were not a party to discussions between Delek US Holdings and Shell with respect to a higher bid. We did not receive those details because the committee ceased its activities. So, I never received that information. However, if the figures are correct, the amount in question was in the price range that Shell had indicated it was seeking for its refinery.

Mr. Robert Bouchard: Shell wanted somewhere between $150 and $200 million. In other words, Shell was ready to look at an offer between $150 and $200 million. That is what you understood, as member of the Fortier committee.

Mr. Jean-Claude Rocheleau: Yes, that is what was in the Shell's data room that we had access to. The data room showed a price range, and, if the figures we saw are correct, it would mean that the offer was certainly in the upper part of the range Shell was asking.

Mr. Robert Bouchard: You said that the Fortier committee was discontinued. What can you tell us about that? Did Shell put a stop to the committee, in your view? You sat on the committee. How do you see it?

Mr. Jean-Claude Rocheleau: We received a letter, written in English, from a lawyer for Shell. She demanded an immediate halt to the Fortier committee's work. We knew that, if the committee's work was not stopped, subsequent discussions between Shell and Delek US Holdings could be put in jeopardy.

So, since we did not wish to be seen as an obstacle to the work of trying to sell the refinery, we preferred to stop our work so that we could not be accused of having blocked discussions between Shell and a buyer.

Mr. Robert Bouchard: I have some questions for Mr. Oblath.

I have an item from Radio-Canada here. It says:

> Delek then revised its offer to $420 million: $200 million for the refinery and $220 million for the gas stations in Quebec and the Maritimes. Shell turned the offer down and stuck to its price of $500 million.

Was your initial asking price $500 million, or did that price go up, increase or change during the negotiations?

[*English*]

Mr. Richard Oblath: Again, the expression of interest from Delek... I do not know where those numbers came from that you quote in the press. The negotiations between Delek US and Shell were in total confidence. There obviously were leaks from those discussions, but I can tell you, I was in the room during those discussions, and those are not the numbers that were discussed between us.

It is true that the offer for the refinery and the wholesale businesses approached $200 million. That is a correct statement. As I said, though, that is not for the refinery alone. We twice asked Delek US, would they buy the refinery alone. The answer was no. We were willing to sell the refinery and the wholesale business, but not for the same value as the refinery alone.

● (1015)

[*Translation*]

Mr. Robert Bouchard: You mentioned confidentiality agreements. Delek US Holdings signed a confidentiality agreement with Shell. It is a pity that you did not agree to release Delek US Holdings from that agreement.

Explain to us why you feel that that buyer is not trustworthy and why you did not release them from the confidentiality agreement?

[*English*]

The Chair: Monsieur Bouchard, there's no requirement in a parliamentary committee to release anybody from any obligation they may have, in terms of witness testimony, because witnesses here are afforded the same immunity from civil or other suits that may be brought to them in a court of law. Everything that is given as testimony here in front of our committee has the same protections afforded to you as to a member of the House of Commons in the House. Witnesses and members are free to express their opinions here without fear of lawsuits in the courts.

I reiterate that to all members so that they understand that you're free to discuss and to divulge whatever information you wish to. I also, as chair, indicated that to our witnesses before they came today.

I think Mr. Oblath has answered your questions and divulged information regarding the offer that was reported in Radio-Canada, and he's clarified that.

Go ahead.

Hon. Dan McTeague: Point of order.

[*Translation*]

Mr. Robert Bouchard: As I understand it, I cannot touch that point.

I would like to ask Mr. Oblath a question.

The Chair: Just a moment, please.

Mr. McTeague.

[*English*]

Hon. Dan McTeague: Chair, on a point of order, I just want to make sure, in the interest of time... You took two minutes to make that point, and it's a very good one, but I think we should attach that at the end. In other words, give an additional two minutes for the purpose of some of the members on the committee, Chair. Thank you.

The Chair: We've already extended it by 15 minutes, so I think—

Hon. Dan McTeague: You just eliminated two minutes of that 15, and I'm now getting another 30 seconds.

The Chair: I have, but it was a clarification of what was going on.

[*Translation*]

Mr. Bouchard, you have already used your five minutes.

Mr. Van Kesteren, the floor is yours now.

[*English*]

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

Thank you, witnesses, for appearing before us.

I wonder if you could take us through a little bit of a description as to what is happening in the oil industry. I speak specifically. When I look at the number of refineries that have closed in the past, I think since 1954 there were quite a number of these refineries throughout Canada. I would assume that would be the case in the United States too. There seems to have been an enormous number that have been closed. I wonder if you could maybe just explain to the committee why that is and how that's happened.

Maybe you could tell the committee as well how the oil industry has changed. I understand we have a common grid with the United States.

Finally, if you could, talk to us about capacity, the capacity for refinement here in Canada and what the consumption is. Are we getting our share of the market?

Maybe you could just elaborate on those few things first.

Mr. Richard Oblath: I'd find it very difficult to give you the exact numbers for Canada itself, but I can give you an overall picture of what's happening. If you start from the global situation, clearly global demand for refined products is going up. Refineries are being built in various parts of the world. There have been no new refineries built in the United States for about 37 years, and I believe in Canada for 25 or 30 years. In fact, I think our refinery at Scotford was probably the last refinery built here.

The newer refineries are very large, and therefore some smaller, older refineries are being shut down in various parts of the world, particularly in western Europe and North America. So that's the overall trend that's happening.

The liquidity of the global market is such that consumers all over the world are still capable of being supplied. It's relatively easy to move refined products via vessels. It's done every day all over the world. Therefore the optimum use of refined products from the most efficient refineries in the world is the trend that's going on.

Within Canada, the Montreal East refinery is the least competitive refinery in Canada and has been for the last ten years, in terms of profitability. Unfortunately, the refinery has come to the end of its life. I think that is just the realization we've come to. Over a hundred other companies have apparently have looked at this, of which 17 have looked in great detail at the refinery, and have come to the same conclusion. Without significant help from sources outside of private industry, this refinery cannot continue to operate.

● (1020)

Mr. Dave Van Kesteren: I understand that you produce aviation fuel at your refinery. Who is going to fill in that gap? Obviously Montreal has a strong aviation presence. Who is going to fill in the gap?

Mr. Richard Oblath: I'll make a general statement, and then on the specific issue around aviation fuel I'll let Monsieur Houle answer.

There's a presumption in some of the questions, Mr. Chair, that we don't care about our customers. We didn't want to sell the refinery. The best thing we saw as a choice back in 2009 was to sell the refinery as a going refinery. If someone had found a way to run that refinery we would have been a very, very happy customer of that refinery and then passed those products on to our customers. Shell's intention is to retain its customer base. They are the reason for our being in business. We will do everything we can to make sure our customers are supplied, wherever they are in the world.

On the specific issue with aviation gas, I'll pass over to Monsieur Houle.

Mr. Christian Houle: To make it simple, most of the imports we're going to do will be gasoline, about 65% of the volume we're going to import. Europe is very long on gasoline, and our own refineries in Europe are long on gasoline, so the volume will be fairly easy to buy, even on the spot market, to bring the ships to Montreal.

The aviation fuel, the av-gas as we call it, for the small airplanes would be taken from either our Pernis refinery in the Netherlands or in the Gulf Coast.

The low-sulphur distillate—it's a small volume—will be taken out of the Puget Sound refinery, or in a better place if we can find a better place. At least we have that secured.

And the jet fuel will be domestic from other refiners and a blend of import, but the import will be a very small volume, which will be fairly easy to get from South America and the Gulf Coast, which would be brought in by ships.

The Chair: Thank you, Mr. Houle and Mr. Van Kesteren.

Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: It costs money to buy the refinery. Do you agree, Mr. Houle? It also costs money to dismantle it. How much is that going to cost you?

Mr. Christian Houle: Mr. Chair, I am sure that you understand that that is sensitive information in competition terms. I cannot reveal the full and exact cost of all the components. But I can say that there are costs associated with what are called employee severance payments. Several million dollars are set aside for that. There are costs associated with decommissioning the units, and the decontamination, restoration and characterization of the soil so that it will meet Quebec government standards. These is also a cost for the conversion project I mentioned earlier, such as for pumps and pipes.

I am describing things in fairly simple terms, but Mr. Oblath may know more about those details. All those costs were considered when the time came to assess the value of the refinery compared to the value of the terminal. People have to understand that. We are not talking about the physical cost of the refinery. We are talking about the value of the terminal for Shell as opposed to the value of the refinery for someone else. As Mr. Oblath explained, the refinery as a terminal has some value. Unfortunately, there was no agreements on what that value is.

● (1025)

Mr. Yvon Godin: I am having a hard time understanding. It seems a little complicated.

Mr. Houle, you told us earlier that this stage was over and that stage was over. It is as if you saw this coming a long time ago. That means that you did not start thinking about it in 2009, but you let things go to such an extent that, according to you, your refinery is done for. So you are really telling us that that was your intention for a long time.

Mr. Christian Houle: Mr. Chair, the refinery has 20 to 30 units. So there are always some that are not in use. As part of our strategic study, of course, decisions were made from the point of view of safety. By that I mean Shell's variance formulae and technical inspection staff. Some decisions were postponed for safety reasons pending the final response that would determine if we were going to continue our activities, look for buyers, or convert the refinery into a terminal.

For a conversion process and a strategic study, it was normal to wait as long as possible and not to incur expenses. September is now the final deadline. That is when the units must absolutely cease operations. We gave ourselves as much time as we could in order to push back the final decision and to increase the chances of selling the refinery. Once again, I repeat that Shell's preferred option was definitely to sell the refinery. Clearly, we wanted to sell it, but, for the shareholders, the price had to be higher than the value of a terminal.

Mr. Yvon Godin: As you said, refineries are no longer being built in Canada, and it looks like that situation will continue. You mentioned the shareholders. It seems that it is better to deal with countries where labour costs less. Welcome to free trade and all it entails; this is what it costs. Is that your position?

Mr. Christian Houle: I am going to let Mr. Oblath answer that question, Mr. Chair.

[*English*]

Mr. Richard Oblath: I don't consider Singapore or the gulf coast of Texas to be low labour rate areas of the world. We're making an enormous investment in Port Arthur, Texas, to double that refinery, and we've made a very, very large investment in Singapore as well.

[*Translation*]

Mr. Yvon Godin: Fine. But Texas is in the United States, and now gets the upper hand over us in eastern and Atlantic Canada because the petroleum we buy from Shell will come from Texas, and the Americans will make the money.

[*English*]

Mr. Richard Oblath: Mr. Chair, we have a responsibility to make our products in the places in the world where it makes the most sense. Unfortunately, this refinery has not been competitive for many years. It's the least competitive refinery in Canada. That's not our analysis; that's an industry benchmarking analysis. The refinery now is too old, too small, and cannot be made competitive, and that's not—

[*Translation*]

Mr. Yvon Godin: Okay. Excuse me.

Mr. Rocheleau, you…

[*English*]

The Chair: Monsieur Godin, let Mr. Oblath finish, please.

Mr. Richard Oblath: Mr. Chair, the fact is this is not—

[*Translation*]

Mr. Yvon Godin: No, no. Excuse me, Mr. Chair. These are my questions and the answers to my questions. This is my time.

[*English*]

The Chair: I understand, but as chair, I'd like the witness to finish his sentence and then you can ask a question.

Go ahead, Mr. Oblath.

Mr. Richard Oblath: Mr. Chair, this is not only our own analysis, but a lot of other companies have looked at this, including... Someone characterized Delek as not a credible owner. I did not do that. They are a credible refiner. They are a refiner themselves. They and other credible refiners have looked at this and made the same decision that we have.

● (1030)

The Chair: Thank you, Mr. Oblath.

[*Translation*]

Mr. Godin, you can ask one last question.

Mr. Yvon Godin: Mr. Rocheleau, do you agree with them when they say that the Montreal refinery is no longer profitable and that it is time to walk away?

Mr. Jean-Claude Rocheleau: No, not at all. As I have said, the refinery is viable. It has made money and it has a market. What Shell has done is to take our money, the profits that we have made at the Montreal East refinery for years, and put it into facilities in the tar sands, into building the Scotford refinery. That is where our money and our profits have been going for years. Montreal has suffered from a lack of investment for some time, because its profits went to build what they needed in the west.

This refinery is as competitive as any other in Montreal. The problem is that Shell has waited so long to do any maintenance work that we are now up against a wall. No maintenance has been done as required since the beginning of 2009. Shutdowns were postponed from the spring of 2009 to the fall of 2009, and then from the fall of 2009 to the spring of 2010. Now, with none of the required work done, we are presented with a fait accompli, that the refinery will now be closed in September.

That does not make it a refinery that can no longer operate and make a profit. In fact, in the first quarters of 2010, the profits from the Montreal East refinery now place it in the top 25% of Shell's refineries.

The Chair: Thank you, Mr. Rocheleau and Mr. Godin.

Mr. Allen.

[*English*]

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you very much, Mr. Chair.

Thank you to our witnesses and all the other interested stakeholders who are here today.

I just want to pick up on one thing you said, Mr. Oblath. You talked about a significant investment in Texas and other facilities. What differentiates those facilities in those locations, as opposed to the Montreal East refinery, from an investment standpoint? Is it age of facility, or what is it?

Mr. Richard Oblath: A huge number of factors—not necessarily age, but size. The Port Arthur refinery in Texas will become one of the two largest refineries in the whole of North America, Canada and the United States.

Mr. Mike Allen: What is the size of the investment you're putting into Port Arthur?

Mr. Richard Oblath: I don't know the exact number, but it's billions of dollars.

Mr. Mike Allen: Billions?

Mr. Richard Oblath: Yes.

Mr. Mike Allen: Okay.

I just want to pick up a clarification on the timeline that you've put out here. You've talked about September 13 and the last shipment sometime in August. So if I understand correctly from the previous questions, if there were an offer made, it would have to be within the next two weeks, basically. Is that right?

Mr. Richard Oblath: In our discussions—and the discussions based on expressions of interest went the furthest with Delek, and this was on June 21—both parties set ourselves a timeline that should we come to an agreement we needed to do so by July 23. That was a target we set during that meeting. That would have been a full contractual agreement for them to buy and us to sell the refinery plus the businesses they wished to also have. It doesn't mean that ownership would have changed, then, because there are various regulatory issues and other issues you have to go through between signing and closing a deal. We are clearly running out of time to do any transaction.

Mr. Chair, again I remind you we planned on this back in July last year. We were hoping to have sold the refinery or at least be under contract to sell it by the end of 2009. We told the special committee that we would be willing to work with them, but we gave a deadline of June 1. It's now getting in towards the end of July. Our choices are running out.

Mr. Mike Allen: The next question is on the value of the site. You talked about the value of the site in Montreal East. It seems to me that you've actually said in your statement that a delay in permitting can cause supply disruptions and there are normal permit requests. Is there a better permit process, or what is the length of the permit process for this as a brownfield site? It would have value, I assume, as a site where you're already working, as opposed to permitting a new site. How quickly do you believe you can get the permits?

I guess my next question about that is from the conversion to the terminal. Mr. Godin started to get on this. Do you have an estimate? Presumably you must have said something to your shareholders about what it would cost for just the capital cost to convert to a terminal. Can you share that value?

● (1035)

Mr. Richard Oblath: Monsieur Houle.

Mr. Christian Houle: The first question you have is about permitting?

Mr. Mike Allen: First was on the permitting.

Mr. Christian Houle: There's no one answer; it's a matrix of different bodies of government—Quebec, Ville de Montréal. Different people need different permits. We need permits, for example, to put in a new pumping station, an electrical substation. I need a permit to change the service of the tanks in the refinery. I need a permit for demolition. The current injunction, for example... The judgment has been made, and we respect that and we're going to follow the law and the judge's decision. The consequence of that is that it's preventing our doing other work that people are scared to do in the refinery. That will cause an impact on the project side, which could delay the readiness, to be ready on November 1. Then the number of ships, the volume—there could be a significant disruption to the market if we don't have those permits of demolition, as an example.

I met with the Ministry of Natural Resources on Friday. I gave them the supply plan, the detailed one. They had a few questions. As long as they give me that permit by the end of the month, for example, we're as per the schedule and we'll meet the timeline. If for different reasons—and I'm not an expert in the world of politics or things like that—it starts to be delayed, there will be disruptions in the supply.

[*Translation*]

The Chair: The second part of the question was on.

[*English*]

the cost of remediating or converting to a terminal.

Mr. Christian Houle: Yes, and I will be forced to probably say the same answer, that the information is considered sensitive competitive information, so I cannot disclose. I can only say the big-ticket items of this conversion, the soil remediation project, severance packages, all those things from the total we have considered in the final decision, but I cannot go into the detail of each of these components.

The Chair: Thank you very much.

Mr. Allen, is that satisfactory to you? Are you satisfied?

Mr. Mike Allen: Can I follow up just real quick on one point?

The Chair: Just very briefly, because we're running out of time here.

Mr. Mike Allen: Okay. The $400 million you've invested over the last five years, how much will that be of value in new terminal business?

Mr. Christian Houle: If I take quickly the top three, let's say, the gasoline hydrotreater will not be used; it will probably be sold to somebody in the world. That's what we're going to try to do. The distillate hydrotreater is considered almost brand-new and will be sold most likely to somebody in the world. And the CCR might be sold to somebody in the world, but it won't be used in the terminal.

Mr. Mike Allen: Thank you, Chair.

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

Mr. Coderre.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, I am known as someone who says what he thinks. But I really get the impression that someone is pulling the wool over our heads today, because this just makes no sense.

We are being told that there was a desire to sell a refinery which, in reality, was so obsolete that it was worth no more than a scrap yard, and yet you were asking for between $150 million and $200 million for it. Montreal deserves more than to just be a parking lot for gas. Is that clear? That's the major point.

There are no refineries being built elsewhere. Basically you are telling us that you intend to dispose of your current stock and that we will just be at the mercy… Furthermore, now it will be tankers coming in. Shall we talk about the environment? You aren't even capable of complying with Quebec's environmental regulations, given that you have had 25 offences in the last several years. And yet you are here telling us that there is nothing to worry about because tankers will be coming in, what's more, and we will be able to get supplies from the Gulf of Mexico. I guess you intend to work with BP; I can hardly wait to see that. Over there, you don't need to unload anymore; on the contrary, you fill up. All you have to do is scoop up the oil on the beach.

I find that completely unacceptable, Mr. Chairman.

I hope you have an open ticket, because I don't think we'll have finished with Shell today. If another committee meeting is needed, we will call one.

[*English*]

Mr. Oblath, I'm very pleased that you're here today, but I would like you to table your term sheet, because I don't understand. If you have to put forward another $600 million, and that infrastructure is totally wasted and you will let that infrastructure go...and now you're saying, well, we're still willing to sell. Okay. We'll have Delek tell us later on... Would you be ready to table that term sheet so that we can see what happened? That's the bottom line. It's not just an issue about what Delek offered you. It's what did you tell them? In the beginning we were talking about a bracket just to put up some money to buy the refinery, and now it's more and more. At the end of the day, we understand it's a total waste.

● (1040)

[*Translation*]

It's not very encouraging for the employees, but nor is it very encouraging in terms of our energy security. We will be dependent on the United States and others, in terms of supply, for the purposes of our own energy security. I can't wait to go to the Shell station at the end of my street and see that the cost of gas has gone up by 10¢ a litre because of our dependency on the United States. If something happens—such as a humanitarian mission, a war or whatever it may be—we will be dependent on another country. What does it mean to be a sovereign country, in your opinion?

It's not just a 25% shortfall in Quebec; it will be 13% all across Eastern Canada.

I am outraged by those kinds of comments. But none of this seems to really bother you, Mr. Houle. Not only that, but it's our fault, because we summoned you to appear at a committee meeting today, which meant that you didn't have time to apply for your permits. However, you did have time to file a motion for an injunction, for example, because you wanted to move ahead with the dismantling before obtaining the necessary permits.

[*English*]

Mr. Oblath, do you believe that Delek US has the capacity to run Shell's Montreal East refinery?

Mr. Richard Oblath: I have no doubt that they're a credible owner of a refinery. They already do run that, and I have no reason to believe that they could not do so here.

Hon. Denis Coderre: So you don't doubt their financial capacity? I don't want to hear about credibility. They are credible. You signed a confidential agreement. If you signed a confidential agreement, that means something. You didn't do that with Blue Wolf, but you did that with Delek US. Do you believe, yes or no, that they have the money to buy you?

Mr. Richard Oblath: I do not want to judge their balance sheet. That's up to them. They showed us the capability of raising those funds, a vast majority—the amount of funds they were going to put in was tiny. Most of those funds were coming either from loans, from—

Hon. Denis Coderre: That's their issue and we'll talk about that. What you wanted to have was the money, so they filled the bracket that you had focused on, which is $150 million to $200 million. The question I'm asking you—

Mr. Richard Oblath: Mr. Chair, again—

Hon. Denis Coderre: No. I had an answer. You repeated exactly what you were saying at the beginning.

Are you ready to table your own term sheet so that we can know, so that Canadians can know, because it's a public hearing, what you truly wanted from somebody who would be able to buy that refinery?

Mr. Richard Oblath: Mr. Chair, the terms sheet for the refinery alone has been publicly discussed here. The special committee knows what it was. It was in the range of $150 million to $200 million. The reason it's not an exact number is it depends on some other factors in the detailed offer that would be made. We have had no expression of interest that has come close to the $200 million mark for the refinery alone.

Hon. Denis Coderre: Okay. So you don't mind if other witnesses who were part of the committee would talk freely about the terms of your terms sheet. You give that. You don't have any problem with that.

Mr. Richard Oblath: I do not—

The Chair: Mr. Coderre, as chair I'm going to interrupt here. We're at the end of the meeting, but I'm going to answer that question.

Witnesses are free to divulge whatever information they wish to divulge, without fear of civil suit in a court of law. Testimony given here or comments and questions provided by members of this committee or questions or comments provided by witnesses are protected, as they are in the House of Commons. So I reiterate that as chair, not just for our present panel of witnesses but for the future panels that will appear today.

We finish up our meeting here at quarter to eleven. I want to thank all of our witnesses for appearing today, and I want to thank our members of the committee for their questions and comments.

This meeting is suspended till eleven o'clock.

• ——————————— (Pause) ———————————

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• (1100)

[*Translation*]

The Chair: I would like to call this meeting of the Standing Committee on Industry, Science and Technology back to order.

Welcome to our 26th meeting on this 20th day of July, 2010.

We are meeting today pursuant to Standing Order 108 to examine the impending closure of Shell Canada's Montreal refinery.

[*English*]

Welcome to our three witnesses. We have in front of us today Monsieur Fortier, from the follow-up committee of Shell Refinery; Mr. Boles, from Delek US Holdings; and Monsieur Delage, from IBS Capital. Welcome to all three of you.

We will begin with questions and comments from all the witnesses. We will not have opening statements from the witnesses. We will begin with questions and comments from members of the committee so we can get into questions immediately.

We have an hour and a half of questions and comments from members of this committee, beginning with Mr. Coderre.

[*Translation*]

Hon. Denis Coderre: Thank you, Mr. Chairman.

I am very pleased to see you all here today.

As you know, earlier this morning, officials from Shell said a great many things, in particular with respect to Delek US Holdings.

I would like to put my first question to the Hon. Michael Fortier, who is chair of the Shell Refinery Follow-up Committee. In your opinion, was it truly Shell's desire to sell the refinery, at every stage of the process, or did you have the sense that it was constantly upping the ante?

Hon. Michael M. Fortier (Chairperson, Follow-Up Committee of Shell Refinery): That is a question that you should put to Shell. I asked Shell that very question, Mr. Coderre, at the very beginning, when the union and the governments involved asked me to lead the process. That was the first question I put to Shell officials and I was told it was very serious about wanting to sell the company.

I asked the question again very often throughout the process, and every time, at different levels, whether it was Houston or London, the company confirmed its desire to sell.

Hon. Denis Coderre: Do you agree with that, Mr. Delage?

Mr. Claude Delage: Yes.

Hon. Denis Coderre: You're a financial expert. You lobbied a number of potential buyers and you also proposed buyers. Is it your view that a company such as Delek US Holdings has the financial wherewithal to buy the refinery and that Shell should have paid more attention to its request?

Mr. Claude Delage (Managing Partner, IBS Capital): I very much agree that Shell was a highly qualified company, both in terms of its organization, as a subsidiary of a larger group, and in terms of its expertise in the field. It is important to understand that Shell had concerns—which were appropriate—and did not want to sell to a company unfamiliar with the industry. It had that expertise.

[*English*]

Hon. Denis Coderre: Mr. Boles, welcome to Canada and welcome to our committee.

I'm delighted to see you, because it seems you're part of the solution, and that for the first time we've put a face to a name and people have the opportunity for you to tell us what you had in mind for the future of the Montreal East refinery.

First of all, did you withdraw...? Shell said that you withdrew from your offer or you felt that Shell asked for too much and that it didn't seem they truly wanted to sell.

Mr. Jim Boles (Business Development, Delek US Holdings): With respect to the question about did we withdraw, negotiations reached an impasse over one very significant issue, in my view: the turnaround. That would have resulted in Delek acquiring a closed refinery. That's not something we get excited about—nor would our potential financing sources.

We attempted to explore a number of options around this matter, and were unable to. So we were looking at buying a closed refinery that we could not reopen until the spring.

• (1105)

Hon. Denis Coderre: Mr. Boles, if it is not dismantled, so it is not a closed refinery, are you willing, sir, to put up an offer and acquire Shell's Montreal East refinery?

Mr. Jim Boles: The short answer is yes.

Hon. Denis Coderre: Did you or did you not respect their term sheet by putting up at the beginning the $150 million to $200 million for the refinery?

Mr. Jim Boles: Well, we offered $150 million in writing ultimately for the business. We're not in the market to buy scrap iron, so what was important to us was the business. The refinery is a vehicle to get to the customers. You said the refinery; to me, we're buying a business, not without customers.

Hon. Denis Coderre: Is it true that you asked to buy the gas stations, or did Shell offer you all those gas stations and the retail from Quebec and the Maritimes?

Mr. Jim Boles: Let me answer that this way, if I may. The asset purchase agreement that's in Shell's virtual data room has a section that requires that the retail locations be purchased. Now, when I originally discussed this with Mr. Charles Marion at Shell, we were late to the process. So we agreed that we would work very hard to attempt to try to get to a deal on the refinery and then we would address the retail stations.

Hon. Denis Coderre: So the bottom line, for the sake of our discussion—and this is my last question—for Montreal, for Quebec, for our own national security, is that Delek US would be ready today, since the refinery is not dismantled, to go back and is still willing to buy that refinery.

Mr. Jim Boles: We're willing to buy the business and we're willing to buy the retail stations, so we're willing to buy everything that Shell wanted to sell.

I would like to clarify one thing, and that is that Shell has waived our appearance and all the matters under the confidentiality agreement for us to be able to speak today.

The Chair: Thank you, Mr. Coderre.

We'll now go to Monsieur Laframboise.

[*Translation*]

Mr. Mario Laframboise: Thank you very much.

Gentlemen, thank you for being here today.

My first question is addressed to you, Mr. Fortier. First of all, we had a seller who wanted to sell—you told us that you enquired about this on a number of occasions—a buyer that wanted to buy and a follow-up committee, of which you were the chair, which was recognized by Shell. Knowing you, as I think I do, you certainly met with its officers to discuss the framework and all the details. However, by the end, you were no longer a party to these discussions, and you were asked to withdraw. Did you find that a little… I would like to hear your comments in that regard.

Hon. Michael M. Fortier: In my opinion, Mr. Laframboise, it was perfectly appropriate that I not be a party to the negotiations. We are talking about a company selling its own assets and another company that wants to buy those assets. I was not bringing any value to the process. So, as I see it, it was perfectly normal for the two companies to negotiate on their own.

The reason I asked the committee to wind up its activities—something we did in mid-June—is that I realized, through my discussions with Shell officials, and even in the letters they began to send me, that we were becoming a problem for them, and I did not want to be a problem. The committee's aim was to act as facilitator. So I had no desire to have the opposite effect.

The fact is that we had completed our work: we had found, not one potential buyer, but several potential buyers. One of them is here today, because that particular buyer is the one that went furthest in the negotiating process with Shell. So, the committee, including Claude and myself, had found potential buyers and had done its work. We therefore decided to wind up our activities. Was that really necessary? No, but I had the sense that this was becoming very important to Shell, and I did not want to make an issue of it. I therefore agreed to have the committee wind up its activities.

Mr. Mario Laframboise: And that was after receiving a letter from Shell's lawyers, I believe?

Hon. Michael M. Fortier: Yes.

● (1110)

Mr. Mario Laframboise: My next question is for Mr. Boles. You own other refineries. Are there several of them?

[*English*]

Mr. Jim Boles: We own one refinery, two terminals, and a pipeline.

[*Translation*]

Mr. Mario Laframboise: You had the necessary expertise, and even Shell acknowledged that you did. There was some doubt about your financial wherewithal, but that seems a little more understandable.

Did the negotiations unfold as you expected? Were you overtaken by events at a certain point?

[*English*]

Mr. Jim Boles: I don't believe we were side-swiped, to use your term. It was a very quick negotiation. We explored matters as we went along. We entered the process in late April, early May. We had a June 1 deadline, and we were trying to do as much raw due diligence work as we possibly could and discuss negotiation matters as we went along.

Through that process we became aware of things we were surprised about, but I don' t think there was any ill intention on Shell's part in that regard. It's just a wholesale business, and in our mind we were buying the business, we weren't buying iron. They had a different view of that, and that came up. There were things like that, and they just happened in the process of negotiations.

None of it bothered me. This is what I do.

[*Translation*]

Mr. Mario Laframboise: Shell officials tell us that approximately $600 million was invested in the refinery and that one of the issues was your ability to secure the necessary funds to properly equip it. You said earlier that the refinery was not in good condition. So, you were aware of that.

Did you have the financial wherewithal to restore and refurbish it? Were you in a position to secure the necessary working capital to meet your commitments and serve both Quebec and Eastern Canada?

[*English*]

Mr. Jim Boles: The short answer is yes, definitely.

[*Translation*]

Mr. Mario Laframboise: When you see that a seller is anxious to sell but is starting to have doubts about whether the buyer has the money… It is important to determine whether the buyer is credible or not, and I think your credibility is well established.

I believe that Mr. Fortier had secured government assistance. I thought I understood that there had been discussions with the governments of both Quebec and Canada in that regard. Is that correct?

Hon. Michael M. Fortier: There were discussions with governments regarding the possibilities, but they never made any official commitments. They wanted to meet with the potential buyer first, enquire about the buyer's intentions regarding the assets and also see a business plan, which is perfectly natural. However, there are a certain number of standardized programs, particularly in Quebec, which are well known to investors, who make regular use of them. So, they would have been available to a potential buyer.

Mr. Mario Laframboise: Was that satisfactory as far as Shell was concerned, in your opinion? M. Oblath didn't seem to be sure of that. Twice he mentioned that a buyer coming forward with government money could be problematic.

Hon. Michael M. Fortier: When a company that size shuts down —and this is unfortunately not the only closure to have affected the country or certain regions of the country, either in this or any other industry—when large groups shut down a plant which has hundreds of employees and survival committees such as my own are struck and begin lobbying potential buyers, those buyers know at that point that both governments and municipalities are anxious to see the company survive. So, it is perfectly normal for those buyers to ascertain whether public money will be available. That is part of the process.

The fact that Delek US Holdings may have been interested in securing significant government money as part of the operation doesn't shock me at all. Had I been in their position, I would have done exactly the same.

The Chair: Thank you, Mr. Fortier and Mr. Laframboise.

[*English*]

Mr. Wallace.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chairman.

I want to thank our witnesses for coming here today.

Because this is a public meeting, and people may be tuning in and have no idea what we are talking about, Mr. Fortier, could you give me a brief understanding of how the follow-up committee was formed, its mandate, who was on it, was it ever done before?

I'm from Burlington, and we had a Petro-Canada refinery close, right next door. I was a city councillor at the time, and my ward bounced right up against it. I don't recall any discussion in 2005 of this. Shell closed before that. I know Mr. McTeague lives in Oakville, but there was a Petro-Canada refinery and a Shell refinery, and the Shell refinery closed first.

What is the mandate of your committee and its make-up?

● (1115)

Hon. Michael M. Fortier: Mr. Wallace, it's very simple; it was to find buyers. The community in Montreal rallied around the refinery. Hundreds of people were going to lose their jobs. The union and the governments asked me to chair the effort, and I agreed to do it.

Mr. Mike Wallace: When you say “governments”, what are those two governments?

Hon. Michael M. Fortier: Well, four, actually. There are two municipal governments involved, the City of Montreal and the City of Montreal East, the federal government, the provincial government, and the union. I agreed to do this pro bono, voluntarily, as did Mr. Delage and everybody who helped us on this. Therefore, those sitting on the committee were representatives of those different stakeholders, so the governments, the municipalities, the union, and Claude and me.

Mr. Mike Wallace: I appreciate that, just so we understand what the committee—

Hon. Michael M. Fortier: For those five people who just tuned in, that's the background.

Voices: Oh, oh!

Mr. Mike Wallace: Thank you for that.

Did you base that model on the work you did...? Was it done anytime previously, that you know of, or is this the first time this has happened?

Hon. Michael M. Fortier: It's the first time I've done it for a large plant such as this, but I was convinced—I was saying earlier in French that I know that communities always rally. In the pulp and paper industry, which I know well, when those mills close, when those big plants close, there's always an effort in the local community to try to find a buyer.

Mr. Mike Wallace: I appreciate that.

Mr. Boles, the rest of the questions are for you.

Shell was here obviously before us. They gave us the impression that your company had provided a letter of intent or an expression of interest—it depends on your definition of what those are—that there was no, what they would call, technically, bona fide, in writing, actual offer. Would you agree with their assessment of the process to date?

Mr. Jim Boles: Yes.

Mr. Mike Wallace: Through the letter of intent that I'm assuming you put in front of them, that was the basis by which you were going to negotiate with Shell to hopefully come to a conclusion that would result in a bona fide offer. Is that correct?

Mr. Jim Boles: Generally, yes. Just as a matter of clarification, we provided them with an expression of interest, the term their process identified, and we discussed that likely there wouldn't be a letter of intent. Neither one of us wanted a letter of intent. That wouldn't have been our preference. Our preference would have been to negotiate an agreement.

Mr. Mike Wallace: So the agreement would be borne out of the expression of interest then. Is that correct?

Mr. Jim Boles: Yes, and we discussed many matters around a possible transaction through that.

Mr. Mike Wallace: The letter of interest allows you to sign confidentiality agreements between the two of you so that you can actually sit down and discuss things, what the real numbers are, and so on. Is that correct?

Mr. Jim Boles: The confidentiality agreement was the very first document.

Mr. Mike Wallace: It's before....

Mr. Jim Boles: Everything.

Mr. Mike Wallace: Okay.

Your company put out a press release just a few minutes ago that the discussions are now defunct, or you're no longer talking to Shell. Is that your company's choice, or is it just because Shell doesn't want to sit at the table with you any longer? What was that press release telling me?

Mr. Jim Boles: I haven't seen it, but it was likely driven by the lawyers, so it's some legal matter that was probably appropriate. I'm not saying it wasn't appropriate. It's something we felt like we could do. We continue to be interested. We think maybe there are ways that can be explored where all parties would participate in getting a transaction done, but in terms of the discussions that were ongoing, those have been...let's call them terminated.

● (1120)

Mr. Mike Wallace: By whom?

Mr. Jim Boles: By time, by circumstance. We're not currently talking to Shell. We don't have any intention to talk to Shell, unless, for some reason, they're willing to come back to the table, because we can't get around this issue of the turnaround, you understand. If we're willing to explore alternatives for that, we stand ready to discuss, but we are currently not discussing a transaction.

Mr. Mike Wallace: Okay. So as a representative of the company, if Shell sent your organization a letter saying “We're still willing to discuss things”, you'd be back at the table discussing with them. Is that correct?

Mr. Jim Boles: Correct.

Mr. Mike Wallace: But your company has no intention of sending them a letter saying your company would like to continue discussions?

Mr. Jim Boles: We do not.

Mr. Mike Wallace: Thank you very much.

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

We'll now go to Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: Thank you, Mr. Chairman.

I would like to welcome you all to the committee.

If I am not mistaken, Mr. Boles, you are now saying that you are not interested in buying a company that has shut down or closed its refinery. Is that correct?

[*English*]

Mr. Jim Boles: We don't want to fund the purchase price for a company that has closed its doors. There might be many ways to organize a transaction, but we certainly don't want to put up $150 million and then all we have is somebody standing at the door with a shotgun.

[*Translation*]

Mr. Yvon Godin: Guns are registered here.

Voices: Ah, ah!

Mr. Yvon Godin: Let's just consider what Shell is now telling us—its serious comments, that is. If Shell wanted to negotiate seriously with you and set a deadline for the closure… There can be no closure. It doesn't want that. It says it wants to supply the Montreal region, Quebec, the East and part of Ontario. So, the refinery cannot shut down; it has to continue to operate.

Is that what you are talking about—in other words, that Shell should continue its operations and that at the same time you move ahead with the transaction or the transfer of the company? Is that right?

[*English*]

Mr. Jim Boles: Let me try to be responsive to what you said.

It's my understanding that Shell has made arrangements for supply to be brought into the country. They have been working on interim supply arrangements for those customers for a while, and that was an issue in the last set of documents that we shared with each other around the transaction. It's my understanding that they have been working to get that in place.

I don't know that they have to be operating to supply the needs. I don't know what they've done. I've heard the questions that were asked and I heard the answers, but the plant could be closed and it could be reopened. You've got to find a way to deal with the employees and take care of them in some form or fashion that's fair to all parties concerned.

Mr. Yvon Godin: I don't know if I understand you well. A little while ago I thought I understood that you didn't want to buy something that is closed and will open in the spring.

Mr. Jim Boles: I don't want to pay the purchase price for something that is closed. That is not a risk I entertained when I decided to start working on this transaction.

[*Translation*]

Mr. Yvon Godin: You talk about $150 million for the company. But the question is even clearer than that: are you prepared to pay $150 million for the refinery? You use the term “business”. Could you clarify what you mean?

Mr. Fortier, earlier—or you may have said this in another context—you were saying that there was a price range of between $150 million and $200 million for the refinery. Did you have the feeling that this referred to the refinery and the service stations? Because Mr. Boles says that the document also referred to distribution. Can you clarify that?

Hon. Michael M. Fortier: Yes, I can clarify that. It was $150 million to $200 million for the refinery. When I met with Shell officials, they asked me to make no promises to potential buyers regarding the possibility of the service stations also being for sale, because Shell wanted to deal with that separately at the appropriate time. As far as I was concerned, that was perfectly acceptable.

● (1125)

Mr. Yvon Godin: You say that Shell officials discussed this with you, but did they discuss it with you before you presented them with Delek as a potential buyer?

Hon. Michael M. Fortier: Yes, they did.

Mr. Yvon Godin: According to Shell, Delek made that proposal to you. It's as though it just came out of thin air and Shell had never even considered it.

Hon. Michael M. Fortier: The first time I met with Shell officials, they provided me with a document which stated that the refinery was for sale for between $150 million and $200 million. I asked them about the service stations. They answered that they did not want to mix different types of assets and that they might or might not decide to sell the service stations. They told me my committee should focus on the refinery. I answered that that was fine and that we would focus on the refinery.

As part of the work carried out by Claude and myself, people like Mr. Boles asked what was planned for the service stations. It was at that point that Mr. Boles engaged in discussions with Shell.

Mr. Yvon Godin: I would like some clarification regarding the rumour that approximately $200 million was offered for the refinery and approximately $225 million for the retail stations.

Is that a rumour or is it true?

[*English*]

Mr. Jim Boles: Is that question addressed to me?

Mr. Yvon Godin: Yes, okay; if you want it, I'll give it to you.

Mr. Jim Boles: There was never a discussion of a specific dollar amount on the retail stations. There was discussion of a formula upon which a purchase price for those retail locations would be based. We offered, in writing, $150 million. We understood from Shell that they believed there was still a significant gap in value. Our attitude about that was that we'd like to try to find a way to close that gap. We didn't think we could go over $200 million, recognizing that at the time we had no knowledge that there'd been a discussion between them and the committee of a purchase price of $150 million to $200 million. Coincidentally, that sort of...

We said we could go up, but we would want some concessions. We never put that in writing. It was a small discussion in the meeting of June 22 and in a subsequent phone call conversation I had with one of the Shell people working on the transaction, and dependent upon other financial considerations. So this whole discussion of $200 million was what you would commonly find in a negotiation. There's some to-ing and fro-ing around what you would give. Our offer of $150 million for the business, just the refinery business, was an expression of interest, which we would follow through on.

Mr. Yvon Godin: Okay. Then really, do you still want to get into negotiations, and do a real negotiation? A negotiation is not done in 24 hours. It's not done in a month, especially, I think, in a big business like that, right?

Mr. Jim Boles: Correct.

Mr. Yvon Godin: Then if Shell is open to negotiations... They told us this morning, they swear that they want to sell it. The Bible wasn't here, but they want to sell it. Are you willing to buy? And maybe it's a crazy question, but do you have enough money to buy it? Do you think you could buy it?

Mr. Jim Boles: The short answer is yes and yes. That's dependent upon some financial assistance from municipalities, the financing that we organize. But of the $600 million, let's call it, that Shell would receive in the sale of the refinery business, based on our discussions with members of the committee here and our own resources, I think we thought that was very doable.

The Chair: Thank you very much, Mr. Boles and Monsieur Godin.

Mr. Rota.

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

Thank you for being here this morning.

Mr. Boles, it's going to sound a little redundant, but I just want to confirm. You said that the company is still prepared to buy the business, I believe is what you said until now. You're still open to looking at the business and buying it at the $150 million range.

Mr. Jim Boles: Yes.

Mr. Anthony Rota: Okay, very good. I just wanted to clarify that.

And despite what the lawyers have released this morning in a press release, you're clearly saying that you're willing to pay $150 million for the refinery now, and then the stations later on, the retail outlets—that's not really a must, but it would be something you'd be willing to look at, at a later date.

● (1130)

Mr. Jim Boles: That's correct. Either way, now or later.

Mr. Anthony Rota: I'm sorry...?

Mr. Jim Boles: Yes, either way, now or later.

Mr. Anthony Rota: Either way, now or later. So it wasn't tied together. It wasn't an all or nothing deal.

Mr. Jim Boles: Well, our preference would be to get it now, right? Our preference would be to maybe not pay for it now, but to get it.

Mr. Anthony Rota: But it's not a deal-killer.

A voice: A post-dated cheque.

Mr. Anthony Rota: Now, the issue as well is you mentioned turnaround as one of the deal-breakers. Turnaround, again just to clarify, would be if the refinery shut down, didn't have its customer base, and then you would have to start up and rebuild again. Is that clear? Is that what I understand by business and turnaround?

Mr. Jim Boles: Shell will continue to provide product to its existing customers. They have made some arrangements. I don't know what those are, but we've discussed that they were in the process of doing that. So they've made arrangements for alternate sources of supply.

Mr. Anthony Rota: I think we're talking wholesale and refining. One is actually just taking a product from somewhere else and selling it and providing it. That's not what we're talking about here. We're talking about the refinery and keeping it operational, and that's what you're interested in?

Mr. Jim Boles: The refinery will not be operational past September. It will not be.

Mr. Anthony Rota: Is it because it's not getting a supply of oil and is shutting down on September 10? What is it?

Mr. Jim Boles: No, it's because the turnaround was not done, and Shell's safety standards and probably Delek's own engineering professionals would agree—

Mr. Anthony Rota: When was that turnaround not done?

Mr. Jim Boles: To infinity. It hasn't been done.

Mr. Anthony Rota: No, but when would they have started not making that turnaround? Did they plan for this? Did they just say, oh well, we'll just go through the charade and worry about it later, or does it just happen one day that we're beyond the point of no return and we're shutting down the refinery?

Mr. Jim Boles: Those are really questions for Shell, but Shell had a couple of deadlines, I guess, based on pressure it got from parties present and extended that. But at some point in time, if you haven't ordered all of the equipment and made all the engineering preparations for a turnaround, it gets to the point where safety standards would require that you have to shut. I'm thinking that's where Shell is.

Mr. Anthony Rota: So their engineering went into shutting down the plant, not into keeping it running. I won't ask you for an answer on that. I'll be fair on that.

Shell says the refinery needs improvements to the tune of some $600 million. Did you see the need for these improvements? Is it falling apart right now? What is the long answer to that?

Mr. Jim Boles: By way of clarification, I'd just like to say that what you talked about earlier, continuing the discussions...the discussions are over, as our press release would state. We're prepared to recommence new discussions, if you will. I'm not saying anything contrary to our press release.

The deal is dead, and we're ready to go back to the table on a new deal.

Our financial model reflected about $800 million that needed to be spent over the next ten years. That's a lot of money. It's give or take $50 million. I don't remember the exact number; it's a lot of money. That would be similar to the situation of the Tyler refinery in Texas, where a substantial amount of money needed to be spent and reinvested in that refinery to get it to the point of being very profitable, and it is that and it has done well.

Mr. Anthony Rota: And that was part of your plan as well. That's obviously something you've considered and you're willing to look at, and actually invest in, if you're serious about picking up the business, so that it operates for Delek.

Mr. Jim Boles: We believe the reinvestment of substantial amounts of the cashflow from operations into making those moneys available and making those repairs is what would be required. So the money we'd make would get reinvested in that asset to get over the hurdle of this $800 million that needed to be spent.

The return on investment for us would be acceptable if we leverage it, which we would do. The way we see it is that we can take an asset like that... If we had to deal with Shell's Port Arthur refinery, $500,000 a day, or whatever it is, we'd probably all resign. But when you give us a situation like this one, we believe we're good in these situations. We believe we can go in and bring constituencies together, we can share the pain, and we can reinvest cashflow and do certain things to make it a success.

That's not anything against Shell; that's just how we see the opportunity. We're acquisitive. We want to buy refineries. There are not a lot of refineries for sale at reasonable prices, let's put it that way. So we want this business. We'd love to get back into negotiations.

● (1135)

Mr. Anthony Rota: And we can keep it going as a going concern, no question.

Mr. Jim Boles: But it will be shut.

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

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: Thank you, Mr. Chairman.

Good morning Mr. Fortier, Mr. Boles and Mr. Delage.

Mr. Fortier, I would like to address this question to you to be sure I have proper understanding. You seem to have successfully fulfilled the mandate you were given, because you were able to find potential buyers—we don't know who all of them were, but you did find potential buyers. The witness sitting next to you represents the company that went the furthest in this whole process.

However, since we began our discussions with the other witnesses —in other words, the officials from Shell, including Shell managers at the Montreal refinery—we have been discussing a very special context in which refineries in Canada have operated since about 1970. More than 35 refineries—large refineries—have shut down. We're not talking about small refineries. We are told that Shell had reached the stage where it felt it had to consider shutting down the refinery in order to convert it to a terminal. We talked about conversion to a terminal, a project which is currently at a standstill as a result of a court ruling.

When you received your mandate and began discussions with potential buyers, did you talk about the special context in which North American refineries have been operating—namely that more of them are being shut down than are being started up? In Quebec in particular, there is a much greater focus on hydroelectricity than on oil. Have you explained the particular context in Quebec to future buyers? Was all of this explained to Delek US Holdings? Were they given a demonstration of this so that they would really know what they were getting into?

Hon. Michael M. Fortier: As part of the process we put in place, Mr. Petit, we obviously approached companies operating in the energy sector, most of which were already in the refining business. The vast majority of these companies have a very good understanding of their industry, their operations, their profession and especially the North American market, because it is very different from the European market.

The overcapacity in North American refineries is well known. At the same time, there is one surprising fact. I am no expert on the oil industry, but over the last four or five months, because of my involvement in this, I have learned a few things. The fact is, Mr. Petit, that there are attractive acquisition opportunities out there all across North America and refinery transfers are occurring. There was a transfer in Delaware that was finalized on June 1. This is a refinery that had shut down and was purchased by a group of American investors.

So, there are transactions occurring. The buyers are adults and they've been vaccinated. They have a very clear understanding of the industry's circumstances in the short term, and especially over the long term.

● (1140)

Mr. Daniel Petit: I see.

Mr. Fortier, I would like to discuss something else with you. You presented potential buyers to Shell. Naturally, Shell is talking about the refinery, but we learned subsequently—even today—that there was also an issue of customer loyalty, in terms of retail station customers or customers who are loyal to Shell because it provides them with the oil or gas they require on a daily basis.

In the transaction that Delek US Holdings was attempting to finalize or which it may have decided to reopen, what was going to happen to employees? You know, it's like buying a hockey team. Do we take all the players or do we drop some of them? What discussions took place with respect to the employees? Were the 500 employees expected to move over to Delek US Holdings or was the plan that half would stay with Shell, some would be laid off and others would be pushed into retirement? What plan was decided on? When you buy a refinery, you do not necessarily buy all the employees.

Hon. Michael M. Fortier: I would like to ask Mr. Boles to answer that, because he was involved in the discussions with Shell.

[*English*]

Mr. Jim Boles: I take it I just got thrown under the bus.

Voices: Oh, oh!

Mr. Jim Boles: You need the employees to operate the business, right? You need the people. You need the union people and you need the administrative people.

We didn't get to the point, in 30 days, of being able to...we never met a single employee of the refinery, never. There wasn't time. We were trying to do due diligence in the virtual data room, to try to get an understanding of the business. To the extent that there need to be cost cuts, and some of that would be people, you typically see that in a refinery situation. That typically would occur with regard to administrative people, but there was not any real analysis done. We just didn't have time. We had too many business issues we were trying to understand.

The Chair: Merci, Mr. Petit. Thank you, Mr. Boles.

Mr. Bouchard.

[*Translation*]

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

Welcome, gentlemen.

My first question is for Mr. Boles.

You offered $150 million to buy the Shell refinery and you had discussions with certain company officials on a number of occasions. What specific terms or conditions proved to be a stumbling block in the process? Was it a question of cost? Were there other factors? They may have been quite clear with you on certain things or perhaps you had your own interpretation of the facts.

[*English*]

Mr. Jim Boles: Well, it's time and circumstance. I'm not trying to pick peas with you, but we didn't make an offer; we expressed an interest at a certain price level—since the lawyers would have a problem with the word “offer”. We're prepared to move it to that level, but it's not there now.

You must understand, this turnaround is a major, major, major issue. We were faced with closing regardless of what we did. The term sheet we exchanged with Shell provided that on June 26 we would sign an agreement by July 26; that's 30 days. We've got to move two sets of lawyers and all that stuff and understand the business issue, and it's 30 days. We've worked around the clock on deals and we could do it again; we know how to do it. So in spirit we'll agree; we'll sign an agreement in 30 days.

The other condition was that we close within the next 60 days following that 30. That's a very, very short timeframe to get all the approvals, to get the financing, to do all the things that are necessary. We said we would agree to that and go forward on that basis. How much furnace money we have to put up, recognizing the risk we take on those timeframes—we needed to talk about that. But in terms of the spirit of getting this deal done, we'll do that.

It did not matter if we had met both of those timeframes. That refinery was going to be closed because you could not do the turnaround. Prior to that, we explored with Shell: we'll put up the front money, you get it started; you get it started, we'll pay you back. That was a problem. I'm not questioning that internally it didn't have a right to be a problem; it just was. We explored the ways of trying to hurry up and do it.

Even if we had resolved that, it's not likely, in my humble opinion—well, in my opinion—

Voices: Oh, oh!

Mr. Jim Boles: —that that would have been done. You didn't have time to do the turnaround.

So you had a closed facility. We're not going to pay the purchase price for a closed facility, and we never got to the stage of saying, okay guys, let's agree that we've got a closed facility... Shell had an alternative use here. It wasn't like they had to sell to us, right? They've got an alternative purpose for it, unlike many sellers who just want to sell the asset and the business. So we didn't get to the point of exploring, hey look, let's furlough some employees, let's pay some part pay; you organize the temporary arrangements for the customers and we'll stand by and continue to spend money and time and management effort to get this deal done.

Willing parties can find ways to do that, right? But it was an enormous hurdle for them, because Shell's a big company and they've got plans in place. We respect those plans, and they're moving forward with what they corporately needed to do for themselves, their stakeholders, and, as they continue to tell me, the pain that all this “do we have a deal or don't we have a deal” was causing their employees.

So that's the problem. The turnaround is the biggest problem. There are many other issues, many that need to be resolved, but that's just a day's work, right? We just do it. On this one, time ran out. You couldn't get any equipment, you couldn't get the engineering done, you couldn't get any of that, and if Delek's choice was to buy a closed refinery or go operate a popsicle stand, we were not going to buy a closed refinery. We weren't going to pay the purchase price for a closed refinery.

● (1145)

[*Translation*]

Mr. Robert Bouchard: Mr. Boles, to a question put to you earlier, you answered that the discussions were over and that you do not expect to reopen negotiations with Shell.

So, as I understand it, the ball is now in Shell's court. What has to happen in order for the Shell people to pick up the phone and ask you to sit down with them for further discussions?

[*English*]

Mr. Jim Boles: To commence discussions, we just have to have somebody who gives us a call and says they're ready to convene a group to talk about it. We're available to discuss the situation again.

[*Translation*]

Mr. Robert Bouchard: How would you describe your relations with Shell throughout these discussions? Did you have the feeling that they were sometimes making additional demands? Were the initial terms clear? Was it always like that? You referred to that earlier but I'd like you to say more about it.

[*English*]

Mr. Jim Boles: I think they conducted themselves on a commercially reasonable basis. There were times when they asked for things, and if I were a seller I might ask for the same things. When I didn't hesitate to say no, their positions were more modified as a result of negotiations and the to and fro of all that.

It was very respectful, as you would expect. I didn't see anything in there that was under the table as to the relationship of the negotiations with Delek.

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

Merci, Monsieur Bouchard.

Mr. Braid.

● (1150)

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

Thank you to our witnesses for being here today.

Perhaps I could start with questions for Delek US.

Mr. Boles, does Delek US currently operate in Canada?

Mr. Jim Boles: No.

Mr. Peter Braid: Could you explain, Mr. Boles, why you were interested in this potential deal?

Mr. Jim Boles: I'm going to assume that you don't want me to repeat what I've already said about our interests, and I won't. We want to buy refineries. It's a stated corporate objective. This is a refinery that was presented to us as being for sale.

Mr. Peter Braid: All right.

This could perhaps be classified as a hypothetical question, but take a stab anyway, if you can. What were your long-term plans for this refinery had you been successful in acquiring it?

Mr. Jim Boles: That's a pretty enormous question. Our plans would have been to accomplish a completing of the capital expenditure program that needed to be made in as efficient and expeditious a manner as possible and returning it to generating as soon as possible, and then free cashflow.

Mr. Peter Braid: Very good.

You explained earlier, Mr. Boles, that negotiations reached an impasse. That will often happen in the process of negotiations. It sounds like the impasse was the issue of the turnaround. That was the showstopper.

The fact that the turnaround was an issue—was that a consequence of the fact that you came into the process fairly late in the game? In other words, had you started the process earlier, would the issue of the turnaround perhaps have been avoided?

Mr. Jim Boles: Let's assume that in September of 2009 Shell believed we were a very credible buyer and there was some chance the deal would close with us; then it's possible that the turnaround could have been done on that basis.

Mr. Peter Braid: Okay.

You've indicated that you're not prepared to pay a purchase price that includes the issue of the turnaround. Is it fair, then, to sum up by saying that if the price properly reflected the inevitable turnaround issue, you'd be talking turkey?

Mr. Jim Boles: I think what we said was that we would not pay a purchase price for a closed refinery. I think your characterization of the purchase payment and the turnaround combines a couple of concepts that I don't think I spoke to. I said we wouldn't want to pay for a closed refinery. We wouldn't pay for a closed refinery. It doesn't mean we wouldn't explore ways to acquire, or be in a position to acquire, that refinery if someone wanted to sell it, right? But we're not going to pay $150 million for a closed refinery.

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

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

Now we're going to go to Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: You were in the room earlier when Mr. Coderre asked a Shell official about a document of interest. He was told that Shell had no objection to it being distributed to the committee. Are you prepared to do that?

[*English*]

Mr. Jim Boles: Yes. I don't have any problem with the committee having any of the communications. It doesn't matter to me.

[*Translation*]

Mr. Yvon Godin: Fine. Then you will be submitting it to the committee?

● (1155)

[*English*]

Mr. Jim Boles: That document?

Mr. Yvon Godin: Yes.

Mr. Jim Boles: Sure.

Mr. Yvon Godin: Thank you.

The Chair: Mr. Boles, if you can send it to the clerk, I'll ensure that she distributes it to all members of the committee. Thank you.

Mr. Yvon Godin: You were talking about turnaround. What turnaround are you looking for? What will you need?

Mr. Jim Boles: Well, I'll speak as a transaction guy, basically out of ignorance more than anything else, but I've been around it a bit. This is a pretty significant turnaround. My belief, based on hearing the Shell people and hearing our own Delek people, is that you can't get the equipment before the winter. That's a problem. What you're facing is probably trying to do this turnaround in the spring. The last thing you want is material in the refinery turning to gel during the wintertime, when you can't get the kinds of people you need in there to do the work, to do the turnaround, and so forth.

I mean, what you would do is you would sit down with a bunch of engineers and business people and start talking about what we can do here. Do we mothball this facility? Do we close it? Do we go ahead and clean it out and do those things that are necessary, and start ordering the equipment, to get ready to do that turnaround in the spring? Do we do the turnaround and say, “Shell, you crank the plant back up; if it runs, we'll fund”?

There's a lot of “ifs” there. It would take some exploration of options. Again, I'm not a specialist on turnarounds, and I haven't looked at a lot of detail, nor have our engineers. But to my mind, you're likely talking about having to try to keep employees and customers in place for six months or so. I think Shell used that number of months. I think they used the number three to six months, and I wouldn't disagree with that.

[*Translation*]

Mr. Yvon Godin: Did you know that the company is already in the process of decontaminating the Montreal East facility? Some parts of the plant are already closed.

[*English*]

Mr. Jim Boles: Well, all the plant would be closed.

Mr. Yvon Godin: Oh, I do understand that. I'm asking if you know whether part of it has already started to be closed and if that will affect future negotiations.

Mr. Jim Boles: No, I don't know that, but that wouldn't affect... If Shell believed it was prudent, safety-wise and other things—and they're pretty conscious of those kinds of matters—then it wouldn't bother us from a deal standpoint. We'd do a deal. It wouldn't affect the deal. They'll find alternate sources of supply to keep the customers, because customers are what we want.

[*Translation*]

Mr. Yvon Godin: Have you already had discussions with representatives of the Quebec government?

[*English*]

Mr. Jim Boles: No.

[*Translation*]

Mr. Yvon Godin: A Shell official was talking earlier about the offer you made. You showed that the funds were coming from various sources. Is that information in the document of interest?

[*English*]

Mr. Jim Boles: No, it will not be. That money, as we discussed with Shell, would be what we received from members of the committee as expressions from various sources with whom they discussed providing funds for the transaction, so that a combination of support from our parent company, from our own resources and these other sources, would have been available.

But remember that a large part of that is borrowing. If we could present a reasonable plan, where we would need...whatever the number is. Let's say the number we heard earlier is right, that it's $400 million to buy the inventory. Let's say that number is right. It probably won't be, but if it had been...

Voices: Oh, oh!

Mr. Jim Boles: I'm not trying to be cute this time; I'm saying that more than likely, the inventory requirements of Shell will go down as they get closer to closing, and then they'll be very little.

But let's say it's $400 million. We'll have a working capital financing facility for that. We'll put up $100 million or so of equity, but we'll borrow the other $300 million. There will be some project financing that will go on for this $800 million. Between cashflow from the refinery as the model reflects it and the project financing that's available, as we discussed with these gentlemen, that can be financed.

So if the question was “Can you get the money or are you just here for a trip to Ottawa?”, we can get the money.

● (1200)

[*Translation*]

Mr. Yvon Godin: It is perfectly normal for a company to borrow money. Otherwise, the poor banks and credit unions would not be making much money. As I see it, it is normal to borrow money when you're in business.

Based on what I understood the Shell official to have said, we are talking almost exclusively about borrowed money. I believe Shell also borrows money. I can guarantee you that in New Brunswick, the Irving company, which is worth billions, also borrows money.

In any case, that is not a concern for you, since you are able to secure the money.

[*English*]

Mr. Jim Boles: Was there a question?

Voices: Oh, oh!

Mr. Yvon Godin: Well, I could ask you this one, if it's not clear enough: Could you get the money?

Mr. Jim Boles: We typically would not spend the kind of money we did on lawyers and engineers and consultants and management time if we didn't feel like we could fund the deal.

Mr. Yvon Godin: Good.

The Chair: Okay, thank you—

Mr. Yvon Godin: My last question will be very short.

Negotiations on the turnaround get serious: are you a buyer if Shell is ready to sell?

Mr. Jim Boles: Yes, we have an interest in this refinery. We believe we can put a business plan together that can make it a success. But it's not going to be without pain by all.

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

Merci, Monsieur Godin.

Mr. Van Kesteren.

Mr. Dave Van Kesteren: Thank you, Mr. Chair.

Thank you, gentlemen, for appearing before us.

In my short stint here—I'm going into my fifth year—I think this is unprecedented as far as the attempt made.

Mr. Fortier, you and I had a brief conversation, and you had mentioned that there have been similar attempts when it comes to industries that are in crisis. But I think to this degree, this has got to be a first.

I'm wondering—don't answer my question yet, because I have a series—if we're seeing a trend develop whereby governments will pressure companies to sell, or at least to make that a possibility. I should add, too, that I'm a former businessman.

I would say, Mr. Boles... I must ask, are you from Texas?

Mr. Jim Boles: I am from Texas, yes.

Mr. Dave Van Kesteren: I was involved in purchasing my first business, and I attempted to purchase another. I'm an auto dealer, in case you're wondering what I do for a living, and it's complicated. It's an enormous undertaking. I commend you for the time and the patience, because in our second acquisition we backed off. There were just so many...

I wonder if you could answer that first question. Is this something we're going to see as a trend?

The second question would go to Mr. Boles, because although we need people to sell, we also need the buyers. Obviously when you buy something, you're looking for a bargain. You're looking for possibly a fire sale. What would your reaction be if you were to make an acquisition of a company in Canada, if this became a trend, whereby the government would haul you up before a committee to question you about your purchasing practice, whether or not everything was on the up and up—and I'm sure they would be, and that's why we have lawyers—but whereby you'd have to answer all these questions? Would you entertain that, or would you run for the hills?

Mr. Fortier, maybe first you could go.

● (1205)

Hon. Michael M. Fortier: On the trend, obviously I'd only be guessing here. I remember when GM closed its plant in Quebec, there was a committee that had been struck. I don't remember who was sitting on the committee. I think you will likely only see this when you have scale, and hundreds of people whose jobs depend on the survival of the business. You also need cooperation from the current owner. The current owner needs to say, as Mr. Boles said, “Although we have an alternative to running it as a terminal, we are willing to sell it”, and in this case, this is what we had. So I think you need a combination of scale, interest from the community, and a willing vendor.

Mr. Dave Van Kesteren: Can I interject something here? The thought occurred to me too that in the case of possibly not General Motors, but if we were to talk about the forestry industry, a mill that was closing down and it was an economic decision, in this particular case, this is not necessarily a decision that's being made because the company is in trouble. Far from it. Shell's a very profitable and very successful company. This is a decision that it's no longer profitable, for whatever reasons, and they need to make this decision.

Subsequently, the company that would be making the offer is somewhat at a disadvantage, because if it's not advantageous for Shell to continue that operation, Mr. Boles certainly wouldn't pay the going price and then ever expect to have this as a profitable endeavour as well. So he would have to buy this at a fire sale in order for this to be—

Hon. Michael M. Fortier: Companies are traded every day. In every business that you can think of there are transactions. As we speak, there have probably been foreclosings. You always have a motivated seller and you've got a motivated buyer. It's not that you're selling because you can't make money with it; you might want to redeploy capital to another part of your global business. But remember that in this case, Shell actually ran its own process to sell this in the third and fourth quarters of 2009. It announced that it had failed to sell it, and then we showed up as a committee and said, “Do you mind if we try?”, and they said “No, go ahead, try, but it's not going to be easy”.

Mr. Dave Van Kesteren: Originally, were they interested in selling the retail as well as the refinery? Because obviously they're in the business to produce gas and then to sell gas. Was that part of the original, or is that something we kind of threw in and discussed?

Hon. Michael M. Fortier: You should ask them, but I think they told me that they had attempted to sell only the refinery in 2009.

Mr. Dave Van Kesteren: Am I out of time?

The Chair: Just a short question, go ahead.

Mr. Dave Van Kesteren: That's amazing. My time either flies by very quickly or this side's just that good.

Mr. Boles, could you answer the question that I laid out first, when I talked about—

Mr. Jim Boles: The short answer is yes. It wouldn't bother me to go in and appear before... If your feet follow your mouth in a deal, then you don't mind sharing whatever you've said, because you're going to perform what you've said you'd do. The precedent's already set for a morphing of laissez-faire to something different from what we've seen. Certainly in the United States, for sure, we have a lot more governmental support of at least the financial industry.

Putting our various feelings on that aside for a second, though, there's not a fire sale price here, and I don't know that you've suggested it. You were dealing in hypothetical. We don't believe $150 million is a fire sale, and we don't believe that's all that's involved here. Don't forget that there's $800 million that needs to get reinvested—or some number. Our folks have said $800 million over a period, we estimate, of ten years. That's a pretty major undertaking. That's a commitment to that business. That's a lot of money. So we don't consider it to be a fire sale, and we're not looking for a fire sale. We don't want to overpay, but we also believe that the best deals are done when people have a fair and commercially reasonable transaction.

The Chair: Thank you, Mr. Boles, and thank you, Mr. Van Kesteren.

Mr. McTeague.

Hon. Dan McTeague: Mr. Boles, thank you, *et les témoins, M. Delage et M. Fortier.*

I'll go very much to the question.

Mr. Boles, you made the case that there was in fact a business case for purchasing the refinery. If by chance the committee were successful in doing in Canada what is often done in the United States, and makes an order to maintain the supply.... If you had been here earlier, you would know that the question I asked was about when the process of inputs of feedstock actually comes to an end. Shell detailed when that was going happen. But if there were an order to maintain that feedstock sufficient to keep that refinery open at normal business terms, do you believe that would be enough to continue the interest of your company in purchasing the refinery? In other words, the transformation process would not take place.

● (1210)

Mr. Jim Boles: What I understood you to say was that they would continue to operate the way it's being operated now.

Hon. Dan McTeague: Correct.

Mr. Jim Boles: We would be willing to re-establish discussions and negotiations for the purchase of the refinery if that were to happen.

Hon. Dan McTeague: Mr. Boles, in 2007-2008, and again this year, Natural Resources Canada's oil division, in its annual survey of refiners, made the following comment:

> Refinery utilization rates close to 100 per cent, along with growth in demand for petroleum products, have created a need for significant additions to refinery capacity in Canada. Without investment in new refining capacity, supply interruptions could become more frequent and increasingly difficult to manage.

They further stated:

> Due to the high demand for petroleum products in the Northeastern United States, refiners in Atlantic Canada export considerable volumes of petroleum products to that region.

If Shell Canada, representing 13% of all eastern Canada's capacity, were taken out of the matrix, what would that do in terms of creating vulnerability and access to supply, not just in Canada but also in the northeastern parts of the United States? Could you comment on that?

Mr. Jim Boles: I would find it difficult to comment on that in general. I don't know how to comment on what you said.

Hon. Dan McTeague: Then let me go back to the business side of it. I'm looking at crude oil today at about 50¢ a litre, which you would call about $2 a gallon, and I'm looking at the exchange rate of crude making it about $80 a barrel, both Brent and WTI at Cushing. And considering of course the refineries along Port Arthur and Beaumont, which are a hell of a lot older than our refinery here in east Montreal, at $15 or $16 a barrel, which is what this current transaction turns out to be in terms of the margin available to that refinery, is that still pretty competitive, considering the market today?

Mr. Jim Boles: You're saying $15 to $16 of gross profit per barrel?

Hon. Dan McTeague: Well, it would be the net profit after converting the crude into gasoline.

Mr. Jim Boles: Yes, if you're talking about any kind of gross profit per barrel at $15, that's very competitive.

Hon. Dan McTeague: In your experience and that of your company, could you give us an example or perhaps an idea of... Well, a statement has been made by Shell that there has been a compression, obviously, in the profits they're making at the refinery level, including as a result of a glut in crude. Is there quite a substantial availability of crude around the world right now that you can get access to—saving except of course if the longshoremen in Montreal are on strike, as I believe they are today, adding further to the increase and the vulnerability—do you think there is enough crude to get around that you can continue to make a business case?

Mr. Jim Boles: Yes.

Hon. Dan McTeague: Then let me ask the final question, because I think it's important to address this in terms of the capacity issue here in Canada.

The normal business terms that one would see for refined product across the country are in decline. It would appear that Shell has moved out of eastern Canada in large part; with the exception of Sarnia, it closed its refinery some time ago in Burlington, Ontario, and in Bronte and Oakville, Ontario, coupled with a decline in a number of other refineries. Would you say that the number of refineries exiting the market in Canada is at a pace that is far greater than that in the United States, our nearest partner from which we would get supply?

Mr. Jim Boles: I would guess, and it would just be a guess, because I've seen nothing and have not studied it, that the way to characterize it is that those who are exiting the market in Canada are probably not greater than those who need to exit in the U.S.

Hon. Dan McTeague: How much pressure is placed on a country or region or environment when they must resort to the import option? Are there discounts, or do we often see a situation where prices are higher? If a country like Canada and its eastern market decide to get out of the refinery business, which of course this closure will do substantially, will we ultimately see an import option at boutique or premium prices, which only Canadians in eastern Canada will have to pay?

Mr. Jim Boles: Supply and demand says that the less you control your own destiny the more subject you are to those periods of time when supply is not readily available, and while there could be price implications, the bigger problem is going to be supply implications.

● (1215)

Hon. Dan McTeague: Mr. Boles, in September 2008, two years ago, we wound up in a situation where, as a result of the closure of the refinery in Port Arthur and several refineries on the Texas gulf coast, Americans faced about a 6¢-a-gallon increase and Canadians were treated to a 60¢-a-gallon increase. So my question again is, is it conceivable that what is a proverbial cold in the United States could turn out to be pneumonia for most Canadians right where they least expect it, in their pocketbook?

The Chair: Thank you, Mr. McTeague.

Mr. Boles, perhaps you could answer that and then we'll go to Mr. Allen.

Mr. Jim Boles: That's such a cosmic question. It would seem to me that from an end-product standpoint, gasoline and diesel, the absence of being in control of your refining situation is not good in terms of the obvious part of what you were saying, and I don't think you could replace that on a spot basis.

The Chair: Thank you, Mr. Boles.

Mr. Allen.

Mr. Mike Allen: Thank you, Chair, and thank you to our witnesses.

Mr. Boles, I find it interesting that you said $800 million over ten years if you get an acceptable return on investment, if that's leveraged. Of the $800 million that you figure you would have to spend over the next ten years, how much would be directed right at the turnaround period, which would be the short-term period?

Mr. Jim Boles: You heard the numbers that Mr. Oblath gave earlier. That would be included in that.

My recollection is that the turnaround costs in the first three years—I'm going from memory, and I don't have a great one—is somewhere in the neighbourhood of $80 million, for the turnaround portion. Then, of course, you don't have a large expenditure for turnaround for some number of years—I believe that is four years—but you do have ongoing capital expenditure requirements in those periods.

Mr. Mike Allen: So it would take you somewhere in the order of $80 million, roughly, to get up and running.

Mr. Jim Boles: We have a schedule that we can provide.

Mr. Mike Allen: I just wanted to get that clarified, because I thought the number might be bigger. I am just wondering how quickly you could actually do a refurbishment project like that if it were several hundreds of millions of dollars, and could you reasonably even get it done by next spring?

Mr. Jim Boles: The part that needs to be done by next spring is not that; it's the $50 million.

Mr. Mike Allen: Okay.

You say you have one existing refinery asset and two terminals.

Mr. Jim Boles: Right.

Mr. Mike Allen: How large is the output of your existing refinery, and where is it located?

Mr. Jim Boles: It's in Tyler, Texas. It's a brand at 60,000 barrels a day.

Mr. Mike Allen: Okay, 60,000 barrels a day.

I have one last question, and then I think Mr. Wallace wants to ask a question as well, so I'm sharing the time.

In Shell's testimony just a while ago, we were hearing there were three or four assets. If, for example, they closed the refinery and went to a terminal operation, some of the assets—and they listed a few—could be sold off to other places. Could you speculate on the amount of money that could be received from buying that asset and selling off the pieces?

Mr. Jim Boles: The speculation would be not a lot.

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

Thank you, Mr. Allen.

Mr. Wallace.

Mr. Mike Wallace: I have one quick question. We've been talking about capacity and about customers. What percentage of the gasoline production at this Montreal East refinery goes south of the border? I'm assuming you know that.

When you're talking about customers, is that the customer base that you're interested in maintaining and that's why the place has to continue to operate so that those customers rely on your supply and then you'll be the new supplier?

Mr. Jim Boles: We've not been given access to a large number of the contracts, so I don't know.

Mr. Mike Wallace: You have no idea, after you've offered $150 million, what percentage of the gasoline produced at that plant goes south of the border?

● (1220)

Mr. Jim Boles: You mean what those customers do with the gas once we sell it?

Mr. Mike Wallace: No.

Mr. Jim Boles: Then I would answer yes, I don't know that.

Mr. Mike Wallace: You actually do not know that.

Mr. Jim Boles: That's right.

Mr. Mike Wallace: Well, to me that means you haven't gotten very far in your discussions, if you don't even know the different percentage of the customers, whether they're internal, external, how much is in aviation gas, how much is in gasoline production.

Anyway, I appreciate your honest answer.

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

We'll now go to Mr. Laframboise.

[*Translation*]

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

My question is addressed to you, Mr. Fortier.

Like me, you heard Mr. Boles state earlier that on June 21, at what were probably the final discussions, it was known that the refinery would shut down because of inadequate maintenance.

I have a problem with this when I look at it. First of all, it seems to me that Shell's decision had already been made. They wanted to convert the refinery to a terminal. They did absolutely nothing to maintain the refinery.

When you were told that the refinery was for sale for between $150 million and $200 million, were you told that it was a refinery that had to be operational or was it known right from the outset that the refinery would not be operational?

Hon. Michael M. Fortier: I did not see the documentation, nor was I a party to discussions between Shell and the companies that signed a confidentiality agreement with Shell—not just Delek; there were several of them. I was not present for those calls or those meetings, but to my knowledge, Shell did inform those companies that the equipment would have to be upgraded.

In any case, the companies that had enough of an interest in the assets to sign a confidentiality agreement are companies that are well acquainted with the market. And that is one of the first questions they would have asked, in any case. So, there was no attempt to conceal the fact that some upgrading would be required.

Mr. Mario Laframboise: Based on Mr. Boles' comments, one has the sense that, in any case, Shell was not willing to give any extension.

Mr. Boles, if I understood you correctly, you wanted some time so that Shell could make its refinery operational again or you wanted some time and a price adjustment to be able to move forward with this. I gather that was the issue in the final negotiations.

[*English*]

Mr. Jim Boles: The problem was that we won't pay a purchase price for a closed refinery. That's where we are. Shell's view was that this refinery's going to have to be closed, and our view was that we don't think we'll be paying for a closed refinery.

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

[*Translation*]

Mr. Laframboise, Mr. Bouchard would like to ask a question.

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

I have a brief question for Mr. Fortier.

First of all, I know you worked very hard, even though you were unable to secure a positive result or outcome from this process.

Do you believe the federal government could have applied greater pressure or played a role in helping to secure a positive result—in other words, to ensure that the sale would be finalized? There was a buyer and Shell was possibly interested in selling.

Hon. Michael M. Fortier: The federal government sat on the committee along with officials from other levels of government. It offered the committee its support—unconditional support—just as the other levels of government did. To my knowledge, the Minister of Natural Resources was in contact with Shell officials at various levels throughout the process. And, as I recall, at the end of the process on June 1, when two formal offers were made—one from Mr. Boles and one from another company—the Minister communicated in writing with senior management at Shell to say that he was very pleased with the outcome and let them know he was following developments.

So, Mr. Bouchard, in terms of what I needed to ensure our committee could do its work, I must say I enjoyed excellent cooperation not only from Ottawa, but from Montreal, Montreal East and Quebec.

The Chair: Thank you, Mr. Bouchard and Mr. Fortier.

Mr. Coderre will be allowed one final question.

● (1225)

Hon. Denis Coderre: Thank you, Mr. Chairman.

[*English*]

Mr. Boles, as a start, I want to congratulate you for your honesty and your transparency. This is why we had this meeting today. I feel great about your answers. I know that you're part of the solution. You came and answered the questions straightforwardly, and we are very pleased about that. I think it's important that Canadians know that not only do we have an enterprise that's willing to be part of that solution, but we have good people also who are willing to come here and address those questions straightforwardly. So congratulations.

I just hope that Shell, whose people are still in the room, will listen to what we have said today and your answers, and that there is a buyer if there is a seller. I hope they will listen to that.

[*Translation*]

The beauty of the Canadian Parliament is that a committee can meet again.

[*English*]

I understand that if there's a will, there's a way. We have the way, but we have to make sure the will is there.

[*Translation*]

Mr. Delage, I know that you have been extremely patient today. You have just been listening to the discussion most of the time. However, on the committee, you were the expert and financial lobbyist throughout the time it was conducting its work. In light of what we have heard today, I would like you to explain Shell's attitude. We have a feeling about all this. I have no reason to doubt that this is a serious buyer and that Delek US Holdings is not interested in doing the same thing as Shell—in other words, to create a parking lot for gas in Montreal. I believe the company wants to protect the employees and work towards becoming player or catalyst in the petrochemical industry in Quebec and Canada.

Did Shell really want to sell? In light of your understanding and what you experienced in this process, would you say that Shell would be prepared to go back to the table for further talks? What were they like at the time?

Mr. Claude Delage: Unfortunately, I cannot answer for Shell, but I can tell you what I witnessed throughout the process.

We were extremely prudent and very much aware of the responsibilities that rested on our shoulders. Indeed, this was something that involved a large number of families. That's the reason why we demanded that Shell not initiate a process without having a clear framework—something we secured on February 16. As soon as we received confirmation that Shell wanted to sell and we had a framework, we began a global search for companies that would be potential candidates. We contacted those companies. We ended up with a far smaller number. We engaged in discussions. Subsequently, we presented those companies to Shell, one after the other. Shell had the right to say whether they were credible or not and whether or not they would sign a confidentiality agreement. They did sign agreements with certain companies.

What followed were of discussions. We organized conference calls in which Shell participated. They involved people in charge of mergers and acquisitions as well as managers responsible for the assets in Montreal. The idea was to answer the legitimate questions of the people making proposals. It was at that point that I had a conversation with Mr. Fortier and made him aware of my concerns.

Buying and selling companies for others is my business. In 25 years, I have learned to recognize a motivated buyer and seller. Yet I had certain doubts, which were baseless. They were doubts based on my experience alone, for what they were worth.

It was in that context that we took advantage of a visit by Mr. Rathweg and Mr. Marion to Mr. Fortier's office in Montreal to make our position absolutely clear, and we didn't beat around the bush. The fact is that we had better things to do. Our role was to act as facilitators, and we respect the fact that they own this asset and if they do not want to sell it, all they have to do is say so. So, that's what we did.

Hon. Denis Coderre: Mr. Delage, we are short of time.

How do you explain the fact that we are still at an impasse, even though Shell wants to sell its assets and get rid of the ones in Quebec and the Maritimes? A buyer is prepared to invest $150 million and $800 million over 10 years. Do you think Shell is acting in good faith?

● (1230)

Mr. Claude Delage: I cannot answer for Shell. I can tell you, however, that every time company officials asked for something, we provided it. They continually raised the bar.

When I hear Shell saying that the price they were asking was only for the refinery and that it didn't include the wholesale side, well, I would refer you back to the February 16 term sheet which states that the present value of future revenues they would receive with the terminal… What do you think “wholesale” sales are?

So, throughout the process there were numerous contradictions in terms of Shell's behaviour. I respect the fact that they want to do what they want to do with this asset. On the other hand, when interests on all sides get together to try and find a way of avoiding a closure… It would have been simpler if they had just said they were not interested in selling.

The Chair: Thank you, Mr. Godin.

Thank you, Mr. Delage.

[*English*]

Thank you to the Honourable Michael Fortier and to Mr. Boles for appearing.

In particular, Mr. Boles, as your Canadian friends and neighbours to the north, we appreciate that you as an American would come up from the United States to cooperate and participate in these hearings. We do appreciate it.

This meeting is suspended until one o'clock, when we will reconvene.

●

(Pause)

●

● (1300)

[*Translation*]

The Chair: On this 20th day of July, 2010, I would like to welcome committee members and witnesses to this 26th meeting of the Standing Committee on Industry, Science and Technology.

We are meeting today pursuant to Standing Order 108 to consider the impending closure of Shell Canada's Montreal refinery.

[*English*]

We have in front of us during this panel two sets of witnesses. First, we have Madam Dagenais and Monsieur Bilodeau from the Competition Bureau. We also have Mr. Rau, Monsieur Labonté, and Monsieur Gauvin from Natural Resources Canada.

We'll begin with an opening statement from Monsieur Bilodeau.

Mr. Richard Bilodeau (Acting Assistant Deputy Commissioner, Civil Matters Branch Division, Competition Bureau Canada): Thank you.

Mr. Chair and members of the committee, thank you for the opportunity to appear before you this morning as part of your study of Shell Canada's recent decision to close its Montreal refinery.

My name is Richard Bilodeau, and I am the acting assistant deputy commissioner of competition for the Competition Bureau's civil matters branch. I am accompanied today by Martine Dagenais, assistant deputy commissioner of competition for the bureau's merger branch. We look forward to assisting the committee today in its deliberations.

As the committee members are aware, the Competition Bureau is an independent law enforcement agency that is headed by the Commissioner of Competition. The bureau administers and enforces the Competition Act, which is designed to maintain and encourage competition in Canada in order to promote a number of objectives, including increasing the efficiency and adaptability of the Canadian economy and providing consumers with competitive prices and product choices.

The act applies, with very limited exceptions, to all sectors of the Canadian economy, including the petroleum sector, and sets out criminal and civil penalties for a variety of anti-competitive practices. These include, for example, entering into agreements with competitors to fix prices, allocate markets, and restrict output; abusing a dominant market position; and engaging in misleading advertising and deceptive marketing practices.

[*Translation*]

The Bureau takes its enforcement responsibilities very seriously, and is acutely aware of the importance of promoting competitive markets in the petroleum sector.

As committee members may recall, the Bureau announced in June of 2008 that criminal charges would be laid against 13 individuals and 11 companies which conspired to fix the price of gasoline at the pump in Victoriaville, Thetford Mines, Magog and Sherbrooke, Quebec. Those charges, which so far have resulted in almost $3 million in fines and jail terms totalling 54 months, arose from the largest criminal investigation in the history of the Competition Bureau. Investigators seized over 100,000 records, searched 90 locations, and intercepted thousands of telephone conversations over the course of their investigation.

Very recently, on July 15, the Bureau announced that new criminal charges had been laid against an additional 25 individuals and three companies with respect to this same price-fixing case, bringing the total to 38 individuals and 14 companies accused. Price-fixing is widely considered to be among the most egregious forms of anti-competitive conduct. And we will pursue these criminal activities to the fullest extent of the law.

[*English*]

The committee members may also recall that in July of 2009, the bureau completed an extensive review of the merger of Suncor and Petro-Canada. Ultimately the bureau entered into an agreement with the parties to resolve concerns that the merger would lessen competition substantially, which we concluded could lead to higher gasoline prices. The agreement required the companies to sell 104 retail gas stations in southern Ontario as well as significant storage and distribution network capacity in the greater Toronto area for ten years. In securing these remedies, the bureau not only preserved competition in those markets where concerns were identified but also facilitated entry by new and vibrant competitors.

With that background, I will now turn to the specific topic that is before this committee today, the impending closure of Shell Canada's Montreal refinery.

As the bureau has stated in previous appearances before this committee, our overriding concern in all cases is whether the conduct in question amounts to a violation of the Competition Act. The bureau obtains information on possible violations of the act through its own monitoring activities, from complaints by those in the market, and from firms that assist the bureau in its investigations in exchange for immunity from prosecution or leniency in sentencing. Where evidence establishes a violation of the act, the bureau does not hesitate to take appropriate action.

● (1305)

[*Translation*]

Provided that conduct does not contravene the Act or any other applicable law, businesses are free to determine how they operate. In that regard, generally speaking, a unilateral decision by a firm to discontinue the use of a manufacturing or other facility does not raise concerns under the Competition Act. The Bureau presently has no basis on which to be concerned that Shell's closure of its Montreal refinery triggers any concerns under the Competition Act.

If, instead, Shell ultimately were to decide to sell all or part of the refinery, the Bureau would likely review the transaction pursuant to the merger provisions of the Act. Any such review takes into account a variety of factors, including the parties' market shares, the level of economic concentration in the relevant industry, the effectiveness of remaining competitors and barriers to entry.

Where the Bureau determines that a merger is likely to lead to a substantial lessening or prevention of competition, the Bureau may apply to the Competition Tribunal for an order to prevent, dissolve or alter the merger.

[*English*]

Participants in the petroleum sector and Canadians in general can be confident that the bureau takes its work very seriously and recognizes the importance of competition as a key driver of growth, productivity, and innovation in the petroleum sector and in the Canadian economy more broadly.

With that, Mr. Chair, I thank the committee for its time and welcome any questions from committee members.

[*Translation*]

The Chair: Thank you, Mr. Bilodeau.

Mr. Labonté, please.

[*English*]

Mr. Jeff Labonté (Director General, Petroleum Resources Branch, Department of Natural Resources): Thank you, Mr. Chair, and thank you, committee members, for the opportunity to present to you today.

I have a number of opening remarks and a power point presentation that accompanies the remarks. I will reference particular slides as I move along.

My name is Jeff Labonté and I'm the director general for the petroleum resources branch of Natural Resources Canada. I'm joined today by two of my colleagues, Claude Gauvin and Mike Rau, who both work in the same branch as I do.

My areas of responsibility include the monitoring of oil and gas markets and the development and implementation of oil and gas policy in Canada. As well, I have oversight for advice pertaining to crude oil, refined petroleum products, and natural gas south of 60 degrees. I'm here today to speak to the committee on a number of specific points.

I'll be talking to two particular purposes today. The first would be to outline Natural Resources Canada's role as it relates to the Canadian refining sector and the domestic supply of petroleum products in Canada, as well as giving the committee some brief overview on the petroleum refining and distribution market in Canada over the past number of years and its relationship to regional economies and international events. More specifically, my remarks will cover NRCAN's role, the product supply chain, regional differences, and realities affecting Canada's refining industry.

With respect to oil and gas, NRCAN covers the following areas. First, in response to energy supply disruptions of national significance, NRCAN could act on a temporary basis to ensure Canadians have access to energy. This is in the context of Canada's market-based approach to energy policy where private sector supply and demand and investment choices are made in relation to market fundamentals and demand.

Second, NRCAN ensures that Canada honours its international obligations under the International Energy Agency's treaty. Should the IEA declare an emergency of any sort in the face of a supply disruption, Canada is obliged to act in support of that treaty.

Third, we at NRCAN provide Canadian consumers with information on Canadian oil and gas markets, and we provide policy support and advice to the government on oil and gas markets as well.

In terms of legislation, the issues from an energy security perspective, at this point in time it is NRCAN's view that the potential conversion of the Shell refinery does not pose a risk of a supply disruption on a national scale. Therefore NRCAN has no particular role to play with respect to this instance of this particular conversion. However, I would like to point out that there are two pieces of federal legislation that provide the government the authority to temporarily intervene in the case of a severe energy supply disruption of national significance. Under the Emergencies Act, if a national emergency is declared the Governor in Council can declare a public welfare emergency, which authorizes special and temporary measures to ensure safety and security during a time of national emergency. This could include the disposal of property, including energy commodities such as gas, oil, and crude and refined products.

The second piece of legislation is the Energy Supplies Emergency Act. If a national emergency has been declared, an energy emergency could be declared and the Energy Supplies Allocation Board could be activated. It has the ability to temporarily allocate energy supplies in Canada and could redirect crude oil to ensure that all refineries in particular regions of the country experience similar and manageable shortages and access to petroleum products, or draw down stocks to meet limited supply interruptions.

Moving to the next slide, which is a fairly complicated one, I'll draw attention to a number of aspects of Canada's refinery marketplace. A key point to make, as has probably been presented previously to the committee, is that the upstream crude oil extraction and transportation business and the downstream refinery and retail business operate as two independent segments in the petroleum marketplace. In other words, companies working in one market segment versus another may or may not have decisions that are independent of one another.

If you refer to slide six and you look at the map of Canada, you see a quick snapshot of what are the orbits or areas supplied by particular refineries. The map identifies that there are 16 major refineries in Canada that are each regionally located. Virtually all of the petroleum supply comes from these 16 refineries located across the country. You will note in the map that Canada exports and imports crude oil as well as refined petroleum products. So some of the equation is that Canada is both an import and export nation and that at the net scale Canada exports more crude oil and more refined petroleum products than it consumes.

● (1310)

It is because of transportation economics that the Canadian petroleum marketplace is also quite regional in nature. Drawing into these regional issues and variations, moving to slide 7 and going from west to east, the western provinces and territories are predominantly served by domestic refineries, with Edmonton being the largest centre. These refineries process Canadian crude oil, which is predominantly produced from Alberta as well as Saskatchewan. The region is also a small net importer of refined petroleum products from the western United States.

Southern and northern Ontario rely predominantly on refineries in Sarnia and Nanticoke, which process predominantly domestic crude, which is piped from Alberta to Ontario. However, there are some imports in this area as well, both crude and petroleum products, which come to this region via pipeline from Montreal. The region is both an importer and exporter of petroleum products.

Moving to eastern Ontario and western Quebec, petroleum product markets are supplied by domestic refiners in the province of Quebec, as well as petroleum imports from other countries. It is important to note that the refineries in the region largely process imported crude oil.

The maritime provinces and northern Quebec are supplied by refineries in Quebec, Newfoundland and Labrador, and Nova Scotia, and by seaborne petroleum products; that is, by petroleum-based products imported by ship and transport. Again, refiners in this region predominantly rely on imported crude oil, with the exception of the offshore production in Newfoundland and Labrador, which also supplies refineries in Atlantic Canada as well as other international markets.

The domestic industry in Canada operates, very clearly, in an international marketplace. Due to economies of scale, the global refining industry has been undergoing a rationalization over the last number of decades. Global demand for refined products is growing and is driven by emerging markets such as China, India, the Middle East, and Latin America, while North American demand for petroleum products has been fairly stable or declining with the impacts of the recent recession. It is not expected that demand in North America will grow significantly either, when one looks at the trend over time.

Larger and more efficient refineries are part of the rationale for this particular context, where we see overseas refineries coming onstream that are more efficient, larger, and that produce product at a cost that's difficult for North American refineries to compete with.

We see that this has had an impact on domestic investment choices. In keeping with global trends, the rationalization of the refining industry has been taking place in North America. In Canada alone, we have seen the number of refineries go from 44 in the late sixties to 16 today, while at the same time the overall domestic refining capacity has actually doubled. Most of this rationalization took place because of the oil shock in the seventies, as well as increasing economies of scale in competing nations. For example, in the early 1980s there were six refineries in Montreal; by the mid-1980s, four of those refineries had closed. These refineries were typically small in scale, and all of them had less than one-third the capacity of the Ultramar refinery that is operating near Quebec City today.

Domestic capacity has been on the rise while throughput has been declining. The current realities of the Canadian refining sector pose a challenge for profitability. From 2000 to 2009, domestic refining capacity has increased to roughly 2 million to 2.1 million barrels a day, with production refineries decreasing to the point that capacity and utilization rates have been hovering at around 80% as recently as 2008-2009 and the first two quarters of 2010. I should point out that a capacity rate, generally speaking, of 95%-plus is considered full capacity and generally viewed as optimal.

To put the degree to which Canadian refinery equipment is underutilized into perspective, in 2009 the idle capital in Canada's refining sector was close to 300,000 to 400,000 barrels of oil per day.

There has been a downward trend in refinery profit margins in Canada over the past number of years. Refining margins represent the differential, of course, between crude oil and the price refiners sell their products at on the wholesale market. Margins must meet and cover all costs. It's important to note that expenses are more or less fixed, and changes in refinery margins directly affect the profitability of the particular firms operating.

● (1315)

In summary, I'll reiterate the following two points.

First, from an energy security perspective, the potential conversion of the Shell Montreal East refinery does not pose a risk to the supply of national scale.

Second, the total capacity to Canada's refineries has increased over the past number of decades, even though the number of facilities has decreased, as has the utilization rate. This reflects part of a North American and global trend towards rationalization and increased competition.

Thank you.

The Chair: Thank you, Mr. Labonté.

We'll have about an hour and ten minutes of questions and comments for members, beginning with Mr. McTeague.

Hon. Dan McTeague: I don't know where to begin, Chair.

Thank you, witnesses.

I'm going to start with you, Mr. Labonté. I have a document that you didn't bother to offer, but I did introduce it to one of the previous witnesses. It's from NRCan. It's from your oil division annual survey of refiners. It's on your website. It says:

> Refinery utilization rates close to 100 per cent, along with growth in demand for petroleum products, have created a need for significant additions to refinery capacity in Canada. Without investment in new refining capacity, supply interruptions could become more frequent and increasingly difficult to manage.
>
> Due to the high demand for petroleum products in the Northeastern United States, refiners in Atlantic Canada export considerable volumes of petroleum products to that region.

You also seem to minimize, whether you've discounted this or not —I think it's rather significant for this committee—that it was written following the shutdown of the Bronte Petro-Canada refinery. You've also shown in your matrix here that the refinery in Montreal is regionally intensive and significant. Cast against the rest of the country, yes, when you have two million barrels being produced a day, that makes it, what, 6% or 7%? But when you put it in terms of the actual market, it turns out to be much higher than that, somewhere close to between 12% and 15%.

You also didn't take time to consider the fact that North Atlantic Refining sells zero gas throughout eastern Canada, except for its gas stations in Labrador and Newfoundland.

You failed to mention, although you know, that most of Irving's capacity of 300,000 barrels per day goes to the United States, thereby limiting and exposing Canada to a much wider prospect of competition or of product coming at a premium price from elsewhere.

Given that you don't have a weekly petroleum monitoring report, you have no idea of the inventory on a week-to-week basis. Given that NRCan provides some of that information to our American friends as to what the picture is here in Canada, how can you possibly conclude that there isn't a problem here?

To use your terms: “While rationalization has resulted in fewer refineries, domestic capacity has grown significantly—this is a worldwide trend that is expected to continue”.

It seems to me, sir, that what you've written in one and what you've written in the other are contradictory. Is it a lack of resources or just oversight?

The Chair: Go ahead, Mr. Labonté.

Mr. Jeff Labonté: I'm not sure where I would start with the question, but perhaps by saying that I think we've provided a summary of the current utilization and capacity issues. Given that the Shell Montreal East refinery currently processes almost exclusively foreign crude oil, the conversion of the refinery will have very little impact on the region's import dependence. At the same time, the product shortfall that might emerge will likely be, and will be, supplied by imports from Europe and the United States, as well as Asia and—

● (1320)

Hon. Dan McTeague: Mr. Labonté, I'm talking about gasoline, not oil. I don't put crude in my gas tank, nor do I use crude directly for home heating fuel or aviation fuel. Put this in the context of gasoline and refineries. We're talking about gasoline, not crude.

The Chair: Go ahead, Mr. Labonté.

Mr. Jeff Labonté: I'd like to report that I think, as the committee has probably heard from other members and other witnesses, Montreal does have a competitive import marketplace for petroleum products, gasoline and diesel, imported from other parts of the global market. Our understanding is that both companies that operate the terminals in Montreal, Olco and Norcan, almost entirely source their products from imported sources and compete quite readily with domestically refined product from crude oil imports, as well as other refineries operating in Quebec and eastern Canada.

The Chair: Perhaps I could just help out here. One of the questions that Mr. McTeague raised was that there's a document, apparently, from the NRCan website indicating almost 100% utilization of the capacity in the refining sector. Your slide on page ten shows utilization is quite a bit lower than that. So maybe somebody could explain, or try to explain, the discrepancy.

Mr. Jeff Labonté: Sure.

First off, I think the report you're referring to is dated 2007, which relies on data that had been averaged for years prior to that point in time. It references the market conditions at that point in time, in which they were quite significantly different from now, and also referenced that demand was increasing with respect to the potential for exports as well as a number of activities going on in the North American marketplace.

Foreign competition has increased since then. So has the capacity in the global refining marketplace, as has the refining capacity in Canada since then. So there are a number of aspects that make that particular report a moment in time, as well as one that's slightly outdated. I think the data I presented today is more accurate over time, and we present that to you.

I'll reference the fact that it might be time to update the website, but I will lead with the data that I presented to the committee today.

Hon. Dan McTeague: Mr. Labonté, I guess the issue here is really...if it is still here, and there has been a significant change, in light of 2007, the 2005-06 closure of the Petro-Can refinery. There continues to be a question not just of whether or not there's adequacy of supply, which you may or may not be aware of, but in fact that the terms of that supply may very well change. We may be subjected to vulnerabilities based on cost considerations, based on other nations making determinations as to the ability to supply.

Let me ask you this very specific question, and then I will shift over to the Competition Bureau. Do you have an understanding, in any of your discussions, about inventory monitoring—the authority to ensure that pipelines and terminals have full access to all market participants?

You do not have that authority as it currently stands, is that correct? You don't monitor the participants on the pipelines for access to supply, do you?

Mr. Jeff Labonté: Was that for the Competition Bureau?

Hon. Dan McTeague: No, that's for you for now. You don't monitor this currently.

Mr. Jeff Labonté: No, we do not.

Hon. Dan McTeague: Okay.

Let me shift to the bureau now, because I only have a few minutes before another person takes a question here.

Is the bureau of the view that even if this is not a merger, the supply potential, the disruption to the economy, and the potential for an economic hit, which could have an impact just in terms of price availability, would not concern the bureau as it did with the Texaco resolution in 1989? When you had a lot more refineries at the time—taking into consideration some of the comments that have been made here—you nevertheless ordered a divestiture order, at least a hold order, to make sure that the refinery in Montreal remained open, notwithstanding the fact that this may not have been, quote, a “merger”; it was more of a forced merger.

Why are you not looking at this with the same concerns with supply arrangements, which will have an impact ultimately on competition throughout the eastern part of this country?

Mr. Richard Bilodeau: First off, I think it's important to appreciate what the Competition Bureau's mandate is. As I stated—

Hon. Dan McTeague: No, you've already said that. I want to ask you why a decline in the ability to provide supply to the market is not striking a concern by the bureau. Are you taking a stand-pat approach? You did not do that in the past, when there was a lot more supply, in the case of Texaco. You also did the same thing with respect to Petro-Canada's takeover of Gulf back in 1990.

Mr. Richard Bilodeau: What I can speak to is what we're doing today, and what we're doing today we have to do in the context of the Competition Act. What we're concerned about in any situation, and in this situation, is if there is conduct that is contrary to the act. In this particular situation, if Shell decided to sell their refinery and engage in a transaction with another party, as the Competition Bureau, the mergers branch would review the transaction to assess whether or not there is a lessening of competition in the markets that we would be looking at.

Right now, as we speak today, we've examined a variety of matters in the petroleum sector, but we're not engaged in any matter that involves Shell Canada's Montreal refinery.

● (1325)

Hon. Dan McTeague: Let me ask you this. If supply is no longer available in Toronto, Ontario, where Shell sells some of its product, and some of the independents, non-branded dealers, are told, “Buy your product elsewhere”, and Nunavut as a territory no longer has access to supply, are you going to sit back and just say, “Sorry, it's not a merger, therefore we have no business...”?

The competitive nature of this industry is changing rapidly, with fewer and fewer players. I don't care how much capacity we can talk about, 100% utilization is 100% utilization; there may be a temporary blip on that.

When can we expect the Competition Bureau to actually stand up and protect and preserve, and to ensure that there is a competitive process for Canadians? If this doesn't trigger it, what will?

Mr. Richard Bilodeau: What does trigger it are situations where the act is contravened. I can point to two recent examples. Number one is the gas price-fixing charges that were laid last week in Quebec, the second wave of charges that we laid in that matter—

Hon. Dan McTeague: Which you stumbled upon, Mr. Bilodeau, I should point out. It's actually almost a point of order. You stumbled on it when someone came forward, thinking they'd been ripped off. That's how the bureau found it. You didn't do it because of any investigative prowess. You happened to stumble on something that turned out to be very important for you, obviously. You keep pounding your chest on it, but frankly, if the person hadn't made the mistake, you would never have gotten a conviction.

The Chair: Thank you, Mr. McTeague.

Mr. Bilodeau, you can finish your comments and then we'll go to Monsieur Bouchard.

Mr. Richard Bilodeau: I was just going to finish by saying that we did review a merger last year of Suncor and Petro-Canada. We took action in that merger as well.

The Chair: Thank you, Mr. Bilodeau.

Monsieur Laframboise.

[*Translation*]

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

Ladies and gentlemen, you are the experts. People who are following developments in this area are listening to us today.

Mr. Bilodeau, you say that this is not a sale, and that is what you have written. In your opinion, when a company stops operating a production plant, that raises no concerns under the Competition Act.

Is that simply because the definition in the Act provides that sales, acquisitions and mergers are reviewed, but there is no reference to closures?

Mr. Richard Bilodeau: The Act does define a merger. I will turn it over to Ms. Dagenais to explain what we do when we receive a merger file.

Mr. Mario Laframboise: Ms. Dagenais, does the definition in the Act prevent you from looking at a closure? Is it because that is not included in the definition under the Act?

Ms. Martine Dagenais (Assistant Deputy Commissioner of Competition, Mergers Branch Division B, Competition Bureau Canada): In the case of a transaction or a sale, the Competition Bureau has the right, under the merger provisions, to review all transactions in Canada to ensure that there is no substantial lessening of competition.

Furthermore, if it were established that there had been a substantial lessening of competition, the Commissioner would have the right to apply to the Tribunal to secure an order. However, I should point out that in a transaction, the parties, either the buyer or the seller…

Mr. Mario Laframboise: That was not my question, Ms. Dagenais.

In fact, the closure of a facility by an owner can affect competition just as much as a sale. If the Bureau doesn't analyze closures, I gather it's because of the definition under the Act. Is that correct?

Ms. Martine Dagenais: The factors we consider when we review a merger are…

Mr. Mario Laframboise: We are not talking about a merger; we're talking about the closure of a refinery. That can do just as much damage. Closing a refinery can cause just as much damage as selling it to a competitor, for example, because it results in less supply, something which inevitably prevents competition.

So, the reason you don't review closures is that the definition under the Act does not give you the authority to do so. That was my question.

Ms. Martine Dagenais: As I just said, when a merger occurs and it reaches a certain threshold…

Mr. Mario Laframboise: We're not talking about a merger.

Ms. Martine Dagenais: If assets were sold, that would be a merger and, in such a case…

Mr. Mario Laframboise: As I understand it, if there is no sale, you don't review it.

As a legislator, if I want you to review that sort of thing, I would have to amend the Act. Is that correct?

Ms. Martine Dagenais: We are not currently analyzing the closure of the Montreal refinery. That is not something the Bureau routinely looks at.

● (1330)

Mr. Mario Laframboise: However, if there were a closure and someone complained about the prejudicial effect of that closure on competition, would you analyze it or would it be beyond your purview, from a legal standpoint?

Mr. Richard Bilodeau: According to our information, which the public has access to, there is no indication that this could give rise to concerns under the Competition Act.

Mr. Mario Laframboise: I would like to come back to Mr. Labonté. A number of stakeholders are telling us that closure of the Shell refinery will have a domino effect. They are saying that Suncor would also shut down, because of the pipeline, the costs, and so on. Is that possible? The people who have been telling us that seem to know what they're talking about. Is there a danger that this will have a domino effect on oil service in general in Montreal?

Mr. Jeff Labonté: Thank you for your question. I will answer you in English.

[*English*]

It's difficult to speculate as to whether or not any additional refineries in Montreal or the Quebec region or Atlantic Canada, or anywhere for that matter, will open or close. However, the refineries in the Quebec region generally operate with both domestic and predominantly imported crude oil. So the pipeline issue is how the oil is provided by a pipeline from Portland, Maine, as well as through ship passage. So there may or may not be... It's hard to speculate on this point.

[*Translation*]

Mr. Mario Laframboise: We are told that refineries in East Montreal share the costs. Is that correct? Are you aware of that? If you are not aware, please let us know and we will be sure to forward all the information to you.

[*English*]

Mr. Jeff Labonté: There are costs shared by the different producers that source their product by the agencies and deliver them via pipeline. However, the degree to which that cost is a one-to-one cost or an equally shared ratio depends on a number of factors, some of which have less to do with the output and more to do with their particular contracting activities.

I can't comment on what their contracts are, and I'm not going to.

[*Translation*]

Mr. Mario Laframboise: So, it is not impossible that the Shell closure will have a ripple effect and impair the financial capacity of Suncor and other refineries in East Montreal.

[*English*]

Mr. Jeff Labonté: Again, I can't comment as to whether or not Suncor or any other related refineries will be more or less profitable given what happens with respect to the Shell conversion that's being proposed.

[*Translation*]

Mr. Mario Laframboise: If the closure of a company has a ripple effect and inevitably creates shortages, I have trouble understanding why the Competition Bureau would turn a blind eye and ignore it. If you are telling me that the Act prevents you from doing something, then that's fine. Otherwise, you should stop ignoring this because a problem is indeed developing because of the closure of the Shell refinery in East Montreal.

Mr. Richard Bilodeau: Mr. Chairman, if a company's actions do not constitute an offence under the Competition Act—or under any other act—those actions, such as the unilateral decision by Shell to close a refinery, for example, do not raise concerns under the Competition Act. Such an assessment is consistent with the mandate we have been given under that same Act. As I stated previously, at this time, we have no reason to believe that Shell's decision to shut down the Montreal refinery raises concerns under the Competition Act. If that company were to decide to sell the refinery, we would review a potential merger under the merger provisions. However, at this time, no concerns under the Competition Act are raised by the closure of that refinery.

Mr. Mario Laframboise: If it were to shut down and a complaint were filed, the Act would allow you to intervene if you were able to prove that this would have a ripple effect, that it would increase costs and that it would result in shortages. If it lessened competition, there would be a problem.

Mr. Richard Bilodeau: I would like to speak in general terms about the work carried out by the Competition Bureau. When a situation affecting a specific market is brought to our attention, the first thing we do is review the allegations. We try to determine whether the allegations or alleged conduct may have a connection with the Competition Act. If that is the case, the next step is to see whether the facts support the allegations. Following an investigation, if we determine that serious questions are raised under the Competition Act, we have the ability to raise the issue before the courts.

● (1335)

The Chair: Thank you, Mr. Laframboise.

We move now to Mr. Petit.

Mr. Daniel Petit: Thank you, Mr. Chairman.

Good afternoon, witnesses. My questions will primarily be addressed to Mr. Gauvin, Mr. Labonté or Mr. Houle.

Mr. Gauvin, Shell officials mentioned that they met with officials from the Department of Natural Resources. Were they talking about you or about the Quebec Ministry of Natural Resources and Wildlife?

[*English*]

Mr. Jeff Labonté: We have not met with any members of Shell. I imagine that if they said so, it was with ministry officials from the Province of Quebec.

[*Translation*]

Mr. Daniel Petit: As I understand it, Mr. Labonté, you are saying that the individuals who met with Shell are officials from the Quebec Ministry of Natural Resources and Wildlife. Are you certain? Have you checked that? Were you present?

[*English*]

Mr. Jeff Labonté: We were not involved in any meetings with Shell and Quebec ministry of natural resources officials. I would imagine that the minister of natural resources in Quebec has review of this particular closure and has an evaluation under way that is looking at this particular case, and I understand that the minister needs to sign off on this particular conversion. That would be likely in most provinces and jurisdictions, where the regulations are provincial in nature with respect to petroleum products and crude oil, as the Constitution Act points out with respect to natural resources.

The provinces typically have regulations that look at supply and the marketplace and things that are operating, and it would be a decision taken by a particular province as to whether or not things have the ability to open or close. So I can't really say anything more than that is likely what is occurring and that we have not met with Shell officials, nor were we involved in the discussions with the Province of Quebec officials and Shell.

[*Translation*]

Mr. Daniel Petit: Does your department know how the Quebec Ministry of Natural Resources and Wildlife intends to proceed? As you know, Shell officials gave very clear testimony this morning. They want to shut down the refinery and convert it to a terminal. That facility will be turned into a kind of parking lot only for gasoline, as Mr. Coderre was saying.

Mr. Labonté, the Quebec Petroleum Products Act requires that the Quebec Minister of Natural Resources and Wildlife authorize any change that is requested. Do you know whether the Government of Quebec has authorized the conversion of the refinery to a terminal? Also, are you aware of the process involved and what permits that must be secured in order to convert a refinery to a terminal? Do you know whether the Quebec Minister of Natural Resources and Wildlife has authorized such a change?

Mr. Jeff Labonté: Thank you for the question, Mr. Petit.

[*English*]

I'd have to say, at this point in time, I do not believe or I'm not aware of whether or not the minister in Quebec has granted authority to Shell to proceed with the conversion. I understand there's an injunction until September. I would imagine that the process is under way as to that particular undertaking, as the standing order for the injunction continues.

The procedures as to what would be evaluated and how the process works are not things we have responsibility for, so we're not acutely aware of how that occurs and all the intricate steps involved. I imagine that Shell would be able to speak to what those look like—and perhaps the members of the Province of Quebec's administration with respect to the procedures.

[*Translation*]

Mr. Daniel Petit: Mr. Labonté, you are the spokesperson, or at least you seem to be speaking for the two other individuals.

I am from Quebec. This authority rests with the Province of Quebec, not with you. Do you know whether the Province of Quebec has authorized the conversion of the refinery to a terminal? Are you aware of the current situation in that regard? Have you received any documentation, e-mails or anything that would suggest that Quebec has decided, through its Minister of Natural Resources and Wildlife, to convert the refinery to a terminal? Do you know whether that is the case?

● (1340)

[*English*]

Mr. Jeff Labonté: We're not aware of any decisions that have been made as to proceeding with the conversion, or any dismantling or any of the steps.

[*Translation*]

Mr. Daniel Petit: Fine. Can we say, however, without involving you personally, but rather, involving your department, that the decision to authorize the conversion of a refinery to a terminal does indeed rest with Quebec, in accordance with the Petroleum Products Act which is still in effect in Quebec? It is not up to the federal government to decide whether there will be a refinery or a terminal. That decision rests with Quebec, and not with the federal government.

Mr. Jeff Labonté: Thank you for your question.

[*English*]

The answer to the question is yes, it is the Province of Quebec that has the authority and the regulations to permit that particular terminal conversion to proceed. The federal government does not have authority and the Department of Natural Resources doesn't have authority to provide the go-ahead on that particular proposal from Shell.

As I pointed out in my presentation, NRCan's authorities in this are limited to the Energy Supplies Emergency Act, as well as the Emergencies Act, and we typically work at the level of analyzing markets and providing a number of things. However, we do not have the authority to approve or disapprove with this particular case.

[*Translation*]

The Chair: Thank you, Mr. Petit.

Mr. Godin, please.

Mr. Yvon Godin: Thank you, Mr. Chairman. I am going to continue along the same lines.

Quebec alone has the power to authorize or not authorize the sale of the Shell refinery, or its conversion to a terminal. If Quebec decided not to grant the permits in July, could the federal government intervene and say to Shell that, since it has no permits from the Province of Quebec and there is a shortage of oil in the region, it will be required to continue its operations, because there is an emergency?

Mr. Jeff Labonté: Thank you for your question.

[*English*]

It is a hypothetical question.

With respect to proceeding to the closure or the conversion, or anything related to that, it is a provincial jurisdiction. In this particular case, should there be a delay or should there be any uncertainty, given the excess capacity in the particular Canadian refinery marketplace, as well as the competitive petroleum import market in Quebec, the nature of the uncertainty would not cause the federal government to intervene under the Emergencies Act, nor under the Energy Supplies Emergency Act, as it would not appear, as I pointed out earlier, that the particular issue is a national emergency or of a national nature.

Again, the federal government's role in a national emergency relies on the provinces to deal with energy shortages and to reactivate all business activities. Prior to enacting emergency powers, the federal government would need to make certain that the provinces requesting the aid—which would have had to request the aid—had taken all reasonable steps to minimize any of the potential disruptions. To do this, the province would likely have to declare its own state of emergency before the federal government would take action on that particular front. In a declared state of emergency, we would consider that. However, as I pointed out, NRCan does not believe and our assessments don't believe this would meet the conditions under the act.

[*Translation*]

Mr. Yvon Godin: That means we are now talking about five provinces. In the Atlantic region, there are four provinces, and if we add Quebec, that represents an area covering almost half of Canada. Shell says that if it can't have its terminal by September, there will be an oil shortage. That is why the situation is urgent.

When something affects half the country, is that not enough to declare a national emergency? Is that what you are saying?

● (1345)

[*English*]

Mr. Jeff Labonté: What I'm saying is that the marketplace in Atlantic Canada and Quebec is fairly competitive and there are a number of different refineries and that the potential closure or the disruption related to this particular refinery is still within the limits of the capacity currently operating.

Of course, the refineries don't close overnight. They typically have forward contracts and supply arrangements with their particular customers. So one would expect that the signalling that's going on now under the uncertainty is leading to different arrangements being made between particular suppliers.

Certainly in Atlantic Canada the capacity for the refineries to produce far exceeds the capacity for Atlantic Canada in terms of demand at this point in time. So again, although it may represent half of the country from a geographical perspective or aspect, it doesn't, from a demand perspective or from a shortage of capacity perspective, present a particular issue that would trigger the act.

[*Translation*]

Mr. Yvon Godin: I would like to look at page 8 of your deck.

It says there that the domestic industry operates in an international marketplace and that, due to economies of scale, rationalization is a worldwide trend. Demand projections continue to be uncertain, foreign competition is increasing. Capital and labour costs are lower —that is what is called cheap labour. There is less regulation—there we're talking about countries with no regulations. It talks about production increases in non-OECD countries and economies of scale.

This is a document that was produced by the Department of Natural Resources and it describes exactly what is currently taking place. Can the Competition Bureau not open up a file and begin investigating this?

Mr. Bilodeau, what are your thoughts?

Mr. Richard Bilodeau: We undertake investigations and reviews pursuant to the Act, and there are several ways through which that can occur.

It can occur if a complaint is lodged or if the Bureau hears about a particular situation. In order for the Bureau to conduct an investigation, the particular issue must be consistent with its mandate. It must raise issues in relation to the provisions dealing with mergers, and abuse of dominant position under the Act—for example, allegations that competitors have agreed to fix prices, allocate markets to themselves or divide production among themselves.

In that context, if allegations are made and forwarded to the Bureau, we review them and start an investigation in accordance with our Act. We have done that a number of times in this industry, but in all kinds of other industries as well. Once we are made aware of allegations, we review them. If there is a serious issue under the Act and we feel it is appropriate to take steps, we do so. We can proceed by laying criminal charges, in the context of a criminal investigation, or by referring the matter to the Competition Tribunal, which is the specialized tribunal with responsibility for hearing Competition Bureau cases.

Mr. Yvon Godin: I see.

As I understand it, the refinery is already in the process of being shut down. You are well aware of that. If you are not aware of it, you missed the boat today.

Mr. Richard Bilodeau: We are aware of it.

Mr. Yvon Godin: So, we are all aware of Shell's intention, which is to shut down the refinery. We practically know that the company is not interested in selling, unless it can prove the contrary in the coming days.

The Department of Natural Resources—this is not me talking, because I have the Department's deck in front of me—makes reference to competition, lower capital and labour costs and less regulation. Less regulation, imagine! There will be more damage caused, just like in the Gulf of Mexico. As far as they are concerned, less regulation is not a problem, because it means lower costs for them.

In terms of increased production in non-OECD countries and economies of scale, by getting their oil from somewhere else, they will save money. Competition will mean that markets will be hard-hit. If a company were to lodge a complaint, you would have the power to investigate under the Act.

Mr. Richard Bilodeau: We don't need to receive a complaint in order to investigate. We can lay charges if we become aware of a situation that raises a problem—

Mr. Yvon Godin: And in your opinion, does the current situation meet that test?

Mr. Richard Bilodeau: Well, as I said a little earlier, Shell's unilateral decision to close its refinery raises no concerns with respect to competition, as far as the Competition Bureau is concerned.

● (1350)

Mr. Yvon Godin: Shell officials appeared this morning and said they can get oil anywhere. I may have misunderstood, but according to what they were saying, it's a lot cheaper to buy it somewhere else and ship it here. Refineries are shutting down all over the place and no new ones are being built. Do you not think you now have enough information to conclude that Shell is only interested in making more money?

Mr. Richard Bilodeau: It's important to remember that, as far as the Competition Bureau is concerned, what happens somewhere else or under different regulations are not matters the Bureau reviews or examines in any great depth, unless there is a requirement to do so because a specific issue has been referred to us.

You talked about making money. As long as a company's actions and the unilateral decision to shut down a refinery or convert it to a terminal—as has been announced—do not contravene the Act, as regards the provisions dealing with abuse of dominant position, or collusion with competitors, it raises no concerns at our end.

Mr. Yvon Godin: There is no law against making money.

The Chair: Mr. Godin, that's it for you.

We move now to Mr. Rota.

Mr. Anthony Rota: Thank you very much, Mr. Chairman.

[*English*]

Good afternoon, and thank you.

We had Shell in earlier—we had a number of players in this morning—and as a corporation, Shell's goal is to maximize profits. Whether it's in the terminal or in refining, it doesn't really matter. It doesn't matter to us either, and we shouldn't be judging it. They're looking for results for their shareholders—good results. That's business. There's nothing wrong with that. That's part of a healthy business.

As elected officials, on the other hand, it's our responsibility to ensure that capacity, or supply, is there for the country. We want to make sure that there is that supply there. Right now we're talking about 13% of our eastern refining disappearing. It's gone. It's not being shifted somewhere else. Well, it's being shifted somewhere else; we're relying on another country to supply it.

Now, when we look at production in the United States, it's somewhat stalled. They have an economic downturn. We're okay right now—we can get it from them—but it's going to turn around at some point. They're going to use up the supply. That causes me concern. When the economy picks up, demand for U.S. oil and products that are byproducts of oil are going to be sucked up somewhere, and we're going to have a problem. Supply is not guaranteed for Canadians. If it's supplied on the ground here, we have some control of it.

I know that people say that the free market will take of everything, and supply and demand will drive up the price, but when you can't get the product....

I come from northern Ontario. Heating oil is very essential. When you're in northern Canada, heating oil is an essential service, something that we should be protecting nationally. I'm not hearing that right now.

Maybe we're talking to the wrong people. I'm really not sure whether we're dealing with the right people. I would think that the Competition Bureau would be the group that would look at that.

So the question is very simple: are we speaking to the right people? We're seeing competition, but it's more on a macro level. Are you the right ones we should be speaking to?

Mr. Richard Bilodeau: I can't answer the question of whether you're speaking to the right people. What I can tell you, however, is that—not to repeat myself—we have an act, the Competition Act, that tells us what our mandate is, and we operate within that mandate.

Again, if certain allegations were made and they were proven, we would take action in any matter. I'm not talking necessarily about this situation here. We have the Competition Act, and if allegations are made and the act is violated, we will take action. But right now we don't have any concerns based on the information that's available to us at this point.

Mr. Anthony Rota: How would you collect those concerns? Would you have to actually do some investigation or is it by complaint? Would somebody have to file a complaint with you?

Mr. Richard Bilodeau: Filing a complaint is generally the primary method by which we become aware of certain conduct in the marketplace. It's not always the only method. We can learn of situations through the media or through immunity applicants who decide to divulge their participation in a criminal cartel, for example.

The first step in our investigation is to assess whether or not the alleged conduct falls within the ambit of the Competition Act. If it does, then we will investigate and collect information. If we think it fits what the act sets out and there is a violation, we will take action at that point. We have in the past, as we have in the gasoline and any other industry—

● (1355)

Mr. Anthony Rota: I understand that. As it stands right now with this case, it doesn't fall under your purview is what you're telling me.

Mr. Richard Bilodeau: At this point we're not engaged in any matter with regard to Shell Canada's closing of the refinery.

Mr. Anthony Rota: So it doesn't fall under your purview. Yes or no?

Mr. Richard Bilodeau: Right now, on a decision like that, no.

Mr. Anthony Rota: Okay, so it doesn't.

Where would we go for something like that? I ask because we obviously are wasting your time, and I don't want to waste your time and we're only here for a short period. So where would we have to go, if you know? If you don't, that's fair too. So you don't know?

Mr. Richard Bilodeau: I don't know where you would go for that. I would defer to my colleagues. Maybe they can....

A voice: Refuse to deal.

Mr. Anthony Rota: Well, there's another option, which is to refuse to deal. That is one of the clauses within this.

Mr. Richard Bilodeau: Yes.

Mr. Anthony Rota: Where does that fit in here?

Mr. Richard Bilodeau: I don't want to speculate on what would fit and what would not fit. What I can do is to explain to you what refusal to deal is, if you are interested in hearing about it.

A refusal to deal is in section 75 of our Competition Act, where a person refuses to sell product to somebody else.

Mr. Anthony Rota: Okay, so it's just about product. It's not about a company, and you don't deal with the actual corporations then?

Mr. Richard Bilodeau: I would have to verify that. My quick recollection is that it's product.

Mr. Anthony Rota: Okay, very good.

Maybe I'll go over to Mr. Labonté from the Ministry of Natural Resources. On a larger scale, on a macro scale, at what point do you get involved in competition? Again I'm asking because I don't want to waste your time, but are we barking up the wrong tree? Should we even be bothering you or wasting your time?

Mr. Jeff Labonté: Well, I don't think serving you here at the committee and providing testimony is wasting anyone's time.

Mr. Anthony Rota: No, no, but is it something that falls under your purview?

Mr. Jeff Labonté: From our perspective, the competition in the petroleum sector or the oil and gas sector is not in the purview of the act under which we would act. We monitor markets and we certainly monitor oil and gas prices and crude oil sales and movement of product. To understand what is going on, we use Statistics Canada data and we have agreements with all of the particular producers and companies so that we can understand what is happening in the marketplace. So we don't measure it against a competitive landscape or whether or not it leads to adequate or appropriate competition.

Mr. Anthony Rota: Am I out of time?

I'm going to pass the rest of my time to Mr. Coderre, who only has a short question.

[*Translation*]

Hon. Denis Coderre: Mr. Labonté, if the Department of Natural Resources has nothing whatsoever to do with Shell, could you please explain why you told my colleague, Mr. Petit, earlier that you were not aware of the fact that there had been discussions between Shell and the Department of Natural Resources—initially, it was at the federal level, and after that, with Quebec?

Did you know that on February 18, 2010, the President of Shell Canada, Lorraine Mitchelmore, met with Minister Paradis and his chief of staff? Are you aware of that?

Mr. Jeff Labonté: Thank you very much for your question.

[*English*]

I'm aware of the fact that there was a committee and a survival committee established—

Hon. Denis Coderre: That was not my question

Mr. Jeff Labonté: —and that it has involved a number of levels of government and that Minister Paradis had some interest in that particular activity as a minister from Quebec and for the particular region. I'm not privy to the conversation between Madam Mitchelmore and Minister Paradis.

Hon. Denis Coderre: Let me rephrase that in English. You were saying, if I recall, that you were not aware of or don't think Shell Canada had any discussions with the Department of Natural Resources. Were you aware that the minister met the president of Shell Canada?

Mr. Jeff Labonté: I was not aware whether Minister Paradis met with the president of Shell Canada.

Hon. Denis Coderre: Okay.

What's the communication link then? I've been a minister, and one thing I know is that everybody knew everything I was doing, and that Christian Paradis is the same kind of person. So I guess if the Minister of Natural Resources signed three letters to make sure that we could save the refinery, you must be aware of some discussions between the minister's office and the department, especially because it's under your jurisdiction.

Mr. Jeff Labonté: We certainly have provided information to the minister and to officials in government about this particular refinery and the refining industry overall and the oil and gas markets in Canada. That is our responsibility.

As to the specific nature of their discussions, I'm not aware of what they discussed, which is what—

Hon. Denis Coderre: But you were aware they met?

Mr. Jeff Labonté: I am aware they met. I read it in the media a number of times, sure—and others, I understand. As to the specific date, I don't know what date it was.

● (1400)

The Chair: Okay, Mr. Coderre.

We will now move to Mr. Allen.

Mr. Mike Allen: Thank you, Mr. Chair, and thank you to the witnesses for being here.

I guess the first question is to our natural resources folks. We talked a little bit about the government not intervening in the cases. I want to pick up a little bit where Mr. Rota left off.

You are still monitoring the energy markets and you're monitoring the supply. Can you elaborate a little bit on how you do that? Because Mr. Coderre specifically asked a question on a regional basis and you said that under your conditions it would not rate as a national issue. I'm specifically interested in how you review and make a decision on a national scale. Do you review the specifics of a regional issue that comes up to determine if that could in fact have a national impact? And how do you do that?

Mr. Jeff Labonté: Certainly our analysis is ongoing and regular in terms of petroleum markets and oil and gas markets in Canada, and we do that on a longitudinal basis, looking at trends over time as well as more accurate information.

In terms of our assessment as to what would trigger authorities under the Emergencies Act or the Energy Supplies Emergency Act, that is something that would be at the national scale. Part of that role is actually the department working with its provincial counterparts to establish whether it seemed to be, in a regional sense, an emergency and whether that would then constitute a national emergency from their perspective.

I can certainly speak to perhaps a few examples that are realistic. In the late 1990s there was an ice storm in eastern Ontario, upstate New York, and much of the eastern townships in Quebec, as well as the Island of Montreal. That ice storm crippled transportation of goods and services and activities going on for a number of weeks on end. I think the military was mobilized for a period of weeks, with thousands of Canadian soldiers helping facilitate in terms of what was going on with the landscape. Neither did that particular disaster or emergency trigger the particular acts under our authority.

The Saguenay floods that occurred in early 2000 in the Quebec region, which would also constitute a quite severe economic and environmental situation, did not constitute a national emergency.

What would trigger the department's action under the two acts is a fairly high threshold, I would say, in terms of what would meet the standard. Certainly there are a number of events that occurred in the last couple of decades that have been quite significant on Canadians and the Canadian economy, none of which has triggered the act.

Mr. Mike Allen: Okay. So there have been a number of refinery closures. As you have indicated in your comments, I think, there have been 31 in Canada. So if I'm led to believe this, there has been no assessment and the government has not been involved or played any role in these. In a major issue like this, if you didn't get involved in any of those major ice storms or anything, how do you say that you are ensuring security of supply of energy?

Mr. Jeff Labonté: Again, we look at the macro situation across the whole country with respect to the capacity that exists within the refining sector, as well as with the oil and gas operators. Of course, they operate on two levels. They operate at the level of the upstream and the downstream, as I mentioned earlier.

From our perspective at this point in time, and certainly over a prolonged period of time, the economic environment has been such that the capacity has been lower than the actual throughput, which means that reserve capacity exists within the refining sector to meet increased demand, and that demand hasn't existed, so there has been underutilization—which I think was part of the opening presentation I made.

In terms of the rationalization, certainly there has been a trend going on for at least 30 years that has seen rationalization in the refinery sector in Canada, and of course around the world, as I pointed out.

The unfortunate side of refineries is that Canada has gone from some 40 refineries to about 16 at this point in time, and that has occurred over the last 30 years. Over that period, while capacity has increased, the actual number has decreased and their economies of scale have substantially increased. A number of those previous refinery closures or conversions have existed and there hasn't been a requirement under any act for the government to act or to intervene into the market-based policy framework that we have for the energy economy in Canada.

● (1405)

Mr. Mike Allen: What is your timeline for monitoring these shortages? As you presented, page ten in your deck talks about what this was like in 2009. There have been significant changes, obviously, so the 2007 report was significantly out of date. How often do you update this chart reflecting numerous conditions and changes in the market?

The Chair: Thank you, Mr. Allen.

Go ahead, please, Mr. Rau.

Mr. Michael Rau (Advisor, Petroleum Markets, Oil Sands and Energy Security Division, Petroleum Resources Branch, Department of Natural Resources): I can respond to that. The answer is that we haven't actually had a full report since 2008, but we monitor this stuff on almost a weekly basis where we can get it. The Statistics Canada data right now comes out about 60 days after the month of record. We have a number of other different sources through the NEB and we monitor the Energy Information Administration in the U.S. quite regularly, but we haven't actually updated our report specifically since 2008.

The Chair: Thank you, Mr. Rau.

Monsieur Bouchard.

[*Translation*]

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

Thank you for appearing before the committee this afternoon.

I would like to go back to a question put by my colleague earlier. It is addressed to officials from the Competition Bureau.

Let's just assume that Shell's oil terminal becomes a reality. In that case, there would be no longer be any processing done. And imagine that, six months later, a citizen lodges a complaint with the Competition Bureau and provides evidence that costs have gone up. Would that complaint be admissible?

Mr. Richard Bilodeau: First of all, we review all the complaints we receive. At the Civil Matters Branch where I work, we review all the complaints referred to us, as provided for under the Act.

I presume you are talking about the possibility of a price increase within a period of six months. Without making any particular assumptions, I can tell you this. In terms of price levels, whether the cause is the impact of the closure of a refinery or its conversion to a terminal, companies are free to set prices at a level the market can absorb and consumers are willing to pay. No one likes high prices, but the fact that individual suppliers can impose high prices, either because demand has increased or because they anticipate increased demand, does not in itself constitute a violation of the Competition Act. High prices are problematic if they result from anti-competitive behaviour, such as the formation of a cartel, price fixing, abuse of dominant position or price maintenance arrangements. The behaviour must also lead to a substantial lessening of competition.

Mr. Robert Bouchard: Let's just imagine now that the refinery is sold to Delek US Holdings. I would like to know what process the Competition Bureau would follow in such a case. Would a specific action be taken? If the transaction goes through, what exactly will you be looking at?

Mr. Richard Bilodeau: I am going to let my colleague answer that question.

Ms. Martine Dagenais: Thank you for your question.

If the sale is finalized and exceeds the thresholds prescribed by law, the Bureau can and likely will review the transaction. The Competition Bureau looks at mergers with a view to determining the market share of the parties involved, which competitors will remain in the market following the sale, what degree of market concentration exists and what barriers to entry there are. Ultimately, we have to look at whether there is a substantial lessening of competition in the relevant market as a result of the merger.

Mr. Robert Bouchard: What specific circumstances would result in the Competition Bureau not being in favour of this type of transaction? Could it be argued that issues related to the transaction are such that it should not go through and under what circumstances would that apply?

Ms. Martine Dagenais: As I pointed out earlier, it would depend on whether, following the merger, the parties have high market shares with very high barriers to entry that could result in their acquiring significant strength in the market in question. It would also depend ultimately on whether it can be proven that the merger would lead to a substantial lessening of competition. In such a case, the Bureau could take steps and refer the matter to the Tribunal. In the opposite case, however, the Bureau would simply authorize the merger.

● (1410)

Mr. Robert Bouchard: Thank you.

I would now like to address a question to officials from the Department of Natural Resources.

In your deck, it says that in 1960, there were 44 refineries. Today only 16 are left. In your opinion, is there a threshold? Would it be acceptable for there to be only two refineries in Canada? Is there a minimum threshold? Since you have done a study on this, I am interested in knowing whether you have set a minimum threshold for the number of refineries that are needed.

[*English*]

Mr. Jeff Labonté: *Merci pour la question*.

When one examines the landscape with respect to the refineries and their capacity, I think a number of factors are at play. Certainly the sheer number, from 44 to 16, suggests that it could be a situation of interest or concern. At the same time, we have to look at the capacity in terms of what the throughput potential is of each of those refineries. So a number of the issues that one would want to look at... For example, some of the larger ones have the capacity of four, five, six, or seven of the refineries at this point in time. The large one in Lévis and the larger one in Saint John are among the larger.

On a global scale, of course, the capacity for refineries is growing in many other economies. That presents opportunities for us to be consumers of imported petroleum products versus the export of crude oil, which, again, is the dynamic of the market-based energy economy in Canada.

Certainly from a regional perspective, all of the regional elements of the country have quite competitive landscapes where different refineries compete with each other and with independents to provide a reasonable opportunity for retailers to provide product to Canadians.

So I can't say that there's a minimum number per se, although we look at the value and the volume of the capacity as well as the number in the regional locations.

The Chair: Thank you.

Merci, Monsieur Bouchard.

I think it's helpful for members to understand that the Government of Canada doesn't have the legislative authority to regulate the supply of upstream or downstream petroleum products in Canada.

A voice: [*Inaudible—Editor*]

The Chair: I understand that, but I think it's important, because there have been a number of questions about this in committee.

You know, the Government of Canada did have that legislative authority. It was part of the 1980 budget, in the national energy program. That program was abolished in the 1980s. Since then the free trade and free market approach has been reinforced through the North American Free Trade Agreement.

So the Government of Canada doesn't have any legislative authorities to regulate, to ordinarily and normally regulate, the supply of upstream or downstream crude oil or petroleum products in Canada. It's just a point of information for the committee because I think it's helpful.

Go ahead, Mr. McTeague.

Hon. Dan McTeague: Just for the record, I don't recall, unless I wasn't listening to this riveting conversation, which is always a possibility—and Mr. Wallace is coming up soon—anyone suggesting that somehow any member here was in any way inferring market regulation or a question of restraining supply.

The Chair: Mr. McTeague, a number of members from both sides have asked questions about whether or not the Government of Canada had any legislative authority to interfere with the supply of petroleum products or crude oil, either upstream or downstream, as it related specifically in this case to Shell's pending decision to close its refinery in Montreal. The witnesses have indicated clearly that unless it's an emergency situation under the Emergencies Act, they don't have that authority.

I just wanted to reinforce that the authority doesn't exist in legislation. It did exist in the 1980s, but it no longer does.

Hon. Dan McTeague: No, Chair, I appreciate what you've just said, but I think it's not correct to suggest that there isn't the ability for the government to do something, market restriction being one; I'm sure the bureau will want to look at that if I do get to my questions.

Thank you, Mr. Chong.

The Chair: Okay. Thank you.

Mr. Wallace.

● (1415)

Mr. Mike Wallace: Thank you, Mr. Chair. Feel free to take that out of my time, because I'm out of here at 2:30.

My questions are simple, wholly for the Competition Bureau. There have been discussions about “closure”, “merger”—those words. We're talking about one refinery here.

If Shell decided to get out of the refinery business altogether and they were going to close every single refinery they have across Canada, would the Competition Bureau have anything to say, any legislative authority to say anything about it?

Two, can the Competition Bureau tell a company, no, you cannot close, you have to stay open and operate?

Mr. Richard Bilodeau: First of all, the Competition Bureau can't tell anybody or any business what to do or what not to do.

Mr. Mike Wallace: Right.

Mr. Richard Bilodeau: What we have the authority to do is to investigate and refer matters in the context of criminal investigations to the Attorney General, and in civil cases to the Competition Tribunal.

As I've stated before, in the current situation, based on our information, as long as firms make unilateral decisions in their daily activities and in their business operations, that does not usually raise any concerns under the Competition Act.

Mr. Mike Wallace: Okay, that's clear. Thank you very much for that clarity.

The other thing I find somewhat ironic about today's discussion is that we have a foreign or internationally owned company in Montreal, or at least a unit of it, and that we have had a discussion today about it being purchased by another foreign entity, a company from the United States. So would the Competition Bureau normally hear about Canadian companies or Canadian organizations being purchased by foreign entities, and is that an issue for them to look at in terms of what that does to competition? Does it make a difference that Shell is an international company compared with say a Canadian company?

Mr. Richard Bilodeau: Before getting into the details, just so that I understand your question, you were asking whether it makes a difference if the purchaser is Canadian or foreign, when we review a transaction or a merger?

Mr. Mike Wallace: And the seller.

Mr. Richard Bilodeau: And the seller.

Maybe the best way to answer that question is to explain how mergers are looked at and what triggers a review of mergers by the Competition Bureau. For that, I'll turn it over to my colleague, Martine.

Ms. Martine Dagenais: As I said before, the bureau has the power to review any mergers in Canada to make sure they don't result in a substantial lessening of competition. We look at different factors. Foreign competition is a factor we look at, but not whether it is a U.S. buyer or a Canadian asset being purchased. At the end of the day, that kind of decision is more a trigger when we look at if a transaction is subject to notification in Canada. If you have a U.S. buyer with no assets in Canada, maybe you won't be able to trigger the notifiable requirements under the act, where the commissioner is required to get some information from the parties. But in terms of the competition review, we don't—

Mr. Mike Wallace: So the origin of the buyer or the seller in terms of its corporate nationality plays no role in the Competition Bureau's responsibility of looking at a transaction?

Ms. Martine Dagenais: We look at the impact for sure, but in terms of the threshold to trigger a requirement of a notification for the commissioner to review a transaction, it could have an impact. But we—

Mr. Mike Wallace: Okay.

Those are my questions, Mr. Chair. Thank you very much.

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

[*Translation*]

Mr. Godin, do you have any questions?

Mr. Yvon Godin: Yes, I have one or two. I would like to go back to what Mr. Wallace was saying earlier. Does it make a difference whether this asset belongs to Shell or to Delek US Holdings? Both are U.S. companies. And yet there is a difference. One of the two companies wants to shut down the refinery, convert it to a terminal and bring in cheaper products from elsewhere, while the other wants to operate the refinery. In my opinion, there is a difference between the two companies. I would just like to clarify that.

Furthermore, the domestic industry operates in an international marketplace. Mr. Gauvin is responsible for the oil sands. The fact is that if you consider the overall picture these days, with free trade dating back to the 1980s, as Mr. Chong referred to, both past governments and the current government of Canada really couldn't care less. There is oil in Alberta that we want to sell to other countries. They will refine it and send it back to us. We have great arrangements with every country. The system is working very well. So, there is no desire to interfere. I think that's what the government is doing. It is simply washing its hands of the whole affair. Do you agree with me on that?

● (1420)

[*English*]

Mr. Jeff Labonté: I'm not sure I understand the nature of your question. *Je m'excuse*.

[*Translation*]

Mr. Yvon Godin: Did you not understand my question?

[*English*]

Mr. Jeff Labonté: I wasn't sure if I understood what you were asking me.

[*Translation*]

Could you repeat the question?

[*English*]

Mr. Yvon Godin: Sure I will.

I keep going to page 8 of your document, where it says: "The domestic industry operates in an international marketplace". And it continues by mentioning "lower capital and labour costs; less regulation; production increase in non-OECD countries; economies of scale", and all of the things we talked about. Right?

We have Mr. Claude Gauvin here from the ministry, representing, I think, through Natural Resources Canada, the oil sands and energy. We're dealing with all of that. Our country has the oil sands and I don't think they have all the refineries in Alberta. Then there's this big game getting played today about, well, I'll sell you the crude and you refine it and send it to us. They don't want to pick a fight with anybody; they're all polite to each other. Then the government on this one here is more like they're washing their hands of it, and it's a free-for-all.

Is that clearer?

[*Translation*]

Mr. Jeff Labonté: I do not agree with you. In Canada, there is a free market for trade in petroleum products. There are always regional characteristics in Canada. The market is highly complex. There are a lot of different factors in terms of transportation, distances, the population of Canada's cities and distribution.

It's highly variable and change is frequent. In fact, that is the way it is in Western Canada. We are talking essentially about Canadian resources being produced in Western Canada and Quebec. There is a need to have access to inputs imported from other countries. It's a trading process within a very free and open market. Every company makes its own decisions independently and that introduces new factors into the Canadian market.

Mr. Yvon Godin: Since the North American Free Trade Agreement was signed, the market has been very free and very open.

Mr. Jeff Labonté: That's correct.

Mr. Yvon Godin: In that respect, I agree with you.

Mr. Jeff Labonté: However, I do not agree with you when you say that we are simply washing our hands of the whole affair.

[*English*]

Mr. Yvon Godin: Well, I think you wash your hands not with water but with oil, and we're getting...I'm not going to use the other word that's coming to my mind.

[*Translation*]

Mr. Chairman, I would just like to close by saying that I hope the Prime Minister of Canada will involve himself in this matter and get in touch with the Shell officials to ask them to go back to the bargaining table.

The Chair: Thank you, Mr. Godin.

[*English*]

That's our last member for today.

Mr. McTeague, go ahead.

Hon. Dan McTeague: I have two questions, actually.

The Chair: Yes, go ahead.

● (1425)

Hon. Dan McTeague: One is to table a letter that I had already written to Mr. Paradis, back on March 29, 2010, concerning this, as well as a response by the minister. I will table this very short answer. It deals with Monsieur Labonté's answer to my colleague Monsieur Coderre in which he was not aware of what had happened:

> Although this is a private-sector business decision, my staff continues to monitor the situation and the possible impacts on the energy supply and workers at the refinery.

Clearly there is something amiss here again.

The Chair: Thank you, Mr. McTeague. I'll instruct the clerk to make sure that those documents are translated into both official languages and distributed to members of the committee.

Hon. Dan McTeague: Mr. Chair, I have one question, in addition to that.

It's more of an instruction and perhaps advice to some of our witnesses. I take it from Madame Dagenais and others that they've already made a decision with respect to whether this constitutes potentially an area that would allow the Competition Bureau to examine further.

I'm a little concerned, though, about the terms and conditions of conversion from the refinery to a terminal, which could have the effect of freezing out non-branded players, could have the impact of shutting down the entire energy supply to places such as Nunavut, could have an impact on price to consumers, could make us potentially more vulnerable without the concomitant power of investigation or oversight with respect to who owns the terminals and the pipelines.

I'm concerned about the lockstep pricing in a number of major cities across Canada, 2% to 4% above world price in most of those cities for the cost of fuel.

All of this is to suggest that I want the bureau to tell me here and now if market restriction, refusal to deal, or any one of those requests made will be taken seriously, or is it a foregone conclusion?

If it is a foregone conclusion—and bear in mind that I've been around this issue for some time—in 1986 the then Conservative government under Mr. Mulroney decided that they were going to invite McMillan Binch to rewrite the Competition Act. That would be McMillan Binch whose main client was Imperial Oil. If that is the case....

Sorry, Mr. Chair, I want to go to my question.

The Chair: With respect, the last questioner was Mr. Godin. The subsequent round, if we were to continue, was to go to Mr. Wallace.

We decided to end with Mr. Godin because we are nearing the 2:30 point.

Hon. Dan McTeague: Okay. Regarding market restriction, then, is there a chance to look at that, yes or no?

The Chair: Thank you very much.

I'm sure the witnesses will be able to respond to you after the meeting if they so wish. They've answered an hour and a half of questions. We do appreciate the witnesses appearing in front of our committee today.

As a final point of information for members of this committee, I've been informed by Shell's legal counsel that they will be sending a letter to the committee, likely tomorrow, in which they will clarify and respond to some of the testimony presented subsequent to their testimony today. When I receive that letter, I will instruct the clerk to translate it into both official languages and to have that distributed to members of the committee as part of the official record.

Mr. Coderre.

[*Translation*]

Hon. Denis Coderre: Mr. Chairman, given that we will be receiving a letter of clarification, I would ask that as soon as you receive the document from Delek US Holdings with the financial information, you include it in the package as soon as possible. It would also be relevant to ask Shell to provide its term sheet.

Furthermore, because of the discrepancy between Shell's answers and those given by Delek US Holdings, I think it would be appropriate, if we deem it necessary after reviewing the documents, to consider the possibility of calling another meeting. We could then call Shell officials back before the Standing Committee on Industry, Science and Technology to provide further testimony.

[*English*]

The Chair: Thank you, Mr. Coderre. I'll have the clerk review the transcripts and ensure that the documents you have requested are requested from Shell and Delek US.

In response to your question regarding additional meetings, we have two options as a committee. You can choose to trigger a Standing Order 106(4) meeting once again, before Parliament reconvenes in the autumn. Or alternatively, we can at any point as a committee in the autumn, once Parliament has reconvened, decide to have an additional meeting on that.

So without further ado, this meeting is adjourned to the call of the chair.

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