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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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• (1100)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. *Bonjour à tous*. Welcome to the 51st meeting of the Standing Committee on Industry, Science and Technology.

Today we're going to be examining Bill C-452, a private member's bill.

Mr. Vincent is here. We are supposed to have two other witnesses—from the Industry department, Mr. Bilodeau and Ms. Einbinder-Miller. Please come forward. Have a seat.

I'll start with Mr. Vincent for ten minutes, then Mr. Bilodeau for up to ten minutes for opening remarks. Then we'll go into our regular question period, and members can ask questions either to the mover of the bill or to the department officials.

Without any further ado, Mr. Vincent.

[Translation]

Mr. Vincent, welcome! You have 10 minutes, sir.

Mr. Robert Vincent (Shefford, BQ): Thank you, Mr. Chair.

Ladies and gentlemen of the committee, Bill C-452, An Act to amend the Competition Act (inquiry into industry sector), would give the Commissioner of the Competition Bureau the authority to make an inquiry into an entire industry sector if the commissioner believes grounds exist. Bill C-452 aims to fill an important gap in the Competition Act, giving the Competition Bureau more teeth. The objective of this bill is to give the Competition Bureau the authority to start inquiries without having to wait for complaints from citizens in order to act. Bill C-452 would give the Competition Bureau the authority it needs to take action against corporations and people who are trying to take advantage of Canadian consumers.

A brief look at past legislative reform of the Competition Act shows us that the MacQuarrie Committee review, in 1952, brought about several amendments to the Combines Investigation Act, including a provision that provided for research inquiries. At that time, the Restrictive Trade Practices Commission, the RTPC, acted as an adjudicative body that also conducted investigations and research inquiries.

After minor amendments were made in 1976, the research inquiry section provided that the director upon his own initiative may, and upon direction from the minister [...] carry out an inquiry.

Officially, the goal was to ensure that the new Competition Tribunal (the tribunal) would be a strictly adjudicative body.

A Competition Bureau of Canada publication titled *Market Studies: A Contextual Overview* states that "There have been no inquiries related to competition issues starting under the Inquiries Act since section 47 was repealed in 1986." The reason is simple: the Competition Bureau had lost its authority to make inquiries.

How then, can the Competition Bureau make inquiries? The commissioner cannot begin to investigate until a judge is satisfied by information on oath or solemn affirmation that an inquiry is being made under section 10 of the Competition Act, and that a person has or is likely to have information that is relevant to the inquiry.

The Competition Bureau would be much more effective and credible if it had real investigative powers. It is difficult for all of the current conditions to be met.

Mr. Konrad von Finckenstein, former commissioner of competition and current chairman of the CRTC, made the following statement: "While the Bureau's mandate includes the very important role of being an investigator and advocate for competition, the current legislation does not provide the bureau with the authority to conduct an industry study."

The Competition Bureau certainly does not hesitate to intervene when it discovers proof of price fixing. In 2008, the bureau uncovered a price-fixing agreement between gas retailers in four Quebec municipalities. In mid-April 2009, several individuals and companies pled guilty. The investigation is still ongoing.

However, the bureau needs a sworn statement before it can begin an inquiry. Furthermore, the commissioner has access only to information that is available to the public or that is provided voluntarily by the industry.

During our committee meetings, the key question that came up was how this issue was approached in other countries. Here are my findings. In the United States, these studies can be started in three ways: when Congress exercises its legislative authority and calls on the Federal Trade Commission to do a specific report; when members of Congress or Congressional Committees, without using legislative authority, ask the FTC to conduct a study; and when the FTC decides to launch an investigation on its own.

In the United Kingdom, the Office of Fair Trading carries out market studies in various sectors of the economy, including the liability insurance market, new car warranties, private dentistry, taxi services, store cards and pharmacies.

The OFT is also able to make a market investigation reference when it suspects that a feature, or combination of features, of a market prevents, restricts or distorts competition.

The European Commission may conduct its inquiry into a particular sector of the economy "where the trend of trade between member states, the rigidity of crisis or other circumstances suggest that competition may be restricted or distorted within the common market". This authority, while used in a limited extent in the past, has been used more frequently since 2005.

In January 2005, two sector inquiries were launched, one into competition in the energy sector, specifically gas and electricity markets, and another into the financial services sector.

In Australia, the Australian Competition and Consumer Commission can conduct general inquiries in all sectors of the economy. The inquiry can be opened by the commissioner.

Some people would tell me that Bill C-10 gives the Commissioner of the Competition Bureau more authority. I would have to disagree.

These are the key elements of Bill C-10: increasing applicable sanctions; redacting certain criminal provisions on price-fixing practices; creating a more effective mechanism for criminal cases; introducing a mechanism to investigate mergers; giving the Competition Tribunal the ability to impose administrative fines on companies that abuse their dominant market position.

•(1105)

Based on the history of the Competition Bureau, particularly as regards the repeal of section 47 in 1986, and the minimal efforts made by the current government to improve the legislation, and based on what goes on in other countries, I believe that we must pass Bill C-452 and reinstate the Competition Bureau's authority to make an inquiry into an entire industry sector. To close, I still question how gas stations can all have similar prices without consulting each other. I'm now ready to answer questions.

•(1110)

The Chair: Thank you, Mr. Vincent.

[English]

Mr. Bilodeau.

[Translation]

Mr. Richard Bilodeau (Acting Assistant Deputy Commissioner, Competition Bureau, Civil Matters Branch Division B, Department of Industry): Good morning, my name is Richard Bilodeau, and I am the Acting Assistant Deputy Commissioner of Competition for the Competition Bureau's Civil Matters Branch. With me today is Rhona Einbinder-Miller, Acting Executive Director and Senior General Counsel with Competition Bureau Legal Services.

I would like to begin by thanking the committee for the invitation to appear on Bill C-452, An Act to amend the Competition Act (inquiry into industry sector). I would like to focus on two aspects that have an important bearing on the bill that you are considering today. To begin, I will briefly explain the importance of some of the specific amendments to the Competition Act that were made in 2009 as they relate to the issues before the committee today. Second, I will

provide you with a short assessment of some of the implications of this bill, should it be enacted.

[English]

The Competition Act and Canada's competition regime changed significantly as a result of the amendments passed by Parliament in March 2009. These amendments, which represent the most significant changes to the act in over 20 years, were aimed at modernizing the legislation and bringing it more closely in line with the competition laws of Canada's major trading partners.

With respect to the issue before the committee today, probably the most important amendments were those that affected the criminal conspiracy provision, more generally referred to as the anti-cartel provision. Those amendments created a significantly more effective criminal enforcement regime for the most harmful form of cartel agreements. These changes now make it illegal to engage in agreements to fix prices, allocate markets between competitors, or to restrict output, regardless of factors such as the impact of the agreement on competition in that market.

Penalties for criminal cartel behaviour were also increased. The maximum term of imprisonment for individuals was increased to 14 years, while the maximum fine per violation was increased to \$25 million.

The changes to the anti-cartel provision came into force on March 12, 2010, a year after the other amendments, thereby allowing businesses time to adjust their practices to ensure that they were in compliance with the new law. At the same time, the amendments created a new provision that allows other forms of potentially anti-competitive competitor collaborations to be reviewed by the Competition Tribunal under a companion civil provision.

[Translation]

With all of the amendments to the act now in force, a top priority for the bureau is to ensure their efficient and effective implementation. Equally important for the bureau is to bring cases forward in a responsible manner to fulfil the enforcement mandate given to us by Parliament.

As well, in this new legal environment, it is important to clarify the bounds of lawful and unlawful conduct, while ensuring Canadian business and consumers are confident the law will be enforced with vigour. This brings me to the bill under consideration today.

I would like to take this opportunity to set out some of the issues we see arising from this bill regarding both the workings of our legislation and the nature and extent of the powers that will be conferred on the bureau, should the bill be adopted. As we understand the intent of this bill, a primary concern underlying its introduction is that the commissioner does not have the proper tools to successfully investigate and prosecute price-fixing in the petroleum sector.

However, the bill before you today was introduced before the new anti-cartel provisions of the act came into force. These amendments now make it clear and unequivocal that it is illegal to agree with your competitor on price, market allocation or restrictions on output. The previous provision did not provide this clarity. The new law establishes easily understood boundaries for all businesses regarding what is lawful behaviour. The commissioner no longer has to prove that these arrangements have a negative effect on competition, which will improve our ability to hold accountable those individuals and businesses who engage in these harmful practices.

In effect, the commissioner now has access, through the legislation, to new and powerful provisions that clearly strike at the issue at the heart of this legislative initiative. Moreover, it is premature for the bureau to measure the success of these new and clear provisions, having only had them in place for eight months. We are confident that the true effectiveness of this new and clear provision will become apparent in the years to come.

[English]

One question that came up during debate on this bill was whether the commissioner has the authority to commence an inquiry on her own initiative, or whether she must receive a complaint before she can begin a formal investigation.

Let me be clear that the commissioner does not have to wait for the filing of a complaint with her office before starting an inquiry. Whenever the commissioner has information that indicates that one of the enforcement provisions of the act has been or is about to be violated, regardless of the source of that information, section 10 of the act provides the commissioner with the authority to commence an inquiry into any matters she considers necessary. Of the formal inquiries that are currently being conducted by the bureau, approximately 30% were initiated without complaints.

To conclude, I would like to emphasize that when Parliament amended the Competition Act 21 months ago it provided the bureau with effective means to enforce Canada's criminal conspiracy laws against those serious offenders who agree to fix prices, allocate markets, and restrict output. These amendments, which came into effect in March 2010, combined with our existing powers to collect evidence and protect those who come forward to disclose anti-competitive activity, allow the bureau to act more effectively in the best interests of Canadian businesses and consumers.

•(1115)

[Translation]

Without question, the debate around Bill C-452, and the bills that preceded it, highlight issues in certain industry sectors that are important to many consumers, and to the bureau. We have, particularly since the March 2009 amendments, effectively legal means, and corresponding evidence-gathering tools, to respond vigorously when issues are raised under the Competition Act.

The Competition Bureau is pleased to have the opportunity to contribute to the committee's deliberations. We remain confident that under the new rules passed by Parliament, we can continue to ensure that Canadian businesses and consumers prosper in a competitive and innovative marketplace.

I will now turn to any questions that you might have. Thank you.

[English]

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

Members, we've been used to having an overabundance of witnesses, so it will seem rather luxurious to you to have full seven-minute rounds. However, you know what happens: time still flies, so mind yourselves accordingly.

Mr. Rota is next, for seven minutes.

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

I may be giving a few questions over to Mr. McTeague.

[Translation]

Thank you very much, Mr. Vincent, for being here. Welcome, welcome back. It is nice to see you again.

We have heard that as a result of changes to the act a few months ago, Bill C-452 may not be necessary. The bill was introduced into the House before those changes came into effect. We think it is very important to protect consumers.

What are the gaps in the legislation that was passed—Bill C-10, I believe—that your bill will fill in or make up for?

Mr. Robert Vincent: Thank you for your question.

Mr. Anthony Rota: It is a rather general question; if you would like to address anything specific—

Mr. Robert Vincent: Yes. Bill C-452 creates an investigative power. The Competition Bureau does not have that power.

If you look at Bill C-10, it creates a power to prosecute and to impose fines, but not to investigate. If you want to prosecute and impose fines, you first have to be able to prove that the companies formed some kind of cartel. If you cannot investigate, then even with all the power in the world to impose fines, you will not be able to exercise that power.

Mr. Anthony Rota: Thank you very much.

Mr. Bilodeau, did you say that you did have the power to investigate or that you did not? Could you clarify that, please?

Mr. Richard Bilodeau: We do have the power to investigate. We had it before the Bill C-10 amendments came into effect in March 2010.

Whenever the commissioner has reasons to believe that an offence under the act has been committed or that there are grounds for a court order, she has the power to cause an inquiry to be made under section 10.

The amendments that came into effect in March 2010 simplified the circumstances in which we can investigate cartels. Before, when there were allegations of price-fixing by a cartel, for example, we had to prove not only that there was a price-fixing agreement, but also that the agreement had a significant effect on competition.

Parliament, with Bill C-10, has made us responsible for establishing that there was a price-fixing agreement among competitors, but without having to show that there was any effect on competition. It is sufficient to prove that the agreement among competitors fixes prices, allocates markets or lessens production.

We no longer have to prove any effect on competition.

Mr. Anthony Rota: I am hearing two different things. You are both saying the same thing can be done under two different acts. Have I missed something?

Mr. Robert Vincent: You have not missed a thing.

Mr. Anthony Rota: I am trying to clarify the differences between the two. I have read them and I see similarities.

I am concerned about the potential for an inquiry without any complaint having been made, without any—I do not want to say “without any reason”, but... I am concerned about the position becoming politicized. All of a sudden, there could be a witch hunt. For example, there could be a problem with an industry sector, and all of a sudden the commissioner could get involved and start looking for a problem that does not exist or invent one. In the past, we have seen governments with a tendency to politicize inquiries and situations.

What safeguards are there against this type of thing?

I would like to hear Mr. Bilodeau's answer first and then Mr. Vincent's.

•(1120)

Mr. Richard Bilodeau: You are right. Investigating an industry sector without any specific allegation of an offence under the act could affect the reputation of that sector. That is particularly worrisome in situations where there is no allegation of collusion or anti-competitive behaviour. There is always that concern.

That is one of the problems with Bill C-452. There are no specific grounds for initiating an inquiry. What is the trigger for launching an inquiry? What are the parameters of an inquiry? How long may it take? It also raises questions about confidentiality, because our inquiries are conducted confidentially.

Mr. Anthony Rota: Is that included in the current act, with the new changes that have come into effect?

Mr. Richard Bilodeau: What is the question?

Mr. Anthony Rota: Does the current act contain parameters?

Mr. Richard Bilodeau: The act creates the parameters. If there are price fixing allegations, the parameters are there. Under section 45, we can investigate those allegations. Under section 10, if there is reason to believe there is a cartel, the commissioner may, on her own initiative—with or without a complaint—launch an inquiry and use her official powers to determine the relevant facts, in order to determine whether there is indeed a cartel and whether she should refer the matter to the Attorney General.

Mr. Anthony Rota: Thank you.

Mr. Vincent, do you have any comment on that? The act is there, and your bill would serve to change things. However, those changes are not clear to me.

Mr. Robert Vincent: I think it is clear. There is also the way he answered. To initiate an inquiry, there has to be a complaint. They cannot just suddenly decide for themselves to investigate an industry sector. They cannot do that, it is impossible. Even if there were a complaint, they would have to go before a judge to initiate an inquiry. So there has to be a complaint. Someone has to tell them that there is something going on.

I will give you a concrete example: what happened in the four municipalities around Sherbrooke. Apparently, someone was periodically giving the order by phone to set the price at the pumps. There was a complaint, made under oath. With that kind of complaint, they were able to investigate.

Let's take another easy to understand example: price-fixing for the cost of oil refining. If it is true that every month, each company decides on the price of refining oil for that company, how is it that at the beginning of every month, prices at the pump do not vary? The refining is done at different refineries, but the prices at the pump are the same. If Shell decides that it is 22¢ and Petro-Canada decides that it is 10¢, how is it that the pump prices are the same every month?

The Chair: Thank you, Mr. Vincent.

[English]

Mr. Rota, the time has expired now.

[Translation]

Mr. Bouchard, you have the floor for seven minutes.

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

I thank all the witnesses for being here today.

Mr. Vincent, I thank you for sponsoring Bill C-452.

Mr. Bilodeau said that there had been some changes in March 2009. Mr. Vincent, I would like to know what Bill C-452 now has to offer with respect to what Mr. Bilodeau mentioned.

Mr. Robert Vincent: Well, precisely, it's the power to investigate.

As I said earlier, if each refinery in Quebec and Canada were to decide each month on a price for refining oil and there were no disparity... You've got to understand these people are not talking to each other. They say there is no consultation between refineries to set prices each month. This price is set within refineries on a monthly basis. If these people are not discussing the matter, why is it that the price of gas at the pump, each month, is the same for everyone and equal everywhere, all the time?

If the Competition Bureau has all powers, as they say, if I were them, I would be asking myself this: why is it that with no consultation we see identical prices each month for all refineries, regardless of which oil company it is? It seems to me that this is a sign. And if I had investigative powers, I would immediately look into it. With the investigative powers these people say they have, I would launch an investigation to see why oil companies are price-fixing.

•(1125)

Mr. Robert Bouchard: Mr. Bilodeau, based on what you are saying, the Competition Bureau commissioner has every power to proceed to an investigation, is that correct?

Mr. Richard Bilodeau: Indeed.

Mr. Robert Bouchard: According to legislation and regulations she can initiate her own investigation. How many times has the commissioner initiated investigations over the last 12 months?

Mr. Richard Bilodeau: I do not have the exact figure for the last 12 months. However, I can tell you that at this point, we have 45 formal investigations—investigations called pursuant to section 10, which we are referring to today. Thirty per cent of these 45 investigations were initiated on the basis of means other than an individual calling our office to report an anti-competitive act. These investigations are still underway.

Mr. Robert Bouchard: With respect to this 70 %, would those people be citizens who called in to your office? Did they have to support their complaint? In other words, did they have to prepare the complaint in order to be able to file it and present it to you?

Mr. Richard Bilodeau: There are several methods available. A company may hire a lawyer to call us and make representations to the bureau in order to tell us about the situation his client was faced with, and the lawyer provides an explanation. The same thing applies in the case of any Canadian deciding to call. People can call our information centre and file a complaint. It is then sent to an officer who calls the complainant back and asks questions to try to determine whether the complaint falls within the ambit of the act and whether there can be redress under the act. Questions are asked with respect to some information the individual has, and further to that, we investigate.

This investigation may take just a few days, as it may become evident that the conduct does not fall within the scope of the act. It may also take a number of months, even years, if we realize that there may be something within the market that is not working.

We read the papers. Often this type of conduct may be reported in the papers. Based on public information we read in the papers or which is brought to our attention, the commissioner may launch an investigation to determine the facts and use her formal powers.

Mr. Robert Bouchard: Mr. Vincent, you have just heard Mr. Bilodeau. What do you think this requires of people? I am the member for Chicoutimi—Le Fjord. If I notice that all of the prices are the same when I am driving down the boulevard and I call the Competition Bureau to report this fact, do you think that they will automatically launch an investigation?

Mr. Robert Vincent: That is a very good question, Mr. Bouchard, as I did that myself. I wanted to know how things work. I called and filed a complaint to say that the price-fixing... A great deal had been written in local Granby newspapers to the effect that the price was fixed at \$1.12 and that in neighbouring municipalities, it was set at \$1.05, perhaps. There were a number of reports in newspapers in my riding to that effect. I called myself and asked other people to call to see how an investigation was launched.

Mr. Robert Bouchard: Was this recently?

Mr. Robert Vincent: Yes, recently.

Mr. Robert Bouchard: And nothing changed? No investigation was launched?

Mr. Robert Vincent: The lady who called me back after the fact asked me what evidence I had. They are the ones who are supposed to have the evidence, they are the ones who investigate. If it is up to me to do the investigation and then provide them with all the evidence, what is left to their investigative powers? They are not conducting an investigation; they take what I give them.

That is what Mr. Bilodeau just said. He just said that either lawyers or citizens call in, that they get a call back and are asked to provide the details as to the situation which should be the subject of an investigation. If I provide them with all of this information on a golden platter, yes, the commissioner may proceed to an investigation because now she has all possible and imaginable documents to carry out the investigation.

•(1130)

Mr. Robert Bouchard: Do you think that at this point for there to be an investigation, individuals have to buttress their argument, investigate—

Mr. Robert Vincent: It takes evidence.

Mr. Robert Bouchard: — and table all of this evidence before the commissioner. That is the situation.

Mr. Robert Vincent: Indeed, that is how it works. That is what I was told when I called in. If there is no evidence of collusion between oil companies, they cannot investigate.

I do not understand why they say they can investigate when they cannot. They tell people that they cannot do an investigation.

Mr. Robert Bouchard: We also refer to other countries where certain agencies exist. How this that work? You refer to that in your presentation. Could you provide us with additional information as to what is happening in Australia or the United Kingdom?

Mr. Robert Vincent: As I said in my statement—

[*English*]

The Chair: Be very brief, Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: I will be brief.

In the United States, the UK, European Union Member States and in Australia, commissioners have the power to investigate. I do not understand why here, in North America, Canada has not had this power to investigate since 1986—it existed before 1986. In the rest of North America, in the United States, they have this power to investigate, and so do the 24 countries of the European Union. It would lead one to believe that Canada is beyond reproach.

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

[*English*]

Now we'll go to Mr. Braid for seven minutes.

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

Thank you very much to all of our witnesses for being here.

Mr. Vincent, if we can take a step back, can you explain the real-life situation that gave rise to or inspired your private member's bill? What was the specific situation?

[Translation]

Mr. Robert Vincent: In 1986, when the investigative authority was removed from the Competition Bureau, we realized that it could not launch an inquiry until a denunciation had been made. I am not the only one saying this. The former commissioner of the Competition Bureau told us, during a committee meeting, told us that he could not do his job properly because he did not have any investigative powers. In order for the Competition Bureau to fulfil the mandate given to it by the government, it needs investigative powers. Otherwise, what can it do? Does it have to wait for people to denounce situations based on flagrant evidence?

Finally, we want to protect citizens.

[English]

Mr. Peter Braid: But have any specific situations occurred that you are trying to address or respond to? Can you describe any of those situations?

[Translation]

Mr. Robert Vincent: Absolutely. I believe that this is common practice in the oil sector. In your riding, I am sure that some citizens think the same thing, as well as other people throughout Canada. They are certainly wondering why the price of gas is so high, and why there has been no investigation.

There have been inquiries that have not led to any clear conclusions. That is because, at that time, the Competition Bureau's investigative authority was restricted. Even today, the bureau is limited to documents available to the public. These are documents available on the Internet or elsewhere, or documents that the company agrees to provide to us. How are you supposed to undertake a serious inquiry when you do not have any serious documents? In order to undertake an inquiry, you cannot search an office in order to look for documents, you are limited to what the company agrees to provide. That does not make any good sense.

[English]

Mr. Peter Braid: So you're trying to address the price of fuel to retail gas stations and a concern about potential price fixing. Is that correct?

[Translation]

Mr. Robert Vincent: That is part of the problem. We could also talk about the construction industry that has been making headlines recently. There has been collusion amongst the companies bidding on contracts.

[English]

Mr. Peter Braid: Mr. Bilodeau, can you explain to the committee how the Competition Tribunal has been involved in addressing the specific issue Monsieur Vincent has just described?

Mr. Richard Bilodeau: Gasoline has always been a hot topic for the Competition Bureau, dating back to the Restrictive Trade Practices Commission in the 1980s that Mr. Vincent referred to in his opening statement. But even more recently, we monitor gasoline prices and stay abreast of developments in the industry, specifically to respond to complaints we get about price fixing in the gasoline

sector and other types of alleged anti-competitive activities in the marketplace.

I think we have studied the gasoline markets six times over the years. We've talked to people in the industry and collected information. Every single time in those six major investigations we did not come to any conclusion, except that market forces were responsible for specific spikes in the price of gasoline.

• (1135)

Mr. Peter Braid: Okay, and in those six examples, were those triggered by complaints or were those triggered by your own process?

Mr. Richard Bilodeau: I would say a combination of all those. One of them was Katrina. That's a pretty big trigger. We did look at the price spikes in relation to Katrina and we did determine that it was due to a shortage of supply resulting from the hurricane in that situation.

I would also say that we've had enforcement matters related to gasoline dating back a number of years. We've had 13 price maintenance cases that we brought before the courts. I think we won eight of them; we secured convictions in eight of them. As Monsieur Vincent alluded to, we prosecuted a gas-price-fixing cartel in Quebec. We reviewed the Suncor and Petro-Canada merger last year and we secured remedies in that, and even dating back beyond that, mergers between Texaco and Imperial Oil, and Gulf selling its assets to Petro-Canada and to others.

Mr. Peter Braid: Thank you.

Are there any proposed powers in Bill C-452 that you do not currently have?

Mr. Richard Bilodeau: We can initiate inquiries of our own volition. We can initiate inquiries of six residents, supply an affidavit alleging anti-competitive activities. We can also commence an inquiry if the Minister of Industry directs us to do so.

We also have the power right now to conduct what we consider to be market structure studies, where we can go into an industry, ask questions to study the structure of the industry, and assess whether there are barriers in that industry that exist that don't make that industry particularly competitive or less competitive than it could be.

We've done two of those recently, one into generic drugs and another into various professions in Canada. But it is correct that we do not have right now the power to initiate an inquiry without any allegations of specific wrongdoing into an industry at wide to determine whether or not there is a violation of the act. So that is correct.

Mr. Peter Braid: So what concerns do you have about this proposed trigger in Bill C-452?

Mr. Richard Bilodeau: That is one of the concerns. There are no specific triggers in Bill C-452 to dictate to us or to tell us when we should open up an inquiry, but—

Mr. Peter Braid: Is it too open-ended?

Mr. Richard Bilodeau: Well, bigger than that is that there are costs on both sides, whether there are any costs on the bureau and costs on business. You can understand that issuing formal powers, going to a court to secure a subpoena power, forces companies to spend a lot of time to respond to those requests and to also ensure that they're complying with a legal order from a court, and if they don't comply with that order, they do open themselves up to criminal sanctions. So given the seriousness of that, they hire a legal counsel and they spend a lot of time going through documents. So that definitely is a cost for business.

There's also a reputational cost. You're putting an industry under investigation without specific allegations of wrongdoing, and on the bureau, it would run the risk of distracting us from our core enforcement activities and the mandate that was given to us by Parliament in terms of diverting resources from our key enforcement matters into these broader market sector studies.

The Chair: Thank you, Mr. Bilodeau. That's all the time we have for that round.

Now on to Mr. Masse for seven minutes.

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

Thank you to the witnesses for being here. I know that Mr. Vincent sat at this table for several years and raised this issue consistently in his career in the House of Commons.

Mr. Bilodeau, I think the big difference that I see coming out of this is that this power would allow you to really study an entire industry, as opposed to a situation. Is that correct?

Mr. Richard Bilodeau: That is correct. We could initiate an inquiry into an entire industry without regard to any specific allegations.

Mr. Brian Masse: This is where I think Mr. Vincent has a point. And I have been concerned about the oil and gas industry. We were talking about that. The refining issue is that I think if you don't have competition, it's the same thing as collusion, and when you have vertical integration there is no competition, and it should be studied on a larger, broad base.

I'd point out the fact that we need refining capacity in this country, but we've actually seen refineries closed, not just in Burlington but also in Montreal recently, and we actually saw basically an attempt to block the purchase and development of that refinery. So I see the point Mr. Vincent is making here.

It appears that your department doesn't particularly want this, so you're probably not going to use it anyway until you get a commissioner. But if we had some type of scenario that emerged, wouldn't it be good to have that in the back pocket of the commissioner, who could put that through if an emergency or some type of an issue emerged that was significant to Canadian consumers in the general public?

• (1140)

Mr. Richard Bilodeau: If the situation were to arise, there are a variety of ways we could look at it. If it were a situation where a merger was happening in the marketplace between two refiners, as we saw with Encana and Suncor and Petro-Canada, we could look at it. In that case, we reviewed it, we collected information, and when

we saw that we had concerns with that merger, we negotiated a consent agreement with Suncor. They were forced by virtue of that consent agreement to divest 104 retail gasoline stations and to commit to engaging in a ten-year supplier agreement for gasoline in southern Ontario.

So when those situations arise, we're fully empowered to act. If a merger were to occur, and there was an increased concentration in a particular market in Canada, we have the powers to investigate and to seek remedies if we think those remedies are necessary.

Mr. Brian Masse: Yes, I appreciate that work. The Burlington situation was particularly interesting. You saw Petro-Canada using Esso gas, so there can be no competition there at all in their refineries.

Mr. Vincent, have you consulted with any of the consumer groups with regard to this bill? Has there been any discussion with any of those organizations? What did they have to say about it?

[Translation]

Mr. Robert Vincent: Not necessarily. However, I have read the minutes for all of the committee meetings held on gas and inquiries into this sector. Consumers were always saying that the Competition Bureau did not meet their expectations, that they felt wronged.

If other countries in the world have investigative powers, I do not understand why Canada should not. If someone can name an organization, any one whatsoever, that does not want to have more authority, then do so. This is the only organization I know of that does not want to be given the authority so that it can do its job properly. When you offer to provide more authority to an organization, be it a charitable organization or some other type, everybody is happy. The Competition Bureau is the only exception.

[English]

Mr. Brian Masse: You're making an interesting point about the FTC being able to launch its own investigation. We often hear the government argue about consistency in different industries that want harmonization with the United States, like the auto industry and others. But when it comes to regulatory powers and the protection of consumers, we don't have that reciprocity. For example, this government cannot recall vehicles; it can only suggest recalls. Those decisions are made in Washington and Tokyo and then we comply.

I think this bill is reasonable. It's one that could be exercised by the commissioner.

I don't have any further questions.

The Chair: Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Mr. Chair.

[Translation]

I would like to thank our witnesses, particularly Mr. Vincent. I am, for the most part, in agreement with what he is trying to show in his bill.

Mr. Vincent, the words you have suggested in your amendment are "grounds exist".

[English]

that grounds exist for the making of an inquiry.

[Translation]

Have you got a definition? Who would be responsible for this? The Competition Bureau?

Mr. Robert Vincent: I did not want the Competition Bureau to be restricted to doing very limited work. If it believes that it has a case and reasonable grounds, it should be able to investigate. Earlier I gave an example of these grounds. Refineries, regardless of what company we are talking about, always set prices at the beginning of the month. Why is it that the price is always the same from one company to the next? It seems to me that this indicator constitutes sufficient grounds justifying an inquiry. The price should not be the same.

We talked about refining earlier. I am certain that this is a very worrisome situation. Shell shut down in Quebec. There are three refineries in Quebec running at 95% capacity. They are more or less running at full capacity. By shutting one of these refineries down, we will create a scarcity because it will be impossible to refine enough oil to meet the demand. So there will be restricted access to oil. The price of a litre of gas will increase at the pump, people will consume less, and life is good.

• (1145)

[English]

Hon. Dan McTeague: Mr. Bilodeau, at the risk of eliminating my ability to predict gas prices—because they do move in lockstep at the wholesale level across the country—Monsieur Vincent is quite correct, the wholesale price remains the same over the years. Certainly in the 17 years since I've been involved we've seen a substantial decline in the number of players. Although there have been remedies, at the end of those remedies, including the Texaco-Esso intervention you had, the refinery is ultimately decommissioned and mothballed. We've seen this across the country. It may not necessarily be for competitive reasons. Environmental restrictions may often be in place—and I'll emphasize this to my colleagues—including in the case of Shell in Quebec as well as Petro-Canada with the 15 parts per million sulphur request. Companies are not going to make these kinds of investments, and therefore we wind up with a supply problem.

In your view, would the power of investigation that Mr. Vincent proposes lead to moving from an administrative to a judicial form of inquiry, realizing of course the separation between the two since the days of the Combines Investigation Act and the old Restrictive Trade Practices Commission? Do you see this as blurring that administrative versus judicial function that once existed?

Mr. Richard Bilodeau: Right now the Competition Bureau is the investigator. Criminal cases are referred to the crown for prosecution and civil cases to the Competition Tribunal for a decision in the litigated matter. It is one of the aspects of Bill C-452 that is unclear. Even if we were to conduct a study, what's next in terms of that result? There are some concerns because of confidentiality that we may not be able to release anything because our inquiries are conducted in private, as subsection 10(3) indicates. And we have section 29 of our Competition Act, which dictates that the

information we collect, and specifically information we collect using formal powers, is confidential. It would put a limit on that.

Hon. Dan McTeague: Mr. Bilodeau, at the end of most of your inquiries there's almost a cheering from one section that there's absolutely nothing wrong with this industry, based on a couple of things. But I distinctly recall the previous competition commissioner advocated many of the changes in Bill C-10. Actually I advocated a lot of those in Bill C-10. I'm glad they finally came out a few years later. If it is a matter of resources to do an appropriate and in-depth study of this industry—for this purpose Mr. Vincent's industry would be the gasoline industry—obviously it wouldn't be limited. We could be looking at groceries. We could be looking at any other—automotive, whatever the case may be.

I'm wondering if this simply comes down to a question of resources, to a proper and independent investigation, because often I note the bureau has relied on industry personnel itself, J. Irving and Associates being an example, often using tainted data that may very well be supplied by the industry itself. Would you not want to avail yourselves of this kind of investigative power, provided of course you are properly and monetarily financed to do these things, to do a once-and-for-all determination as to whether or not the industry is effective and meets the objectives of the Competition Act?

The Chair: As brief as possible, Mr. Bilodeau.

Mr. Richard Bilodeau: When we have reasons to believe, we do have ways to collect the information from a variety of sources, from the industry but also from independent parties in the marketplace.

Hon. Dan McTeague: Do those exist, Mr. Bilodeau, independent parties?

• (1150)

Mr. Richard Bilodeau: We have formal powers, whether it's gasoline or any other. When we have an investigation into certain allegations of wrongdoing, we can issue subpoenas to people who have relevant information. Those can be refineries, obviously, or retailers, but it can also be other participants in the marketplace.

Hon. Dan McTeague: Thank you.

The Chair: Thank you very much.

Now on to Mr. Wallace for five minutes.

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

I want to thank our guests for being here today.

I really don't have many questions, but I do have some comments I'd like to make.

First of all, I was part of the Texaco-Esso merger. And it wasn't a merger. They sold off their Texaco unit because of a lawsuit south of the border. I was working for Texaco and ended up working for Imperial Oil for a number of years—loved Texaco and no comment on Imperial Oil.

Let me start with Mr. Vincent. Mr. Vincent, I've sat on committee with you before. I appreciate your commitment to things. My issue is this. This is my third private member's bill in the last number of weeks, which is down to one or two clauses. One had seven clauses and eight amendments. Another one is down to one clause. This is a one-clause bill. I'm not a big fan of private members' bills. I think it highlights the issue. But this is a one-clause piece, and we're calling it legislation.

I want to know who you consulted with. Other than sending it over to the Library of Parliament to send you the legal wording, who did you meet with? Did you talk to the Competition Bureau about what you're proposing? Did you meet with individuals in the field? What I don't like about them is normally there's zero consultation. Normal bills, bills that are presented by whoever is in government, are usually a binder full of stuff, have full consultation with the public. Can you name me anyone you talked to about this before you brought it forward?

[*Translation*]

Mr. Robert Vincent: If that is what you need, Mr. Wallace, that does not cause any problem to me whatsoever. I have a binder full of newspaper clippings. People have called me to talk about gas price-fixing. You asked me whether I had met with the people from the Competition Bureau, and the answer is yes. I met with them in my office. I discussed the bill with them. They told me that they did not want any more power, that they had enough and that they were able to work with what they had. I asked them the question that I have asked here in committee, namely, whether they thought there was any price-fixing in the refinery sector. They replied that they had not seen it from that angle.

How are they supposed to launch an inquiry? They are unable to do so.

[*English*]

Mr. Mike Wallace: Monsieur Vincent, I'm happy to answer that question.

Here's how it actually worked when I worked at Texaco Canada 25 years ago. Depending on my territory, I had 28 to 30 gas stations that were my responsibility. Every retailer had binoculars. We would see what was happening on each corner with our competition. We would decide if we would match their price.

Do you know who made that call? I did, for my gas stations. They would call me—and I was with Texaco at the time—and say Imperial Oil, Esso, is at this; Shell is at this; Sunoco is at this—what do you want to do?

At 23 years of age, I made the decision on what the price was. The system was a little bit different when I went to Esso, but it was still a call-in. It was based on what others were doing.

At the opposite end, I would call my retailers and say what we're doing today is we're going to restore, what we called a restoration. We were going up 5¢ based on what the barrel had been and what the refining costs were. We would sit on it and were hopeful that our competitors would match it.

Do you know who else does that? Bread companies, tire companies, everybody does price shopping to see what the price

is. Do you know what the difference is, Monsieur Vincent? The price is on the street, not on the shelf in the grocery store. It happens in every single industry. People know what people are spending on the retail side.

I applaud Mr. McTeague for being able to determine the price. It is a formula. You get the New York barrel price and you apply a formula, and it tells you approximately what the gas price is going to be the next day. It's not real rocket science.

The Chair: Mr. McTeague.

Hang in for just a moment, Mr. Wallace. I have a suspicion about this point of order.

Hon. Dan McTeague: It's more of a clarification for Mr. Wallace. It doesn't come from New York, it actually comes from the rack price by the few players that are left.

Mr. Mike Wallace: The rack price?

• (1155)

Hon. Dan McTeague: The rack price, the wholesale price, is established at 3:30 p.m. every day, in Mr. Wallace's area usually by his former company, Esso, and the rest simply follow. I think that's very pertinent here, Mr. Wallace.

Mr. Mike Wallace: The rack price is based on the barrel price.

Hon. Dan McTeague: Whatever it's based on.

The Chair: That's great.

Mr. Wallace, I'll restore your time. Go ahead, sir.

Mr. Mike Wallace: Your bill is really concerned with gas prices—and we know the Competition Bureau, in the past, has found price-fixing in Quebec. We have to remember that in urban centres—I can't say for rural, but in urban centres—99% of the gas in the ground is owned by the oil companies, not by individual retailers. It's almost all agents. They're like professional retailers who don't own the product. Maybe they own the product that's on the shelf in terms of cigarettes and so on, but they don't own the product in the ground.

The gasoline is owned by the oil companies and it's their decision on the what the price is going to be.

The Chair: Mr. Wallace, I gave you some extra time there because of the point of order.

Mr. Mike Wallace: Thank you very much.

Anyway, I'm not supporting the bill because it doesn't make any difference.

The Chair: Mr. Cardin, for five minutes

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair. Someone mentioned a clause in the bill where it says "grounds exist for the making of an inquiry".

In a statement, Mr. Bilodeau told us: "Whenever the commissioner has information that indicates that one of the enforcement provisions of the act has been or is about to be violated, regardless of the source of that information [...]." The word "information" is no longer defined in the current act. No mention is made of the type or relative importance of the information.

What do you understand by "information"?

Mr. Richard Bilodeau: That could really be just about anything, such as a case where someone would suggest to a competitor that they come to an agreement on the price. This competitor could call us. This would be information. We will study this situation in its context. We could therefore decide to launch a more in-depth inquiry. We do not need an official statement, signed under oath. If someone were to call us to say that his supplier, who has 90% of the market share, is forcing him to do certain things, we would study the matter under the provisions of the act.

If we determine that this is a matter that falls under the purview of the act, we would question this individual further, in order to get a better understanding of the industry and its actions. This would form the basis for the investigation. We would then talk to other merchants in this industry to determine whether or not they could corroborate the information. The inquiry would proceed. We do not just question the people who call us, we would question 5, 10, 15 or 20 people who play various roles in the market sector.

Mr. Serge Cardin: And once you have obtained information, what is the second step? Who decides whether or not to launch an inquiry and to go further?

Mr. Richard Bilodeau: During what we call a preliminary investigation, if we believe that there has been or may have been a violation of the law, in order to investigate properly, we need to use our formal powers, namely section 11 of the act, which provides that a court authorizes us to send companies a subpoena requesting information. That is one of the ways that we can proceed. This can also be done voluntarily as well. Sometimes companies, wanting to avoid getting a subpoena, provide us with the information.

Once we have all of that, we make a decision as to whether or not a section of the act has truly been violated. We launch an inquiry, we ascertain the facts as to whether or not the law really has been broken. If we believe that the answer is yes, we generally discuss the matter with the party that has potentially broken the law to find out whether or not the situation can be resolved. If we are unable to resolve the problem, our final option, in civil matters, is to turn to the Competition Tribunal, or, if it involves a criminal matter, we refer the file to the Attorney General who then decides whether or not to prosecute the company or companies.

Mr. Serge Cardin: Mr. Vincent, as far as the grounds warranting an inquiry are concerned, how do you see things unfolding, compared to what Mr. Bilodeau has just described for us, with respect to the process that follows the identification of grounds...

Let's suppose that one fine morning, somebody shows up at the commissioner's office to report that something is going on. This individual may come from the Eastern Townships, because that is where the collusion has been occurring. We clearly saw that municipalities were involved and that there was also significant price differences in the rural regions and unexplained sizeable prices

differences compared to other regions, because there were no refineries there.

Let's say that this person noted certain situations and started asking himself some questions. She could have gone to meet with the commissioner to explain the whole situation to him. What would your bill enable us to do immediately compared to the process described by Mr. Bilodeau?

• (1200)

Mr. Robert Vincent: Everything that Mr. Bilodeau told you, all of the steps that he is required to take in order to decide whether or not to launch an inquiry would be eliminated by the bill. We would not have to ask all of these questions, we would not have to go to court in order to see a judge about starting an inquiry. We would be entitled to show up at the offices of a company in order to seize documents. That is what is missing from the investigative authority.

Investigators cannot go to the offices of a sector in order to seize documentation. They can only obtain documents that are available. So that means documentation that the industry... And I am not referring only to the oil industry. I am talking about any type of industry. We see this happening in the construction sector, where prices are fixed for contracts: we need to launch an inquiry. The Union of Municipalities asked the Competition Bureau, back in April, to investigate contract-fixing in the construction sector, and I have heard no more about it, I have seen nothing. We have heard nothing.

And yet, it seems to me that this is flagrant. No one can begin an inquiry because there are no investigative powers. As I said earlier, four other countries—including the United States, Australia and the European Union countries—have these investigative powers. Why do we not have such investigative powers? This is what I want to see for Canada and Canadian consumers: I want the Competition Bureau to have true investigative powers.

[English]

The Chair: Thank you, Monsieur Vincent.

Now, I believe that the government—

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I think we're okay over here.

The Chair: —has no more questions, so we'll go to Mr. Masse.

Mr. Masse, I understand that you just have one question, and I understand that the Liberals have a couple of questions. We'll deal with what business is at hand after that.

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

I want to give Monsieur Vincent a chance to answer some indirect criticism of his bill, in terms of his strategy, because I don't think it's fair.

Bringing forth bills, the government members often decry that if they're so complicated, basically, they'll destroy all kinds of things and the earth will be swallowed whole. Here we have a bill that is very much scoped and can improve legislation, as opposed to attempting to revise the entire Competition Bureau.

Was it your intent to make this as simple as possible, so that the Competition Bureau could then prescribe the remedies and the regulatory ways to go about this new power?

[*Translation*]

Mr. Robert Vincent: Indeed, this bill does not have 7, 8 or 10 clauses, it just has one. So I think that the bill is clear. I want the Competition Bureau to have investigative powers. However, I did not want to provide details about a wide variety of things because that would diminish the bill. This is a bill that will give the Competition Bureau investigative powers so that it can do its job.

We know that the budget of the Competition Bureau is only \$39 million per year, which is not a great deal of money to do inquiries throughout Canada into all industry sectors. I realize that there is a lack of resources and money and I do believe that this money should be used to protect both Canadian and Quebec consumers.

[*English*]

Mr. Brian Masse: And we have heard that testimony here, as you know, in the past. The Competition Bureau has been here over the years I've been here, identifying the clear trouble it has doing its job without the proper resources. That's no fault of the people who are there by any means, and it should be strengthened, given some of the things we've seen with regard to food safety and product safety in this country and a number of other issues that have an effect.

I'll leave that there, Mr. Chair.

I'd like to thank all the witnesses for coming today.

The Chair: Thank you, Mr. Masse.

We'll go now to Madam Coady.

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

Again, thank you both for being here today.

Thank you, Mr. Vincent, for bringing forward this legislation.

As I understand it, Bill C-452 would empower the Commissioner of Competition to initiate investigations. I think that's the key wording here—"initiate investigations"—and to be able to take action.

My first question is to Monsieur Vincent. Are you concerned, or can you think of any safeguards we may want to bring forward to ensure that there are not any, as I'm going to call them, frivolous complaints brought forward? We're strengthening the powers of the commissioner and allowing that commissioner to have those powers to act as well. Are you at all concerned that we may need safeguards to make sure that the complaints are actually founded?

•(1205)

[*Translation*]

Mr. Robert Vincent: There may be a need for some safeguard measures.

Nevertheless, the ancestor to the Competition Bureau was established almost at the same time as Confederation, namely in 1872. I think that it has always had investigative powers, since 1872, almost at the time of Confederation in 1867. Changes were then

made over the years, particularly in 1952. At this time it was given even more powers. It was because industry was able to do some things that were not proper. We had a type of system like the one we have today. Then there were further modifications made in 1976 which gave even greater powers to the Competition Bureau, powers that were removed in 1986 by the Conservatives.

That is why I think that the Competition Bureau has enough experience enabling it to initiate inquiries. I have complete faith in them, and they should be able to launch inquiries as they see fit, but with powers that enable them to do the job properly.

[*English*]

Ms. Siobhan Coady: Thank you very much for that.

Mr. Bilodeau, I'm concerned about resources available. I have two questions for you actually. One is around the resources. Are you concerned that, having these additional powers, you would not have the resources to be able to carry out the tasks that have been mandated?

My second question is that, as I understand it, I'm sort of hearing from you that you already have these powers to carry out investigations, in the broader respect, for an entire industry. First of all, clarify whether you can do it for an entire industry. Second of all, you already feel you have the powers this particular piece of legislation is giving to you, and if that's your point, then why are you concerned about this particular piece of legislation if it just clarifies that you have that power?

Mr. Richard Bilodeau: I think my answer to your first question will probably answer your second one.

We are very concerned about the ability to conduct sector inquiries, because it could distract and could take our focus away from enforcing the new amendments that we got in 2009, and some that came into force in 2010. So we do have a very busy—

Ms. Siobhan Coady: So is that a resources question, then, more so than...?

Mr. Richard Bilodeau: We have a finite amount of resources, as any organization has. We're given the resources, both financial and human, that we have. So we have to work with that, and if we are to undertake market-sector studies, there is a risk they will detract from our key enforcement practices. But we do have the power, and we've done these studies in the past, and we've been able to make recommendations. There have been changes in the industry that were brought about through the recommendations made in those reports.

Ms. Siobhan Coady: So with this legislation, you think (a) that you already have these powers, (b) that it will cause a concern about resources, and (c) that you don't need the clarification? I asked you three questions.

Mr. Richard Bilodeau: We don't need the reclarification. The amendments in 2009 gave us the clarity we needed, particularly in regard to cartels. Before, there was a lot of ambiguity surrounding when we could act to take cartels. The amendments gave us those powers.

Ms. Siobhan Coady: Just for clarity—

Mr. Richard Bilodeau: Sure.

Ms. Siobhan Coady: —you're saying that you already have these investigative powers.

Mr. Richard Bilodeau: That's right.

Ms. Siobhan Coady: Why wouldn't you accept some of these minor amendments, then? If you think you have clarity already, this will only give you more.

I'm going to turn it over to my colleague, Mr. McTeague.

Hon. Dan McTeague: No, you won't. Nice try.

Ms. Siobhan Coady: It doesn't make sense to me. You already have these—

The Chair: Thank you, Madam Coady.

Go ahead, Mr. Stanton.

Mr. Bruce Stanton (Simcoe North, CPC): Thank you, Mr. Chair.

I appreciate the opportunity to ask a question. In private members' business, we all get an opportunity to find out and understand more.

I too was on this committee in the 39th Parliament *avec M. Vincent, un collègue*.

I have one question to Monsieur Bilodeau. Mr. Vincent said that the commissioner cannot begin to conduct an investigation until there is a sign-off by a judge. Am I correct in that?

• (1210)

Mr. Richard Bilodeau: Yes.

Mr. Bruce Stanton: So we have that on one hand. On the other hand, you said in your opening statement that whenever the commissioner has information that she believes can be acted upon, she has the ability to move ahead and conduct that investigation. In fact, you said that about 30% of the current investigations started that way.

Could you explain in lay terms how that process begins? What actually happens when you go and initiate that investigation?

Mr. Richard Bilodeau: Something is brought to our attention, or we come upon something in the course of our work.

Mr. Bruce Stanton: It doesn't have to be a complaint?

Mr. Richard Bilodeau: It does not have to be a complaint. And we don't need a judge to sign off on initiating an inquiry. That is a power that's been invested by the Competition Act, by Parliament, in the Commissioner of Competition.

But no matter how an inquiry is started—regardless of whether the minister is instructing us to do it, six residents have asked to do it, or we're doing it of our own volition or through a complaint—if we want to use formal powers, we have to go before a judge. By formal powers I mean the ability to seek document production or have witnesses compelled to provide us with oral testimony. So whether it's under the current legislation or even under Bill C-452, we will still have to go before a judge to have subpoenas issued to companies under investigation. That is something that is in our act. It's section 11 of our act.

Mr. Bruce Stanton: So to compel documents, to subpoena witnesses, you need to have the judicial sign-off to start?

Mr. Richard Bilodeau: Yes.

Mr. Bruce Stanton: Earlier you said you could do 30% or your investigations without subpoenaing witnesses or compelling documents.

Mr. Richard Bilodeau: A number of our investigations are done without securing subpoenas, and sometimes we've taken cases forward without using those powers. Sometimes companies prefer to give us information voluntarily and under oath. We don't always have to seek section 11s.

Mr. Bruce Stanton: So you don't think that the tenets of Bill C-452 are necessary, then?

Mr. Richard Bilodeau: We have the powers today to conduct the work, to carry out the mandate that Parliament has given us.

[*Translation*]

Mr. Bruce Stanton: Thank you.

The Chair: Thank you, Mr. Stanton.

Mr. Bouchard, you have five minutes.

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

Mr. Bilodeau, you said that you did have investigative powers. I even thought I heard you say earlier, after the last question, that you did not need a judge to begin an inquiry.

I would like you tell me what needs to be done in order to file a complaint. If I have a complaint to file with the Competition Bureau, what do I need to do? Is a telephone call sufficient? Do I have to provide my telephone number? Do I have to submit anything in writing, do I need witnesses, does everything have to be done under oath? Do I have to submit evidence, do research?

Finally, what do I have to do, at a minimum, in order to get the Competition Bureau to initiate an inquiry?

Mr. Richard Bilodeau: To answer your question, a formal inquiry is really—

Mr. Robert Bouchard: Do you not have to go to a judge?

Mr. Richard Bilodeau: There is no need to call upon a judge. The formal investigation is the second step.

The first step involves calling in and saying what the problem is. That is what we call a preliminary investigation. You will be asked some questions for clarification. As I said earlier, the call may be enough. It depends on the circumstances, which industry we are talking about, and what information you provide. There may be other industries. Considerable information on the gas industry is publicly available. As you know, the price of crude oil is public as is the rack price. There is a great deal of information.

Considerable expertise has been built up over the years. We know a little more about the gas industry than other industries, which we know less about or where we have never before conducted an investigation. However, a call is sufficient, even though it is better to have proof.

However, that does not mean—

•(1215)

Mr. Robert Bouchard: I think you are embellishing the truth. I called the Competition Bureau, and I can assure you that I had to describe the situation. Obviously everything was noted and they told me that the bureau would examine the issue. I did not know if there was to be an investigation or not, and I never found out. In other words, it's like sending out a message and receiving the replies much later, several months after you have done your own investigation. That is not timely.

Mr. Richard Bilodeau: Bear in mind that not all complaints received by the bureau necessarily lead to formal investigations under section 10. Forty-five investigations are currently underway, but in 2009, we received between 6,000 and 7,000 complaints. An investigation under section 10 is not automatically undertaken just because an individual lodges a complaint. Sometimes, the complaint deals with something that is not within our purview at the Competition Bureau. It is not about whether we investigate or not. It is simply that Parliament has not given us the mandate to investigate that. That is common.

Mr. Robert Bouchard: Mr. Vincent, in your view, if your bill were to be adopted, how would it make things easier for a citizen who believes he has found something out of the ordinary?

Mr. Robert Vincent: I think that citizens expect the Competition Bureau to be able to do an adequate job. An adequate job means two things to me. Moreover, he clearly mentioned that several times during his appearance.

First of all, a complaint must be launched, but the person calling in must be asked more questions. Does the complainant have the information required to undertake the investigation, in other words, does he have something concrete? Let's look at the example of the price of gas. Imagine a retailer calling you to say that someone has asked him to change his price at the pump. That would be concrete. The Competition Bureau would therefore have something serious enough to take to a judge and to investigate on this issue, but at present, he cannot initiate an investigation himself.

What powers are set out in Bill C-452? As Mr. Bilodeau said earlier, there is a shortage of funding and resources. Why don't they want additional investigation powers when that's what is lacking? How will they be able to do the job without money and resources? That's where the problem lies.

I think he did a good job of explaining it earlier. The culminating point when we examine bills, the question that is always asked at committee meetings is if that is done elsewhere. Is that done in other countries. It was in place before but no longer is. What more can we do? With these powers, we could save even more money because investigations could be undertaken immediately without there having to be an in-depth analysis and a judge involved.

[English]

The Chair: Thank you, Mr. Vincent, Mr. Bouchard.

Now on to Mr. McTeague for five minutes.

Hon. Dan McTeague: I'll come back to you, Mr. Bilodeau. Can I just ask about the gas stations in Quebec, which were charged under the old section 45, conspiracy? Are those matters still before the courts?

Mr. Richard Bilodeau: Yes, they are.

Hon. Dan McTeague: I wouldn't ask you to pursue that for those reasons, because it would be a matter *sub judice*. But it's my understanding that in that case, an individual mistakenly gave information to the bureau thinking that because they were not part of the deal there was somehow some infraction of the Competition Act. The bureau was unable to take the information, get it on record, and then proceed with the charges, which are ongoing. There was a lot of chest thumping when that happened. The overall assumption or impression left, in the absence of my explanation, was that the Competition Act works. In fact, you stumbled on it.

I'll leave that. I want to ask a question with respect to what Mr. Wallace quite readily pointed out. In 1989 you had several players who had their own wholesale price. I'm not talking about retail here, because I think it's pretty clear. We can debate until the cows come home what price inversions look like. If Costco in Mississauga or wherever they are in Ontario doesn't want to charge a retail margin and they want to invite people to come in, that's up to them.

What I think Mr. Vincent is most concerned about is what's happened at the wholesale level, which is the picture we don't exactly see. That's of course where you see identical regionally based prices. Is that a reflection of a lack of competition, or is it just super-competition? One makes the price, and the others simply follow. Or is it because, as has been quite rightly pointed out, they share a product, region by region, for matters of efficiency? I won't conclude why that is but will simply underline that all of your investigations have been predictably useless and irrelevant, because they're following only certain assumptions about the market. Quite apart from who provides you with information and how you acquire information, there has been no global study in this industry, or for that matter in others.

I recall one many years ago that I tried to initiate on the issue of the grocery industry. Justice Kelen, who is on the Federal Court now, was co-author. I did that because we felt that the bureau and the Competition Act that was written in 1986 failed to appreciate the rather distinct and dramatic changes taking place that were impacting consumers and the competitive process throughout the country.

My question to you is about the power of inquiry, which you may see as redundant to the powers you currently have. There's been no change to subsection 10(1) of the "inquiry by commissioner" section in the Competition Act. Is that correct?

•(1220)

Mr. Richard Bilodeau: Do you mean in the recent amendments?

Hon. Dan McTeague: There was no amendment to that, was there?

Mr. Richard Bilodeau: In 2009 there wasn't, no.

Hon. Dan McTeague: Okay. So you still have the same powers you have in parts IV and VI, sections 32 and 33. Nothing has been materially changed in section 10, save and except that we continue to have a concern as to whether the industry is competitive.

When was the last time the Competition Bureau did an in-depth analysis of the health and standing of the wholesale market for gasoline in Canada?

Mr. Richard Bilodeau: I would have to check on that. Off the top of my head, I can't answer that.

Hon. Dan McTeague: Monsieur Vincent.

[Translation]

Mr. Robert Vincent: I believe its biggest investigation was in 1981. When the investigation wrapped up in 1986, the bureau tabled three reports. That is when the power to investigate was removed, when the gas and oil industry complained about the excessive cost of the investigation. So that was the last major investigation done before losing the power to investigate.

[English]

Mr. Richard Bilodeau: We did look when we did the study on Katrina. And a few studies before that looked at the wholesale aspect of the business, not just at the retail but at the entire industry. Monsieur Vincent is right. The RTPC looked at the wholesale market, among other things, in an inquiry that lasted from 1973 to 1986, until the publication of the three books he's referring to.

Hon. Dan McTeague: In a previous generation I met with Mr. Bertrand, the previous commissioner. Back in the days, we used to call them.... What was the name of the old commissioner back in the day?

Mr. Richard Bilodeau: It was the director of investigation and research.

Hon. Dan McTeague: That's right. It was the DIR.

You recall that with Katrina—I'm just raising this as a matter—there was an increase in the United States of about two cents a litre in the Texas region. For average Canadians, it was 12.9 cents. The bureau at that point said that it was just a result of competition.

Mr. Bilodeau, if we were to grant the powers Mr. Vincent so clearly wants to give you, and you had the resources, would one of the things you could look at be the fact that in the United States and in every regional market and among various players, the wholesale price differential amounts to several cents a gallon on any given day? This could be proven through OPIS or Bloomberg or whoever you want. It also explains why on street corners in the United States, which anybody travelling down there will notice, there are substantial differentials in prices, which do not exist in Canada.

Mr. Richard Bilodeau: In terms of comparing Canada and the United States, there are obviously, as you well know, differences in taxes.

Hon. Dan McTeague: There are not at wholesale.

Mr. Richard Bilodeau: We looked at the most recent Fuel Focus report. My understanding of those numbers is that the wholesale pricing between comparable markets was relatively consistent over time.

Hon. Dan McTeague: If you're giving an example, now that the Montreal refinery has shut down, what's your relevant market? I'm not asking these things to bait you, sir. What I'm trying to do is demonstrate why now, more than ever, there probably is great need for what Mr. Vincent has suggested.

No one has done an updated analysis of this industry as it currently exists, given the number of refineries that have quit or left, many of which have done so, as I pointed out, for governmental and

environmental reasons. When we make these things onerous, they don't necessarily make economic sense. The impact is that we have lock-step, uniform wholesale prices in Canada, which do not exist in Europe, Australia, New Zealand, Asia, or the United States. So Canadians are right to ask how, if we are dealing with what appear to be monopoly prices or similar prices, we can conclude anything other than that there is a monopoly here. Obviously they need to worry about collusion or conspiracy, because the same several players get together in the dark of night to fix prices.

If they don't exist at the wholesale level, and there's only one player calling the shots, aren't we talking about an outmoded piece of legislation? Wouldn't his investigative powers actually allow the bureau, once and for all, to understand the industry as it exists today?

•(1225)

Mr. Richard Bilodeau: We have that now with the amendments that were brought in in March 2009 and 2010. We have that ability. And it did remove the requirement of the bureau to demonstrate before a judge that a cartel had a significant competitive impact in the marketplace. It makes it much easier to target those hard-core cartels that have no redeeming benefits for Canadians.

Hon. Dan McTeague: Thank you, Mr. Bilodeau.

Thank you, Mr. Chair. And thank you for the extra time.

The Chair: It's my understanding that we have exhausted all the questions today in regard to these witnesses. Was there any other business that...?

Mr. McTeague.

Hon. Dan McTeague: Mr. Chair, I have suggested a couple of witnesses. I'm not sure, given the circumstance we find ourselves in, having been sort of plunged into legislation, that we should have.... We should actually provide those witnesses an opportunity to appear, perhaps on Tuesday. Beyond that, Mr. Chair, I'm not sure. I can't predict what we're going to be doing next Thursday, which really leaves us only one more meeting before making a decision.

I will obviously have questions of witnesses. I actually have a few more here, but I can discuss that privately with them. Perhaps we should determine through the clerk whether there is a possibility of other witnesses being here, and whether they can be here on Tuesday, first of all. It's my understanding that we haven't sent out the invitations yet. Or if we have, they were just sent out this morning.

The Chair: They haven't been sent out yet. We haven't invited anybody yet.

Hon. Dan McTeague: Mr. Chair, I would suggest that, at your discretion, if we have no witnesses, we have no meeting. So we have two options. Either we go to clause-by-clause on Tuesday or we wait to hear from witnesses, which could carry us into Thursday, if indeed there is a meeting.

The Chair: Mr. Lake and then Mr. Bouchard.

Mr. Mike Lake: I guess we have a couple of alternatives here.

I think we need to hear from witnesses on the issue. Potentially if we have trouble getting witnesses for Tuesday, probably the prudent thing to do would be to wait until we come back. To hear from witnesses on Thursday just before we leave, when we may or may not be having a meeting—we don't know what the schedule is going to look like—and then to have a six-month, or I mean a six-week break before—

Mr. Serge Cardin: It might be six months.

Mr. Mike Lake: Hopefully it's not six months. You guys can't bring us down while we're gone.

Mr. Chair, maybe we want to consider actually holding off and having the witnesses when we come back, since they haven't been invited yet and we don't know which witnesses are going to be able to come on Tuesday. It might make more sense to actually have our witness meetings together when we come back and go immediately into clause-by-clause rather than having the break. I'm just throwing that out there as a possibility.

The Chair: Mr. Bouchard.

[Translation]

Mr. Robert Bouchard: I don't see a problem with hearing the witnesses when we come back. However, I would also agree to hearing them next Tuesday, if the committee so desires. On our side, we have two witnesses we would like to hear from. I think there is enough time to call them for next Tuesday. But I am in the hands of the committee if it prefers to do that later. I am quite certain that there would be enough time to invite two witnesses for next Tuesday.

[English]

The Chair: There's obviously an option. We've endured this for a while, so we could obviously have the first hour with witnesses and then clause-by-clause in the second hour. It always pressures us a bit, but that is an option.

Mr. Lake, did you have another comment?

Mr. Mike Lake: My understanding is that Mr. McTeague has a couple of witnesses, the Bloc has a couple of witnesses, and we may have witnesses who we want to have come before the committee as well, so that might not be an hour. I don't know that that's going to be sufficient, and then going to clause-by-clause. I think we're going to need to have two separate meetings at the very least.

I think we really need to see whether the witnesses can come or not. I think we need two hours to hear the witnesses is what I'm saying.

• (1230)

The Chair: The real issue is whether there's a lack of continuity after the witnesses give testimony and if we come back six weeks later to do the clause-by-clause. Or is it better to hold the witnesses and do the clause-by-clause right after? That's really our decision, from what I'm hearing.

Mr. Bouchard.

[Translation]

Mr. Robert Bouchard: I suggest we hear from witnesses next Tuesday and that we take steps immediately in view of that. I think we will be able to use a good part of the two hours we have, and since the bill is not long, we might be able to set aside some time to

deal with it. In reality, the bill only has one clause. So it will not take long to consider it.

[English]

The Chair: Mr. Rota, Mr. McTeague, and then Mr. Lake.

[Translation]

Mr. Anthony Rota: I would agree with that. If we wait until next week and we hear our witnesses, we could then decide to end the discussions the same day. So there wouldn't be a break between the evidence and the decision. If that can be worked out, I agree with hearing them on Tuesday.

[English]

The Chair: Mr. Lake.

Mr. Mike Lake: I think we're going to Mr. McTeague now.

The Chair: I can go to Mr. McTeague.

Go ahead, Mr. McTeague.

Hon. Dan McTeague: Mr. Chair, I hate to ask this. I have one question of the Competition Bureau before they leave. It's been nagging me for some time. So after we've discussed where we're going, could I just come back, with the indulgence of the committee?

The Chair: Okay.

Hon. Dan McTeague: It won't be seven minutes, I promise.

Mr. Mike Wallace: Do we have to hear it? Why can't you just—

Hon. Dan McTeague: No, it's a good one. It has to go on the record.

Mr. Mike Lake: I didn't actually hear what Mr. McTeague said.

Hon. Dan McTeague: It was nothing. A brief question after our discussion....

Mr. Mike Lake: We're fine with whatever the committee decides. It does seem to make sense to have the testimony of the witnesses in a separate meeting, rather than in the meeting where we go clause by clause, even though it's one clause. It gives us time to consider what the witnesses have to say.

That said, it's one clause. So whatever you decide, we're fine with it.

The Chair: To get this over with, so Mr. McTeague can ask his question, we're going to invite the witnesses. The best-case scenario, we'll be done with the witnesses and go to clause-by-clause at that meeting; the worst-case scenario is that we will hear from the witnesses and then we'll go clause by clause sometime in February.

Is everybody in agreement with that?

Mr. Wallace.

Mr. Mike Wallace: My only suggestion is that we would allocate an hour and a half, at least, for witnesses and then have the legislative clerk be here just in case. It is one clause, and unless we're all going to debate the heck out of it, the decision will be made, the legislative clerk will be here, and then we'll get it done.

The Chair: It was my intention to invite the witnesses and then, as today, see how the questions go. If we wind down, then we'll go right to clause-by-clause.

Mr. Mike Lake: The only thing I'd say is if only one witness can come out of four, then there's no sense even having a meeting to hear from that one and then have three coming in after the break. That doesn't make any sense.

The Chair: Yes, we'll make sure there's a substantive showing of witnesses, or you're correct, we might as well go to February for both.

Did you have another comment?

Hon. Dan McTeague: Well, Chair, we have six amendments. That's why I'm concerned.

Some hon. members: Oh, oh!

Hon. Dan McTeague: All right, guys, we're getting giddy here.

The Chair: Your last question, then, Mr. McTeague.

Hon. Dan McTeague: Mr. Bilodeau, regulated industries... Should Mr. Vincent's bill pass, and we're dealing with questions that might look into the area of securities, which tend to be provincial jurisdiction the last time I checked.... The Americans are going through this whole process right now through the commodities futures exchange commissions to change the way in which derivative traders can avoid transparency or avoid any type of regulatory oversight.

A power of investigation would not derogate, detract, or take us away from the traditional areas, which are verboten for the bureau to investigate other industries, ministries, provincial crown corporations, etc.? Do you have that authority? Would you have that authority? Would that be a problem?

•(1235)

Mr. Richard Bilodeau: To be quite frank with you, Bill C-452 doesn't give parameters or limits, or indicate what grounds we would have to commence an inquiry into that entire industry sector, so I'm not sure how I can answer your question.

I can tell you that we currently have the power under the act to investigate crown corporations that conduct business. That change was made in 1986, or maybe a bit later than that. But there's a bit of a lack of information in Bill C-452 on the triggers, grounds, and scope. Is it an entire industry, or a subsection of that industry? What does industry really mean? So I'm having a bit of trouble answering your question.

Hon. Dan McTeague: There has been a traditional hands-off approach to other governmental agencies, as far as investigations are concerned. Should there be a request, for instance, of the Manitoba Securities Commission related to the intercontinental exchange, which operates and has its own futures trading that may adversely affect a price or supply?

Mr. Richard Bilodeau: There are securities regulators in the provinces, and it is up to them to regulate securities trading. It's not something that's in the Competition Act, and it's not in our mandate to inquire into certain practices in the securities trading sector and the specificity of matters that come up under the jurisdiction of those agencies.

Hon. Dan McTeague: Sorry, I believe Mrs. Einbinder....

Mr. Richard Bilodeau: I will turn it over to Ms. Einbinder-Miller.

Hon. Dan McTeague: Please. Thank you.

Mrs. Rhona Einbinder-Miller (Acting Executive Director and Senior General Counsel, Competition Bureau, Legal Services, Department of Industry): In addition, if we went into an inquiry on regulated activities or a particular industry, that could raise constitutional concerns.

Hon. Dan McTeague: That's why I raised it.

Monsieur Vincent.

[Translation]

Mr. Robert Vincent: The Union of Quebec Municipalities called for an investigation into contracts granted in construction. I think that if the Competition Bureau had the power to investigate, it would have investigated it. It did not do so. We must not lose sight of the fact that in the United States, the United Kingdom, Australia and at the European Union, that power exists, but it has been removed here in Canada.

[English]

Hon. Dan McTeague: I mention this because the rapid and unexplained increase in commodity prices since 2007 has been driving the public's concerns. It probably has very little to do with something the Competition Bureau can determine, and a lot more to do with the dysfunctional nature of our securities system in this country. As a result, people are left hanging.

[Translation]

It is possible that your bill does not cover this issue. I simply wanted to make that comment. Thank you, Mr. Chairman, those were my questions.

Mr. Robert Vincent: Thank you.

[English]

The Chair: Thank you, Mr. McTeague.

Monsieur Bouchard, you're trying to get my attention.

[Translation]

Mr. Robert Bouchard: As Mr. Vincent is the sponsor of Bill C-452, I would like him to make some brief concluding remarks and to add any points that he was unable to raise.

Mr. Robert Vincent: As I already told Mr. McTeague, in essence this bill seeks to establish a power to investigate. Other countries have this power. Mr. McTeague is fascinated by the price of gas.

Are you aware that oil and gas companies determined that their only competition is the result of costs required by municipalities? Within a municipality, the price of gas is uniform, but in a smaller municipality, for example, the price is different. It may be lower. Oil and gas companies do not compete with each other. Competition is at the municipal level. That is where the difference lies, and that is where we want action. We want truly competitive prices. As Mr. Wallace mentioned earlier, when he worked for Texaco, he used binoculars to check prices. Looking at a competitor's price and adjusting our own is not competition. For there to be true competition among oil and gas companies, prices at one company must be lower than those at another so that they lower their prices. That way, everyone doesn't have the same price.

•(1240)

The meeting is adjourned.

[*English*]

The Chair: That concludes our meeting. We'll meet next Tuesday, hopefully with a full scope of witnesses.

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