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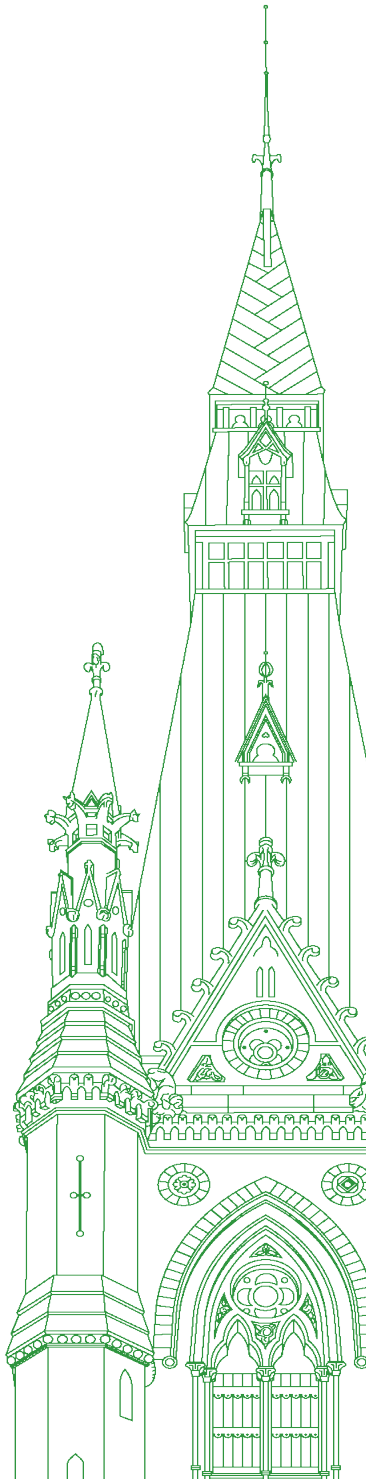

Chair: Mr. Ken McDonald

Standing Committee on Fisheries and Oceans

Thursday, June 1, 2023

● (1540)

[*English*]

The Chair (Mr. Ken McDonald (Avalon, Lib.)): I now call this meeting to order.

Welcome to meeting number 71 of the House of Commons Standing Committee on Fisheries and Oceans. This meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022.

Before we proceed, I would like to remind everyone to address all comments through the chair.

In accordance with the committee's routine motion concerning connection tests for witnesses, I'm informing the committee that all witnesses have completed the required connection tests in advance of the meeting.

Before we begin with witness testimony today, we have one quick committee business item to get out of the way, and I'd like to do it now versus later.

Two study budgets were distributed to members earlier today. Does the committee agree to adopt the proposed budget in the amount of $2,000 for the DFO briefing on Report 21 of the 42nd Parliament?

Mr. Robert Morrissey (Egmont, Lib.): I move, Mr. Chair, that we adopt it.

The Chair: Is anyone opposed?

Hearing no opposition, that's adopted.

Next, does the committee agree to adopt the proposed budget in the amount of $26,000 for the study of the Great Lakes Fishery Commission?

Mr. Robert Morrissey: It is so moved, Mr. Chair.

The Chair: It is moved by Mr. Morrissey. Is there anyone dissenting?

Okay, we'll consider that adopted, and we'll move on now to our witnesses.

Pursuant to Standing Order 108(2) and the motion adopted on January 20, 2022, the committee is resuming the study of foreign ownership and corporate concentration of fishing licences and quota.

I would like to welcome our first panel of witnesses. Representing the British Columbia Crab Fishermen's Association, we have Duncan Cameron, director.

Representing the Competition Bureau, we have Brad Callaghan, associate deputy commissioner, policy, planning and advocacy directorate; Anthony Durocher, deputy commissioner, competition promotion branch; and Pierre-Yves Guay, associate deputy commissioner, cartels directorate.

We will now go to our first witness for five minutes or less.

Go ahead, Mr. Cameron, please.

Mr. Duncan Cameron (Director, British Columbia Crab Fishermen's Association): Good afternoon, honourable members of Parliament and Chairperson.

My name is Duncan Cameron. I am a fourth-generation fisherman and I sit before you today as a representative of the B.C. Crab Fishermen's Association. Our board is made up of elected representatives from the different management areas on our coast. Our areas are lettered similar to how lobster districts are numbered on the east coast. However, every three years, we can select different areas. All our directors are active crab harvesters.

The Dungeness crab fishery is B.C.'s most valuable fishery and has some of the most advanced monitoring tools in the world. The crab fishery was the first in North America to introduce video monitoring in conjunction with RFID-scanned traps, a GPS speed algorithm and robust conditions for the licence to meet conservation objectives.

Unfortunately, we now find ourselves confronted with a pressing issue that threatens the very foundation of our industry. The ability of processors, foreign interests and large corporations to acquire fishing licences directly undermines the conservation of our species, reconciliation efforts and the landed value of our catch. Since 2018, we have been advocating that DFO restrict licence ownership solely to first nations fishery initiatives and individual fishermen, but unfortunately, our pleas have gone unanswered.

Our request for this crucial policy change was and is driven by ongoing reconciliation processes and court directives aimed at granting first nations access to the fishery. The Reconciliation Framework Agreement signed between coastal first nations and the Government of Canada, as well as the Ahousaht case affirming rights to fish, have indicated the use of the willing buyer, willing seller mechanism.

As Ahousaht First Nation realized their crab rights through their appeal decision, the Canadian government was ordered to buy back the equivalent access awarded to Ahousaht from active harvesters. However, because processors were able to compete in buying licences, only a few licences were brought back, and instead, many of the licences were repurchased by processors. The department did nothing to make licences available and failed to take action, leaving us to bear the consequences.

As a result of this inaction, we have witnessed adverse impacts on multiple fronts. Access has been reallocated without proper mitigation for existing harvesters, leading to tensions between indigenous and non-indigenous harvesters. Illegal sales fisheries have thrived, particularly during biologically sensitive crab seasons, and access for first nations outside of Ahousaht territory has been diluted as harvesters have moved to other areas upon three-year reselection.

It is crucial to recognize that processors can secure seafood through alternative means, such as developing new markets, offering competitive services and pricing or partnering with first nations for access. All these avenues lead to positive outcomes for the fishery and coastal communities. The processing facilities required for the crab fishery are much simpler and cost less than those for finfish and other species. That is why we have so many more processing facilities for crab than there are for other species.

Similarly, investors can invest in the seafood industry by investing in infrastructure or other sectors of the marine industry in search of a return on investment from our ocean economy. However, fishermen depend on fishing licences to access and exercise their livelihoods.

A fallacy that has been communicated from the Pacific region by DFO and others is that different conservation objectives in B.C. have shaped licensing policy. This could not be further from the truth. Ownership of fishing licences in a majority of fisheries has nothing to do with conservation, and it is not a tool to manage the conservation effort. We manage conservation through spatial closures, haul restrictions, trap limits, trap size, bait restrictions, crab size, biological sampling and many other tools. We do not use licence ownership or transferability to achieve conservation objectives.

Another common argument presented against this change is that access concerns, such as marine protected areas, are much more concerning to harvesters than licence ownership. While MPAs may be a serious concern and are certainly one we share, two things can be true at once: We need to have access to fishing grounds and we need to see the benefits of the fishery.

A more disingenuous part of this argument is ignoring the fact that licence ownership is directly linked to access decisions. In the MPA example, we can see that where first nations own access and the surrounding communities benefit from the fishery, the proposed protected areas have significantly fewer areas proposed to be closed to our crab fishery. The simple logic is that when a community member sees benefits from sustainable fisheries, they are not as likely to restrict us.

In closing, we recommend the following:

One, immediately restrict the sale of licences to fishermen and first nations. Two, commit more capacity in the Pacific region to this issue to realize the socio-economic benefits of the fisheries, specifically human capacity. Three, increase regulatory oversight for commercial fishing boat and licence brokerages, as outside of the commercial crab fishery, there is essentially only one brokerage.

Thank you for your time.

● (1545)

The Chair: Thank you for that, Mr. Cameron. You are a little under time, which is always good to see.

We'll now go to Mr. Callaghan for an opening statement of five minutes or less.

[*Translation*]

Mr. Brad Callaghan (Associate Deputy Commissioner, Policy, Planning and Advocacy Directorate, Competition Bureau): Good afternoon, Mr. Chair and members of the committee.

Thank you for the invitation to appear before you today.

My name is Brad Callaghan and I'm the associate deputy commissioner of the Competition Bureau's policy, planning and advocacy directorate. I am joined today by my colleagues, Pierre-Yves Guay, associate deputy commissioner of the cartels directorate; and Anthony Durocher, deputy commissioner of the competition promotion branch.

The bureau is an independent law enforcement agency that protects and promotes competition for the benefit of Canadian consumers and businesses. We administer and enforce Canada's Competition Act, a law of general application that applies to every sector of the economy. We investigate and address abuses of market power, anti-competitive mergers, price fixing and deceptive marketing practices. The bureau also advocates for pro-competitive government rules and regulations.

Evidence-based enforcement is at the heart of what the bureau does and this requires that our actions be based on credible evidence that can withstand judicial scrutiny.

It's important to recognize that we are enforcers, not adjudicators. The Competition Act requires us to meet several thresholds and standards, such as proving that there has been a significant harm to competition. Regardless of if we want to bring a case forward, we are guided by the decisions of the Competition Tribunal and the courts.

[*English*]

I would like to make two short comments in relation to the focus of the committee's study on foreign ownership and corporate concentration of fishing licences and quota, just to help situate the Competition Bureau within it.

First, on the foreign ownership aspect, it's important to understand that our analysis is focused on protecting and promoting the intensity of competition overall. The nationality of the companies bringing that competition is not part of our framework. Those considerations would typically fall under other mandates, including the consideration of ISED's investment review division under the Investment Canada Act.

With respect to corporate concentration, the bureau does not regularly evaluate overall levels of concentration or the state of competition in particular markets. In our enforcement work, the bureau looks at specific conduct or allegations on a case-by-case basis. For example, we would examine whether a specific merger between two companies would substantially lessen or prevent competition in a particular market.

Before fielding your questions, I would just note that the law requires us to conduct the bureau's investigations in private and keep the information that we have confidential. That obligation may prevent us from discussing some of our past or current investigations.

I would like to thank the committee for the opportunity to appear today, and we look forward to your questions

● (1550)

The Chair: Thank you for being another person a little bit under the five-minute mark, which we don't see very often.

We'll now go to our first round of questioning. Mr. Arnold, you have six minutes or less, please.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you, Mr. Chair, and thank you to the witnesses for being here.

I will start out with Mr. Cameron.

You talked about conservation and sustainability. Will there come a point in time when you believe that licence ownership will be more of an issue in managing for conservation and sustainability?

Mr. Duncan Cameron: No, that won't be the case in our fishery. You have a crab licence, and we use many other tools to realize conservation.

Mr. Mel Arnold: Thank you.

I want to turn my questioning now to the representatives from the Competition Bureau.

On May 11, a witness told the committee, "The Competition Bureau uses the four-firm concentration ratio: If the top four firms have less than 65% of the relevant market, the bureau is generally not concerned." Is that a correct statement?

Mr. Anthony Durocher (Deputy Commissioner, Competition Promotion Branch, Competition Bureau): We have two of what we call "safe harbour thresholds" that basically give indications to stakeholders as to when a merger, for instance, can raise competition issues. One is if a single firm holds more than 35% in a given market, and the other is if the top four firms hold 65%.

I would just say that these are only safe harbour thresholds, and we look at every case on the basis of the evidence. Therefore, we can take cases when those thresholds are not exceeded as well as when they are exceeded.

Mr. Mel Arnold: Thank you.

In assessing corporate concentration, does the Competition Bureau consider how much the biggest firms purchase, or only what they sell to their share of the relevant market?

Mr. Anthony Durocher: It would be both. It depends on the circumstances, but if we look at a processor, for instance, we would look at both the purchase dimension and at a potential lessening of competition for how much people are paying for their input and whether they can actually decrease the price paid for inputs.

Conversely, on the supply side, the sale side, we would look at whether there's a lessening or a prevention of competition in terms of how much is charged to people down the supply chain, be it distributors or retailers, and their ability to increase the price.

Mr. Mel Arnold: Thank you.

In assessing the concentration level of firms in a sector, does the Competition Bureau consider how much of a specific species of fish is bought by a firm or firms within a relevant market?

Mr. Anthony Durocher: Every merger analysis would be different in terms of looking at the particular facts at play. We would aim generally to define a market and look at the relevant metrics of concentration for a potential exercise of market power. If we were looking at upstream issues and the potential for exercise of market power over the purchase of an input, we would look at all relevant metrics to assess concentration and remaining competitors in that market for the purchase of an input.

Mr. Mel Arnold: Okay. In assessing those metrics in corporate concentration, does the Competition Bureau identify and include all subsidiaries of a corporation?

Mr. Anthony Durocher: Yes. Generally, as part of our analysis, when we identify merging parties, we would look at affiliates. An affiliate is defined under the Competition Act as generally being a company in which another entity has over 50% interest or what we call "control", but there can be instances when the other company is below that, with a minority interest, but it still affords them the ability to control the economic behaviour of that affiliate company. Those are things that we would take into account.

We look at not just de facto but de jure control of companies.

Mr. Mel Arnold: How does the Competition Bureau determine that they're assessing all subsidiaries of a corporation and not just the corporation itself?

Mr. Anthony Durocher: When a transaction exceeds certain financial thresholds, companies must notify the Competition Bureau before they can consummate their transaction.

● (1555)

Mr. Mel Arnold: What would that threshold be?

Mr. Anthony Durocher: There are two thresholds, and both must be exceeded. The first one is that all parties to a merger must have more than $400 million in assets or revenues generated from those assets. The second threshold—and again, both must be met—is that the assets being acquired must generate more than $93 million in sales, or the value of those assets themselves is $93 million.

When a merger exceeds those thresholds, it is notifiable. Companies must provide us with prescribed information to enable us to do a review.

Mr. Mel Arnold: How would you define the "relevant market" of Canadian fish and seafood?

Mr. Anthony Durocher: Every case would be looked at on its own merits, so we would have to look at the specific set of facts for a given merger in the fisheries space to determine the appropriate product dimension of the market and the appropriate geographic dimension of the market.

In answering these questions, we're largely informed by gathering facts from the marketplace. We would typically interview suppliers, competitors, customers and industry association experts. We would also review company documents to make sure that we're making an informed determination of the relevant scope of the markets at play and, more importantly, the competitive dynamics at play.

Mr. Mel Arnold: Thank you.

I believe my time is up. Thank you.

The Chair: Yes, you just ran out, Mr. Arnold.

We'll now go to Mr. Hardie for six minutes or less, please.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you, Mr. Chair, and thank you to everybody here today.

Mr. Cameron, it's good to see you again. You've been kind of a frequent flyer at these hearings.

You mentioned that there should be steps to restrict the sale of licences and quota to, basically, Canadians. Is that correct?

Mr. Duncan Cameron: It's more to actual individual fishermen or to first nations.

Mr. Ken Hardie: Are you saying that if somebody were to sell a licence or quota to another entity or individual who simply leased it out, it should not be allowed?

Mr. Duncan Cameron: You'd have to decide at that point, because in different first nations' fishery initiatives, they want the ability to lease to different members, so I think it would be a little different in that scenario, but as an independent harvester, I would say no.

Mr. Ken Hardie: You attended some sessions in Victoria earlier this year, and almost as a side comment you mentioned that you, in fact, had sold a licence. Is that correct?

Mr. Duncan Cameron: I've bought and sold licences in my fishing career.

Mr. Ken Hardie: It's only human and only natural, and certainly the free market would suggest that you'd want to get the best price you could, especially when you're selling, and the lowest price you could when you're buying. Is that right?

Mr. Duncan Cameron: You'd want at least the best price when you're selling, yes.

Mr. Ken Hardie: Especially given our sense that so many licences and so much quota are in the hands of people who.... If we were to make a transition to an owner-operator fleet separation regime, how could we get through that process and not unduly harm people who up until now have been playing by the rules but who have a considerable amount of wealth at least tied up in the licences and quota that they own but don't fish?

Mr. Duncan Cameron: I would say the demand is so strong that you almost would not have to worry about it.

This government has given hundreds of millions of dollars to CFN specifically. There's a lot of capital that would make that process fairly seamless. I imagine prices will drop a little bit, potentially, but I don't think there's going to be this big cliff.

I think Paul Kariya was pretty straightforward when he testified here. They've been given a lot of money to buy licences, and if they don't have the ability and supply to buy those licences, the access will be expropriated straight towards them, so that's a much bigger concern with respect to licence valuations than restricting who could purchase them.

Mr. Ken Hardie: On the acquisition or provision of licences and quota to first nations communities, I've raised the issue that if that happens and the community actually gets its hands on licences or quota, that represents an opportunity for somebody in that community to actually be engaged in the fishing activities and the usual flow of economic and other benefits back to the community, but we also know that some of the communities—and you mentioned this just now—would prefer to lease it out, and that wouldn't necessarily be to a band member; it could be to anybody.

Do you think that something needs to change there?

● (1600)

Mr. Duncan Cameron: To be honest, I don't think it's our place to speak to how they exercise those rights. We certainly feel for harvesters who want to be on the water, but we're not in a place at this time to determine self-determination for different nations. You can speak more to independent harvesters on that.

Mr. Ken Hardie: I appreciate that, Mr. Cameron.

Mr. Callaghan, vertical integration has become a reality and an economic necessity, I guess, in the industry out on the coast. You've spent a lot of money on a processing facility and obviously you want the material that goes into it.

Add to that the fact that many harvesters get access to quota or licences through a processor and they're then indentured to that processor to sell to them. The price is set before the season starts, and the fisher gets paid whatever the market or whatever the processor's willing to pay them after the fact.

Does that scenario not concern the Competition Bureau?

Mr. Brad Callaghan: My colleague Mr. Durocher may have something to add on this point, just from the perspective of potential merger review, but I would say that vertical integration is not something that in and of itself would cause concern. There certainly are cases in which vertical integration can bring efficiencies and can lead to pro-competitive outcomes, but that said, we would look at every case on its own merits.

My colleague Mr. Durocher has mentioned notification thresholds whereby the bureau would be made aware of mergers transactions in the space, but I'll just mention that the bureau can review merger transactions of any size.

In and of themselves, they wouldn't necessarily raise competition concerns, and we would evaluate each one on its own facts to see if there is an effect on competition.

Mr. Ken Hardie: In fact, has your agency, the Competition Bureau, ever been asked to look into a merger such as, for instance, the acquisition of the Canadian Fishing Company by Jim Pattison Group?

I'll use that as an example. You don't have to confirm whether or not that was one, but have you ever actually had to look into a transaction out of the west coast?

Mr. Anthony Durocher: Yes, we have. We've looked at probably half a dozen mergers in this space, mostly on the processing side, over the last four years, none of which we've taken action on, but all of which have undergone a thorough competition review.

The Chair: Thank you, Mr. Hardie. Your time is up. You're right on the mark.

We'll now go to Ms. Desbiens for six minutes or less, please.

[*Translation*]

Mrs. Caroline Desbiens (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, BQ): Thank you, Mr. Chair.

Witnesses, thank you so much for being with us. We've been looking forward to seeing you.

I'd like you to tell us how the Competition Bureau gets involved when an outside company wants to make an acquisition in Canada or Quebec. What are the first steps involved?

Mr. Anthony Durocher: Thank you for the question.

I'd like to start by saying that a company's nationality really has no bearing on our work. What's important to us is really the competition.

When a transaction or merger is proposed, the first thing to check usually is whether the financial thresholds are exceeded. I touched on this earlier. If the financial thresholds are exceeded, companies must give notice to the Competition Bureau. On the one hand, this gives us the information we need to conduct a review to make sure there are no competition problems. On the other hand, it gives us some time to review the facts before the parties can close the transaction.

That said, the bureau can review transactions even if they don't exceed the financial thresholds, and this is to ensure that there are no competition issues. We have a team that obtains information from the market so that we are aware of any mergers that may be problematic. In addition, we often receive complaints from third parties, whether consumers or suppliers, notifying us of a transaction they feel is problematic. In such cases, we review the facts and determine whether we wish to initiate a review of the transaction.

Transaction review involves interviews and document review. Occasionally, we hire experts as needed. Once this process is complete, in order to act, we need to determine whether there is an impediment to competition or a marked lessening of it. This is what constitutes the threshold.

● (1605)

Mrs. Caroline Desbiens: It's like a rating.

Mr. Anthony Durocher: Yes, somewhat. Actually, it's really a legal threshold. It's included in our law.

It's relatively rare that, as part of our reviews, we determine that there are competition issues, but, when there are, it can be very serious and have a significant impact on an industry. We can then take our case to the Competition Tribunal, either to block the transaction or to seek divestiture of assets to correct the competition problem.

We can also enter into negotiations with companies and come to an amicable agreement, which we call a consent agreement. We then file this agreement with the Competition Tribunal. It's really an amicable agreement, but the—

Mrs. Caroline Desbiens: This way, your thresholds would be respected.

Mr. Anthony Durocher: Yes. This approach can also be aimed at ensuring that remedial measures are taken to counter the anti-competitive effects of a transaction. For example, this often involves divesting one of the parties involved of some of its assets to ensure that competition is respected.

Mrs. Caroline Desbiens: As we know, everything is increasing. In the context where thresholds must be respected, some companies, to take possession of a certain number of resources, will multiply small transactions, rather than make a transaction that exceeds your threshold. Is this something you can measure?

Mr. Anthony Durocher: Yes. In fact, there have recently been changes to the Competition Act, so it's now more difficult to structure a transaction in such a way as to avoid having to give us notice. That said, we also often review transactions as a series, even if they are not structured in such a way as to avoid having to give us advance notice. Obviously, situations are all different from one another and the relevant facts must be considered, but this could lead us to review a series of transactions as a potential case of abuse of dominance.

Mrs. Caroline Desbiens: Are you in a position to know how much of the market share belongs to foreign interests? You say that the share of foreign investment compared to domestic investment isn't what you're looking at. That's really what we're looking at here.

Do you have any means or indicators that alert you to the fact that foreign investment exceeds a certain threshold of acceptability?

Mr. Anthony Durocher: As I said, the important thing for us, whether it's foreign or domestic investment, remains the sole aspect of competition. The nationality of the company does not matter.

Very often, as part of our reviews, we calculate market shares, whether based on revenues or otherwise, to better understand who the other competitors are in the market. Sometimes it's foreign competitors, sometimes it's domestic competitors. It really depends on the industry and the relevant facts.

Mrs. Caroline Desbiens: What would be your definition of a good practice that respects competition in fishing, for example?

Mr. Anthony Durocher: I'd say we're really the champions of competition in Canada. One of our roles, as Mr. Callaghan mentioned, is to provide pro-competitive advice to all levels of government.

Our role is primarily to promote compliance with competition laws. We do a lot of work with small, medium and larger companies to make sure they understand what the compliance issues are and what our role is, so that they're able to refer complaints to us if they think they see anti-competitive activity in a market or potential cartels.

We therefore have an educational role. In that sense, for us, a good practice is to make sure that all companies are in compliance with the law and know how to detect possible anti-competitive behaviour or actions so that, if necessary, we can investigate and—

● (1610)

Mrs. Caroline Desbiens: —submit these cases to the courts.

Mr. Anthony Durocher: Yes.

Mrs. Caroline Desbiens: Thank you.

[*English*]

The Chair: Thank you for that. You were a little bit over.

We'll now go to Ms. Barron for six minutes or less. Go ahead, please.

Ms. Lisa Marie Barron (Nanaimo—Ladysmith, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for being here today.

Mr. Cameron, my questions are going to be for you for the most part in this round.

We are hearing about fishers ending up in debt to licence owners before they even start the season because of the lease prices being set before fishing takes place. I'm wondering what your thoughts are on that and what the results and impacts of this are.

[*Translation*]

Mrs. Caroline Desbiens: Excuse me, Mr. Chair, but the wrong microphone is on and the interpreters can't hear Ms. Barron very well.

I think it's back on now. I'm sorry for the interruption.

[*English*]

Ms. Lisa Marie Barron: Did I say something brilliant?

Okay, I'll start over. It sounds as though we just had some interpretation problems.

Basically, Mr. Cameron, I was asking about the debt that many fishers are going into to licence owners because of the lease price being set before fishing takes place, and I'm wondering if you can speak to the impacts of those situations or if you have come across situations like that.

Mr. Duncan Cameron: Sure. It certainly happens. The crab fishery is a little different, because in most places it's almost a year-round fishery. In other fisheries maybe there are only 30 days or 60 days, a very short term, so you can make that debt mistake multiple times in one year and really get yourself in a spot. Because of the length of the season, crabbing is almost more like a job. You can do maybe one or two other fisheries a little bit, but you're committed almost the whole year to it, so if you do that, you and your crew are not making money for the whole year.

It's going to take a lot less time before it goes badly and your business evaporates than it would if you leased some halibut quota or a prawn licence. You can make that bad decision and you and the crew are done in a month, and then they go work some other job to make up for it or something. In crabbing, if you do that, it certainly exists, but those people, unfortunately, are discarded fairly quickly.

Ms. Lisa Marie Barron: Thank you for clarifying.

One of the other things you were talking about was the current licensing policies not being about conservation. I'm wondering if you feel that the current licensing policies take the socio-economic impacts on fishers into consideration.

Perhaps you can build a little bit more on your thoughts around what is not being taken into consideration when decisions are being made that impact communities and the environment in multiple ways.

Mr. Duncan Cameron: I guess I probably worded it a little poorly. We do use licensing policy in a sense to set conservation. We have a limited number of licences, but the idea of who owns those licences is not the same as the idea of transferring quota. It's not used in the same sense. There's not really much effort at all given to achieving socio-economic goals in our fishery. That's become really clear in how it appeals decisions. Those frameworks and safeguards or the promotion of socio-economic benefits just don't really exist.

Ms. Lisa Marie Barron: What impacts are you seeing? Can you share any examples of the impacts of not taking socio-economic benefits into consideration?

Mr. Duncan Cameron: Yes. Area E Tofino harvesters lost 50% of their access to their business. That sounds like losing 50%, but it really means losing 100% of their profitability. In a very short time frame, the profitability of the business they've been doing for a long time went away. Then those harvesters moved elsewhere and diluted access in other parts of the coast, so it's become a coast-wide issue.

Ms. Lisa Marie Barron: Thank you.

Mr. Cameron, you also spoke about the tensions between indigenous and non-indigenous people as a result of the reallocated access to fisheries and harvesting. We know that reconciliation doesn't mean taking resources from one person and giving them to another; there's a bigger process that needs to be taken.

I could go on, but with no further ado, I just want to see if you could share a little bit more information around some of those tensions you're seeing and the impacts on indigenous and non-indigenous people.

Mr. Duncan Cameron: It's not an area that I fish specifically, but when it happened.... I think it's really clear to say that naturally there are tensions. Those tensions are downloaded onto us and projected by poor policy. You can imagine what it might bring when you're losing your entire livelihood and the community of people you work with are losing their livelihood, and it's sort of being heralded as reconciliation.

Our response to that was to put together a package really quickly to get those harvesters out on the water with boats and gear and the capacity to start fishing right away and to fairly compensate the harvesters who lost access. That was turned down. It's now been more than two years since the appeal decision of April 2021, and three licences have been purchased. Single processors have bought more licences in that time.

● (1615)

Ms. Lisa Marie Barron: Thank you.

What are the impacts you're seeing around the crab fishery in terms of food security, access to crab for local communities, crab staying here in Canada and so on?

Mr. Duncan Cameron: I think we've been pretty lucky up until this point, until recently. The crab fishery has really started growing significantly in value in the last five to 10 years. Before then, there was not a lot of interest in buying licences, other than among fishermen. It was a very independent fishery up until recently, and it still is, in most areas. Crab are available to the public, but if we don't get a policy correction, that will change.

China represents more than 90% of the export market. Some years when it's better in one area, in the Hecate Strait, more of it goes to the U.S., but for most areas, over 90% is sent to China live.

Ms. Lisa Marie Barron: Thank you.

How much time do I have, Mr. Chair? I'm not sure if my timer is still accurate.

The Chair: You have 20 seconds.

Ms. Lisa Marie Barron: I'll take that back next round.

The Chair: We can try that and see what happens.

We'll now go to Mr. Small for five minutes or less. Go ahead, please.

Mr. Clifford Small (Coast of Bays—Central—Notre Dame, CPC): Thank you, Mr. Chair. It's good to see that you're alive and well there in Conception Bay South.

Thank you to the witnesses for taking time to come out and take part in this very important study.

My question is going to be for Mr. Guay.

We've heard numerous witnesses say, in particular with reference to B.C. or Newfoundland, that seafood buyers and processors are operating as cartels or in collusion with one another when it comes to buying or competing for product from fishermen.

How would you define a cartel or collusion in this type of situation between buyers?

Mr. Pierre-Yves Guay (Associate Deputy Commissioner, Cartels Directorate , Competition Bureau): Thank you for the question.

Section 45 of the Competition Act is the conspiracy provision—and I am going to get to your specific question—which says that it's a criminal offence for competitors or potential competitors to fix prices, allocate markets and restrict output in the course of supplying a good or a service. When we're talking about purchasers agreeing together, the problem is that they are not supplying a good or a service; they are on the purchase side, with what we call a buy-side agreement. Under the last amendments to the Competition Act, in 2009, the word “purchase” was taken out of section 45. The possibility for us to intervene under the criminal provision for conspiracy was thus limited.

Mr. Clifford Small: Mr. Guay, I know there are a lot of people from the fishing industry watching these hearings here now. I've heard the words “collusion” and “cartel” all my life, frankly, about the fishing industry, and I've heard many, many times that the Competition Bureau should be doing investigations. Are you telling me that there's no possibility you would ever be able to investigate such things?

Mr. Pierre-Yves Guay: Well, under the criminal conspiracy provision, it's not possible at this point, given the change to the law; however, there are other ways to investigate, and we can look into situations of that kind under section 90.1 of the Competition Act, which is a civil provision.

I'm not an expert in that field, so maybe I can pass it on to one of my colleagues to comment.

Mr. Clifford Small: Well, absolutely, one of your colleagues is definitely more of an expert than I am.

Mr. Anthony Durocher: Buy-side cartels or conspiracies cannot be looked at criminally right now, with the exception of anything related to fixing of wages or no-poach agreements. As my colleague pointed out, they can be looked at under the civil provisions of the Competition Act under section 90.1.

I would point out that whether the Competition Act should be reviewed to be able to look at buy-side cartels under a criminal track is a live issue right now. The government has launched a consultation on the Competition Act, and there are a few notable issues that are taking up a lot of time, and that particular issue is one.

Looking at the buy side under criminal provisions is a long-standing issue in competition law.

● (1620)

Mr. Clifford Small: Mr. Durocher, if independent harvesters can't move freely between processors, is that what you were referring to when you mentioned no-poach agreements? Would that be the type of thing that would fall under “no poach”?

Mr. Anthony Durocher: To be clear, this is as a result of amendments that received royal assent last year, but this actually comes into force under the Competition Act on June 23 of this year, which is in a few weeks. Wage-fixing agreements and no-poach agreements will now become illegal under section 45 of the Competition Act.

A no-poach agreement would be a reciprocal agreement between two employers under which they agree not to poach one another's employees. They agree not to hire one another's employees.

Mr. Clifford Small: We've heard from some witnesses and had some written witness material that a similar thing is happening in the fisheries, such that processors won't take from each other's suppliers, but the provisions dealing with no-poach agreements wouldn't apply to the fishery in the same way. Am I correct?

Mr. Anthony Durocher: I think—

The Chair: Thank you.

Mr. Small, you've gone over your time. I would ask the witness, if he has an answer, to send it in writing to the committee, and we'll include it in the study.

We'll now go to Mr. Hanley for five minutes or less.

Mr. Brendan Hanley (Yukon, Lib.): Thank you.

Thanks to all the witnesses for being here today.

I want to start with Mr. Callaghan.

In your speaking notes, you say quite clearly “the Bureau does not regularly evaluate overall levels of concentration or the state of competition”, but you look more at individual circumstances on a case-by-case basis. Is there a body that does look at the overall impact of competition or concentration?

Mr. Brad Callaghan: I can add a bit more nuance to what I said in my opening.

Beyond our enforcement mandate, under which we would do specific investigations into conduct such as the merger I mentioned, or allegations of cartels, as we've been discussing here, or other aspects of conduct, the bureau can also do market studies. Our powers are circumscribed, so the ability to collect information in those contexts of market studies is quite different from that in enforcement work, in the sense that we can gather that information for a market study only if it is given on a voluntary basis or is available as public information. Market studies are really a part of our mandate to promote competition, so our goal with those is really to advocate more pro-competitive regulations or policies to policy-makers, but that might be one scenario in which we try to at least look at the dynamics of competition in a specific market.

Mr. Brendan Hanley: Thank you.

To be more specific, have you actually done a market study in this area?

Mr. Brad Callaghan: No, we have not.

Mr. Brendan Hanley: But it is a possibility.

Mr. Brad Callaghan: Yes, it is, and we're guided somewhat by the priorities of our organization in terms of what we will focus on. The study we are currently working on has to do with competition in the grocery retail sector. Before that, we have looked at issues in the digital economy, such as digital health care. What we really try to do is focus in on markets that are going to have the biggest impact on competition and on Canadians. We look at government priorities, the priorities of our minister and those of Canadians. Those are really what feed into what we focus on in a market study.

● (1625)

Mr. Brendan Hanley: Thank you.

You mentioned in responding to Madame Desbiens that you have a complaints process. How else do you receive notice? Is there also a reporting requirement that's more proactive than a complaints process?

Mr. Brad Callaghan: Mr. Durocher mentioned the mandatory notification process with respect to mergers. At the bureau we have obviously a general ability to gather our own intelligence. That may come from other work we are doing. We've been increasing our intelligence function at the bureau to make sure we are kind of keeping our finger on the pulse of what's happening in competition in markets.

Certainly complaints are a big factor in terms of what we may be looking into. There are specific ways for us to detect some of the conduct that was mentioned to you earlier, such as cartels conduct, which can be one of the most difficult to detect. I would let my colleague Mr. Guay add anything he may wish to, but in that area there's a specific program for immunity, under which we try to encourage members of a cartel to come forward, because it is a very difficult area for us to detect.

All of these things combined are how we try to identify anti-competitive behaviour.

Mr. Brendan Hanley: I know I have less than a minute, but I want to move quickly over to Mr. Cameron.

Mr. Cameron, you made three recommendations, including one on restricting the sale of licences. You also talked about capacity and increasing regulatory oversight. I wonder if on the human capacity part you could take 30 seconds and expand somewhat on that.

Mr. Duncan Cameron: I can't very much, really. We just have no people in the department who are working on it. We had one person for a year and a half. That person moved onto a different file in December. From what I understand, they've been replaced, but there's just basically no staff capacity put towards potential changes to licensing or towards realizing socio-economic protections that were put into the recent changes to the Fisheries Act.

Mr. Brendan Hanley: Thank you.

The Chair: Thank you, Mr. Hanley.

We'll now go to Madame Desbiens for two and a half minutes or less.

Go ahead, please.

[*Translation*]

Mrs. Caroline Desbiens: Thank you very much, Mr. Chair.

Gentlemen, I'd like to know if you've received any complaints from the fishing industry about bad practices that could harm healthy competition in Canada and Quebec.

Mr. Anthony Durocher: Unfortunately, complaints received by the bureau must remain confidential. I can tell you, however, that roughly speaking, we receive over 4,000 complaints a year from Canadians about all kinds of practices in all kinds of industries. All complaints are carefully examined by officers to determine whether there are grounds for investigating a particular type of behaviour. It's the evidence and the facts that are decisive, in these cases.

Mrs. Caroline Desbiens: Do you lack resources or certain powers to do more with certain sectors?

We've welcomed desperate people to the committee, who'd lost almost everything through some not-so-nice sleight-of-hand. So together we're looking for an avenue to avoid losing the resources that live in our waters and that, fundamentally, belong to Canadians and Quebeckers.

Could you have more powers than you have now?

Mr. Anthony Durocher: Our mandate is very clear and simple: to protect and promote competition in Canada's economy, in all sectors.

As for the Competition Bureau's resources, in 2021, the government has greatly increased them. After 10 years without any increase, this was well received.

With regard to our ability to act and intervene in the event of problems on the competition front, I would point out that a review of Canada's Competition Act is underway, with a view to modernizing it. Generally speaking, this is a fairly important exercise. If the Competition Bureau is to intervene in a market, the act must provide it with the tools it needs to investigate and act quickly to resolve competition-related problems, whether in connection with mergers, abuse of a dominant position or possible cartels. This exercise to modernize the Competition Act is very important to ensure that the bureau can intervene to protect and promote competition.

● (1630)

[*English*]

The Chair: Thank you.

We'll now go to Ms. Barron for two and a half minutes or less. Go ahead, please.

Ms. Lisa Marie Barron: Thank you, Chair.

Mr. Cameron, are you seeing many young harvesters entering the industry?

Mr. Duncan Cameron: The crab fishery probably has more young harvesters than a lot of other fisheries do, because of the growing value, but in the fishing industry as a whole, I would say no.

Ms. Lisa Marie Barron: Of these few young people you're seeing entering, are many or any of them owner-operators of vessels?

Mr. Duncan Cameron: It's a bit of a unique situation. In the area where I fish, which is northern British Columbia, I am the only non-Vietnamese-Canadian captain in the fleet. The Vietnamese-Canadian population makes up a very big part of the crab fleet.

Many of them own the licence themselves, or the family owns it—maybe a mom, a dad or a wife—so they may not technically be owner-operators, but theirs is a family-run business.

Ms. Lisa Marie Barron: Have you seen any generational changes over the years around owner-operators and how those have looked, for example, in terms of what you're seeing today versus what you were seeing perhaps even just one generation ago?

Mr. Duncan Cameron: I would say not from the standpoint of a generation ago, but just within the last five years the fishery has grown in value significantly. We see large processors looking to control costs and buy licences and we see more leasing-out from processors.

Ms. Lisa Marie Barron: That's great.

Mr. Chair, I didn't time myself.

The Chair: We're at one minute and 15 seconds.

Ms. Lisa Marie Barron: Thank you very much.

My last question, Mr. Cameron, is specifically around the landed price for catch. Do you believe there are buyers communicating with one another ahead of time to discuss the prices that should be paid? Is this something you have seen?

Mr. Duncan Cameron: It's a bit of a speculative thing for me to say, but I know that as fishermen we certainly coordinate with one another as to what prices are. I imagine buyers do something similar, but I can't provide evidence of that.

Ms. Lisa Marie Barron: Thank you.

I'm going to ask one more. With regard to the 2019 recommendations that have been put forward, do you have any thoughts on why we've been seeing such delayed movement on the actions that were recommended?

Mr. Duncan Cameron: To be quite frank, it doesn't seem as though the Pacific region has much interest in moving many of those recommendations ahead.

Ms. Lisa Marie Barron: What do you think could be done to help move those recommendations forward?

Mr. Duncan Cameron: I catch crab for a living. I don't know how to herd bureaucrats, unfortunately. How can we get them to do it faster? I'm sorry, but I don't have an answer for you.

Ms. Lisa Marie Barron: That's a good answer. Thank you.

The Chair: Thank you, Ms. Barron. I think the trophy goes to Mr. Cameron for such a wonderful answer on that one.

Mr. Ken Hardie: Excuse me, Mr. Chair. I'm just wondering if, before we break, we could ask the members from the Competition Bureau to supply something in writing that describes what was going on and the changes that were made in 2009. I think that would be useful to us, looking ahead.

The Chair: I think they've heard the question. If they can provide the committee with that information, I'm sure they'll do it and send it in to the clerk, who will distribute it to all the members.

That concludes our first testimony.

I want to thank our witnesses for coming in today and sharing such valuable information with the committee.

We'll suspend for a few moments to change panels. We'll let Mr. Arnold take over to begin the last hour of testimony and questions.

Thank you all. I hope to see you soon.

● (1635)

_____(Pause)_____

● (1635)

The Vice-Chair (Mr. Mel Arnold (North Okanagan—Shuswap, CPC)): I'd like to call us back to order for the second half of our meeting.

I'd now like to welcome the witnesses for the second hour.

Representing the Department of Foreign Affairs, Trade and Development, we have Karl Van Kessel, deputy director, investment trade policy; Shendra Melia, director general, trade and services, intellectual property and investment; and Callie Stewart, executive director, investment trade policy; and, representing the Department of Industry, we have James Burns, senior director, policy.

I'd like to take the time to thank you for appearing today.

You'll have five minutes for opening statements.

I believe Shendra Melia will be opening for that department. I'm not sure if the Department of Industry is going to make opening remarks. If we can keep the total opening remarks to six or so minutes, that would be fantastic. Thank you.

Please go ahead.

● (1640)

Ms. Shendra Melia (Director General, Trade in Services, Intellectual Property and Investment, Department of Foreign Affairs, Trade and Development): Thank you very much.

My colleagues and I are pleased to appear before this committee today regarding your study of foreign ownership and corporate concentration of fishing licences and quota in order to provide an overview of Canada's commitments under international investment treaties to assist you in your ongoing work.

There are very few rules pertaining to investment under the World Trade Organization, so most of my remarks will therefore focus on international investment treaties. These are foreign investment promotion and protection agreements and chapters in our free trade agreements, which essentially cover the same areas.

To begin, it is important to note that investment commitments are fundamentally different from the goods market access commitments with which most people are probably more familiar.

The objective of an investment treaty is to create a level playing field for investment and investors of both treaty partners. Parties to an investment treaty commit essentially not to undertake certain types of measures against the investments and investors of the other party, usually regardless of the sector. Importantly, these agreements do not offer preferential treatment to those investors, nor do they offer specific levels of market access to the Canadian market.

The core commitments in an investment treaty are numerous: Parties can't discriminate against investors of the other party based on their nationality, whether in comparison to Canadian investors or investors of a third country; parties cannot expropriate or nationalize investments without fair compensation; parties can't treat the investor of the other party in a manner that falls below a minimum standard of treatment found in customary international law; parties cannot impose nationality requirements on senior management of an enterprise; parties cannot impose performance requirements that distort business decisions.

Finally, parties cannot limit the cross-border transfer of investment-related funds.

However, all of these commitments I just mentioned are very much circumscribed by a combination of carefully drafted exceptions and reservations in areas that are typically sensitive to either Canada or the partner with which the party is negotiating.

Importantly, I also want to also emphasize that parties to investment treaties maintain their right to regulate domestically to achieve legitimate policy objectives, such as the protection of the environment.

It's also important to note that Canada's investment treaties are broadly consistent with one another, but each individual agreement includes differences that would be very difficult to summarize here today.

In negotiating these treaties, we seek cabinet mandates, and we consult with relevant departments and agencies, with provinces and territories, and of course with stakeholders.

To bring it back to fisheries in particular, investment treaties, as I mentioned, do not guarantee a specific level of access to the Canadian market.

More than two decades ago, Canada also started to include in treaties an exception whereby we explicitly maintain the policy flexibility to discriminate on the basis of nationality in relation to licensing of fisheries and other fishing-related activities. This means that Canada can give special treatment to Canadian investors in the fisheries sector that it does not need to extend to investors of any treaty partner.

However, the exceptions I just mentioned above do not allow for other violations of our investment treaties, such as the right not to expropriate investments without fair compensation.

Finally, all investment treaties, except for the Canada-U.S.-Mexico agreement, include a dispute settlement mechanism, commonly called investor-state dispute settlement, which allows investors of one party to bring a claim against the other to enforce commitments under an international agreement. However, this mechanism cannot force a party to modify its law; it can only order monetary damages to be paid if a tribunal finds that the party in question has violated its treaty obligations.

On this point, I would like to emphasize as well that no dispute has ever been brought against Canada in relation to the fisheries industry.

To conclude, Canada's international investment treaties neither offer preferential treatment to foreign investors nor offer them a specific level of access to the Canadian market. In most cases, these treaties explicitly provide Canada with the flexibility to discriminate on the basis of nationality in relation to licensing of fisheries and other fishing-related activities.

Thank you very much for your attention.

I'd be pleased to hand whatever times remains to my colleague.

● (1645)

The Vice-Chair (Mr. Mel Arnold): Thank you.

We're at about four and a half minutes, but don't feel too rushed.

Mr. James Burns (Senior Director, Policy, Department of Industry): Wonderful. I'll be very brief. Thank you very much.

Good afternoon. My name is James Burns. I'm the director responsible for the Investment Canada Act at ISED. We administer the Investment Canada Act on behalf of the government.

It's a pleasure to be here to support your important study on foreign ownership and corporate concentration in fishing licences and quota.

[*Translation*]

Today, I'm going to talk briefly about the Investment Canada Act as a whole, and then I'll take questions from members. I understand that not everyone is necessarily intimately familiar with how the act works, so I'll take the liberty of giving an overview.

The act plays an important role in our economy. It aims to make Canada an attractive destination for foreign investment, thanks to our stable and transparent regulatory regime. In doing so, the act supports economic growth, innovation and well-paying jobs, while protecting Canada's national security.

[*English*]

At a high level, the ICA provides for the review of significant acquisitions of control in Canadian businesses by non-Canadians for their overall net benefit to Canada. The ICA also provides for the review of all foreign investments on national security grounds.

Net benefit reviews focus on the economic impact of acquisitions of control of the most valuable Canadian businesses by non-Canadians. A net benefit review is triggered by a monetary threshold, which ranges this year from $512 million for state-owned enterprises up to $1.9 billion for private sector investors from countries with which Canada has a free trade agreement.

Canada is an open economy. We are a trading nation. We are an attractive destination for foreign investment, which is needed for our economic prosperity. These thresholds are in place to ensure regulatory certainty for investors and to facilitate investment.

On the other side of the act, the Investment Canada Act provides authority to review foreign investments that could be injurious to Canada's national security. Here I wish to emphasize that all foreign investment, no matter the value or where it originates from, including greenfield and minority investments, is subject to review for national security. The national security review process is undertaken in consultation with national intelligence and security agencies. The national security review provisions apply to all industries, including the fisheries sector.

[*Translation*]

The Government of Canada has not hesitated to take action to block transactions that are not in Canada's interest. We have never and will never compromise Canada's national security.

[*English*]

Our annual report provides useful statistics on our net benefit reviews as well as guidance on the use of our national security review authorities. I would note that there have been over 30 blocks or divestiture orders and investor withdrawals over the past five years.

We have been making efforts to provide more transparency and guidance for foreign investors in Canadian businesses. For example, our national security guidelines have an illustrative list of factors that are considered during national security reviews. As an example, the effects of a transaction on the transfer of sensitive technology, critical minerals and sensitive personal data are considered.

The last point I'll note is that in December 2022, the government introduced Bill C-34 to modernize specifically the national security provisions of the Investment Canada Act. This bill is currently being studied by the standing committee on science and industry. The goal of these amendments is to ensure that Canada is able to address evolving threats that can arise from foreign investment while also enhancing transparency and efficiency in the national security review process.

Thank you very much for your time. I'm happy to take any questions you may have.

● (1650)

The Vice-Chair (Mr. Mel Arnold): Thank you for your opening remarks.

We'll go the first round of questioning. We'll start with Mr. Small.

Mr. Clifford Small: Thank you, Mr. Chair.

Thank you to the witnesses for coming out to take part in our study.

My question, Mr. Chair, is for Mr. Burns.

I just heard you mention national security. Food security is part of national security. Would you agree?

Mr. James Burns: It can certainly be interpreted as that, yes.

Mr. Clifford Small: What percentage of the Canadian fishery would a company like Royal Greenland be allowed to buy in terms of the processing sector?

Mr. James Burns: Thanks for the question. I'm not sure I have the ability to answer that question. We don't really look at it in those terms.

Mr. Clifford Small: Along that same line of questioning, Mr. Burns, if a foreign company like Royal Greenland, for example, which is state-owned, were to make significant buy-ins in the Canadian fishing industry, do you think that could possibly eventually represent a threat—and I am just using Royal Greenland as an example—to our national food security?

Mr. James Burns: We engage on a regular basis with a number of different partners across the Government of Canada to identify areas of most significant import to our national security. These partners can include security and intelligence agencies as well as Natural Resources Canada, Transport Canada and other like parties.

We haven't, to date, had engagements with any interdepartmental partners that have raised fisheries or the concentration of ownership as a significant national security threat to Canada. To date we haven't yet had to answer that question.

Mr. Clifford Small: This past Monday, May 29, the clerk of this committee circulated an email from a Global Affairs official who wrote,

> Canada's most recent investment treaties (starting roughly 2000) include an exception where we maintain the full policy flexibility to discriminate on the basis of nationality in relation to licensing of fisheries and other fisheries related activities.

However, in your opening statement today you stated that the core commitments in an investment treaty include a commitment that:

> Parties cannot discriminate against investors of the other Party based on their nationality, whether in comparison to Canadian investors or investors of a third country.

Please clarify what you mean by “discriminate”.

Mr. James Burns: I'll refer this question to my colleague Ms. Melia.

Ms. Shendra Melia: Thank you for the question, Mr. Chair.

Perhaps I could just take a minute to explain in a little more detail what kind of provisions I was referring to.

First I would say the most obvious one is that in many of our investment agreements, we explicitly exempt, as I mentioned, licensing of fishing and fishing-related activities from non-discrimination commitments. Those would be commitments related to national treatment and to most favoured nation treatment.

This includes Canada's main free trade agreements, such as the agreement with the United States and Mexico, the CPTPP and CETA. It also includes our modern FIPAs.

In practical terms, what this means is that Canada has full policy flexibility to accord preferential treatment to Canadian investors when licensing fishing activities without having to extend that same treatment to investors of other countries.

Second, our investment agreements allow Canada to give preferential treatment to investors of one country over investors of another country when that preferential treatment is something that we have negotiated in the context of an international agreement.

The first treatment that I mentioned is what we call “national treatment”. The second one is what we typically refer to as “most favoured nation treatment”. These protections have been developed and negotiated in the context of our trade agreements, in consultation with Fisheries and Oceans Canada. As I mentioned in my opening remarks, in negotiating trade agreements, we always consult with relevant departments and agencies as well as provinces and territories and stakeholders.

Hopefully, Mr. Small, I have answered the question you asked.

● (1655)

Mr. Clifford Small: Sort of, I guess....

In light of Canada's commitments in its trade and investment agreements, is Canada allowed to prohibit foreign investment in specific sector activities, such as owning commercial fishing licences and quota?

Ms. Shendra Melia: To answer that question, I guess what I would say is that the reservations Canada has taken in its trade agreements are related to fishing licences as well as fishing-related activities. The exception specifies that fishing-related activities include—and I'll quote here just to be very clear on what we have negotiated in the context of our international trade agreements—“entry of foreign...vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports, and use of any services therein”.

That said, I guess what I would say to conclude is that we would defer to regulatory experts and legal counsel to really define exactly what that means.

The Vice-Chair (Mr. Mel Arnold): Thank you.

That's your time, Mr. Small.

We'll now go to Mr. Morrissey for six minutes.

Mr. Robert Morrissey: Thank you, Chair.

My question—I'll ask whoever is prepared to address it to speak to it—is that one of the growing concerns on the east coast fishery is the growing concentration of Chinese ownership within the lobster supply chain at the dock level. What are the existing trading agreements that Canada has with China? What are the major ones that govern how we interact with Chinese companies?

Ms. Shendra Melia: The main international investment treaty that governs our interactions with China is the agreement that we negotiated that is referred to as a “foreign investment and promotion and protection agreement”.

In broad terms, this agreement contains more or less the same commitments one would find in most of Canada's international investment treaties. I'd say one notable difference is that it doesn't guarantee equal treatment to Canadian and Chinese investors before an actual investment is made. We refer to this as “treatment pre-establishment”. It's before the company actually comes and establishes in Canada.

With respect to the treatment of fisheries and fishing, the Canada-China FIPA is in line, I'd say, with most of our modern practices and provisions. As I mentioned in my opening remarks, the agreement contains two key exceptions, or what we call “reservations”, that directly deal with fishing and fisheries. As I mentioned already, the first one is that it explicitly exempts licensing of fishing.

Mr. Robert Morrissey: Okay. That's fine. I understand it on the licensing side.

Ms. Shendra Melia: Yes. Just to be clear again, it doesn't contain any market access commitments.

Mr. Robert Morrissey: One of the concerns that has been getting a lot of attention is the ability of companies in Canada that are 100% owned by China to be incurring losses in Canada because they're not dealing with Canadian banks: They get their cash flow by coming in and out. They do not require operating financing, so they incur losses in Canada and they sell into the Chinese market—they're Chinese-held companies—at a higher profit, therefore undermining some of the Canadian-owned companies that don't have the ability to do that.

Are you aware of this practice? How is it governed under our trading agreements?

Am I clear on where I'm going?

● (1700)

Ms. Shendra Melia: To answer the question specifically, I am not aware of that specific practice, and I would say that I cannot speak to its coverage under our international treaties. I don't believe that it's something we would be negotiating in the context of an international investment treaty.

Mr. Robert Morrissey: Canadian companies are frustrated because those Chinese companies show a loss here. They don't pay taxes like Canadian companies, so we're losing in multiple ways. They're also at a competitive advantage in their own market, with a significant disadvantage to the Canadian producer, which will ultimately have a negative impact on the purchase price that fishers receive.

Who is monitoring this particular practice?

More and more, there has been a huge and growing presence of Chinese-backed companies and money buying up east coast Canadian seafood processing companies. They can indirectly get into the licensed part through the processor they have, if they finance it. This is a serious issue.

In fact, I'll go to the issue of the Halifax live shipment terminal. It's now 100% owned by Chinese interests. They'll only serve their own interests. It's blocking out some of the Canadian companies.

Again, who is monitoring this?

Ms. Shendra Melia: I think the question is probably best answered by colleagues at Fisheries and Oceans Canada. They have a deep expertise on the issues—

Mr. Robert Morrissey: Fisheries and Oceans Canada?

Ms. Shendra Melia: Well, my understanding is that they have deep expertise on all issues related to Canada's competitiveness in the fisheries and fisheries processing industries.

That's my answer, Mr. Chair.

Mr. Robert Morrissey: I'm a bit alarmed that external affairs...and nobody answered from the Department of Industry, though I see that Mr. Burns wants to get in.

Nobody should be surprised. This has been making the media in this last while.

It's a real concern developing on the east coast, from the fish harvester right through. If they get total control of the processing and shipping, they then control the price paid to fishers.

Mr. James Burns: If I could add to that, under the Investment Canada Act, all foreign investments are reviewed on a case-by-case basis. The facts of each case are assessed and carefully considered—

Mr. Robert Morrissey: Excuse me, Mr. Burns, but we just heard in an earlier panel from a witness who said there was a significant part of that legal identity removed in 2009. Their ability to look at the socio-economic impact it would have on the community was removed.

The Vice-Chair (Mr. Mel Arnold): Mr. Morrissey, your time is up.

If the witnesses want to provide information further in writing to the committee—

Mr. Robert Morrissey: Thank you, Chair. I would like to have written answers to my questions.

The Vice-Chair (Mr. Mel Arnold): We will move on now to the Bloc. Ms. Desbiens, please go ahead.

[*Translation*]

Mrs. Caroline Desbiens: Thank you, Mr. Chair.

I'll build on the momentum of my colleague opposite.

We've had people here who wanted to testify anonymously. We have received people in deep distress because, having been caught in an unimaginable situation, they were forced to liquidate the assets of their family business, handed down from generation to generation.

Around this table, we're looking for the solution to a problem that's becoming imminent and that puts the food sovereignty of Quebec and Canada at stake. This is not a secret: The Gulf of St. Lawrence abounds in the treasures of the sea. The world's population envies this resource, so it's only natural to see aggressive foreign interests lashing out at our beautiful potential. It's okay to have money coming in from outside, as long as these people meet a certain tax obligation, as my colleague Mr. Morrissey pointed out earlier.

What do we say to people in Quebec who are worried and losing their business? Are they told to go and file a complaint with the Competition Bureau, but that in order to do so, certain thresholds must be met, otherwise their case is less likely to proceed through the courts? Are they told to turn to the Department of Foreign Affairs, Trade and Development, since we're talking about foreign investment? I'd like to know what these people are being told.

● (1705)

[*English*]

Ms. Shendra Melia: From a negotiating and policy perspective related to international investment and agreements, the purpose of my testimony today is to provide an explanation of the nature of the commitments that we've taken in our international investment treaties. From that perspective, I would say that our international investment treaties are meant to provide a safe and predictable framework for people to invest in Canada.

With respect to those issues, I would certainly suggest, again, that this might be a matter that experts at the Department of Fisheries and Oceans Canada could answer.

[*Translation*]

Mrs. Caroline Desbiens: All right, but the experts at the Department of Fisheries and Oceans are few and far between, and rather laconic.

As I mentioned in my comments earlier, the treasures found in the waters that belong to us must be protected. But the Department of Fisheries and Oceans seems to be in a gray area. I'm not sure what other word to use. I don't know if Mr. Morrissey can help me find the right words. Anyway, it's a gray area.

In fact, no one seems to be able to control foreign markets, which use very specific means and could certainly be the subject of further study, perhaps in collaboration with several departments and agencies, such as the Department of Foreign Affairs, Trade and Development, the Department of Fisheries and Oceans, the Competition Bureau and the Department of Finance. I'm not sure who would be part of that crew, but we could really look into it.

What do you think? Would such a collaboration help identify the problem and put in place tools to avoid the risks of losing our food sovereignty in the medium term?

[*English*]

Ms. Shendra Melia: As trade negotiators, we are certainly always willing to work with and collaborate with our colleagues across the government, including the Department of Fisheries and Oceans.

Perhaps I would also add something that I said in my opening remarks. When Canada negotiates investment treaties, we do protect the Government of Canada's right to regulate in the pursuit of legitimate policy objectives. The regulatory regime, in other words, is allowed to evolve and change over time. Moreover, I would also like to say that nothing in these agreements exempts foreign investors from having to comply with Canadian laws and regulations. In other words, foreign investors are subject to the same laws and regulations as domestic investors.

As I mentioned also in my opening remarks and in some of the answers to questions I've answered already, there are a number of ways in which we as negotiators and my colleagues at the Department of Fisheries and Oceans as domestic regulatory leads work together to help develop some of the framework that we include in our international trade agreements. We're certainly always happy to continue doing that and to look at new issues as they arise, including the ones you have mentioned.

Mr. James Burns: Perhaps I can supplement that.

The Investment Canada Act has two components: We review significant foreign acquisitions of control and we review foreign investments for national security injury. Given the specific application of the act, the Investment Canada Act ought to be viewed as one of many tools in a tool box to address foreign ownership challenges in fisheries.

In order to fully address the scope of the issue that I think you identified, I do agree that other tools could be explored, including provincial legislation and policies that could be used to address fishery licences and competition policy to address unfair competition that—

● (1710)

The Vice-Chair (Mr. Mel Arnold): I will have to stop you there. We're about half a minute over.

We'll go to Ms. Barron, please.

Ms. Lisa Marie Barron: Thank you to our new Mr. Chair.

I'm not sure who to address this question to. Perhaps I'll ask it and then you can let me know who the best person is.

Can you share with us your thoughts around what barriers are in place to implement an immediate ban on further licence and quota transfers to foreign beneficial owners? What's stopping us? What types of things would you foresee as issues with moving forward in that direction, if any?

Ms. Shendra Melia: Thank you very much for the question, Mr. Chair.

From an international treaty perspective, as I mentioned in my opening remarks and in responding to a few of the questions I've answered, we have negotiated some flexibility in our trade agreements that would allow the Government of Canada to take some decisions with respect to offering preferential access to Canadian investors and investments. In terms of what those barriers are, I can only speak to, from my perspective, the international investment treaties that we have negotiated. As I mentioned, we have actually negotiated some policy flexibility in those areas.

Mr. James Burns: Perhaps I would supplement as well, Mr. Chair, by noting that with the introduction of a wholesale approach to block certain types of investment, there would be reputational risks to Canada as a location for inbound foreign investment across multiple sectors. Ultimately the goal is to ensure that Canada is seen as an open destination for foreign investment, and blocking beneficial ownership sales could have certain reputational effects for Canada.

Ms. Lisa Marie Barron: Through the chair, Mr. Burns, what are your thoughts on ways in which we might be able to overcome those challenges you're talking about? If we were to move forward, what would be some of your thoughts on that?

Mr. James Burns: I think that would veer into personal opinion rather than my role as a regulator. I'm not sure. I'm sorry.

Ms. Lisa Marie Barron: Thank you. I was leaving you the space to see if you had some thoughts. That's good.

I do know that I'm feeling particularly like sharing today, and I know that my colleague MP Hardie has some questions that I am interested in hearing the answers to, so I'm going to give the remainder of my time to MP Hardie.

The Vice-Chair (Mr. Mel Arnold): You have three minutes. She's generous.

Mr. Ken Hardie: Thank you very much. That will be noted. Thank you kindly.

With respect to the foreign investment protection measures we have in place, I'm wondering how they would apply in a situation where we're trying to wind down an investment. Right now our concern is that there are investments in Canada by entities that have distorted the market, which we'll get to in a minute, but we perceive that too many licences and quotas are in the hands of foreign investors.

If we were to take steps, as were taken in Atlantic Canada some years ago, to basically give them an amount of time to get out of the market, would that run afoul of some of our treaties and our protection agreements?

Ms. Shendra Melia: What I would say is that this issue is not explicitly covered through the reservations and exemptions that we take in our international investment treaties. They allow Canada, as I mentioned, to give preferential treatment to Canadian and to third party investors. In practical terms, the exemptions and reservations mean that our main investment agreements do not force the government to give fishing licences to foreign investors on the same terms that it provides to Canadian investors.

However, the exception, as I said, does not explicitly allow for the rescinding of licences, for example, so once the licences are given, the exceptions that we have taken in our international investment treaties do not specifically give the Government of Canada the discretion to rescind the licences.

● (1715)

Mr. Ken Hardie: I'm sorry; I'll interject here.

Does that mean, then, that we could be taken to court or that we could face some other retaliation if in fact we required people to divest?

Ms. Shendra Melia: I guess my final thought on the first question, if I may, is that our agreements—

Mr. Ken Hardie: Please be brief, because I have another question—

Ms. Shendra Melia: —only allow for the expropriation.... I want to get to the issue of expropriation, because I think that is perhaps at the heart of what you're asking. Our investment agreements require that if we're going to expropriate an investment, we have to do so for a public purpose, we must do so with due process under domestic law, and we have to accompany that by fair compensation for the value of the investment.

Mr. Ken Hardie: Thank you.

Ms. Shendra Melia: I'm sorry. To answer your final question about dispute settlement, yes, if an investor alleges that Canada is not in compliance with international investment obligations, almost all of our treaties allow that investor the right to pursue investor-state dispute settlement. As well, of course, the investor has the right to pursue dispute settlement in domestic courts.

Mr. Ken Hardie: Thank you. Sometimes there's too little time, and I don't get to the other question.

The Vice-Chair (Mr. Mel Arnold): Thank you, Mr. Hardie. That's two seconds, so unless you're really quick....

We'll move on to the next round now. We'll go to Mr. Bragdon for five minutes, please.

Mr. Richard Bragdon (Tobique—Mactaquac, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for taking the time to be here today and to share with us on this very important subject.

I have a couple of questions. I want to circle back to what my colleague was referencing a little bit ago in regard to Canada's food security and the questions that arise out of that in relation to foreign ownership and, increasingly, foreign corporations' involvement in Canadian waters.

As a result of what's happened in the last few years, we're seeing increased anxiety and the absolutely critical importance of securing our food supply chains. What steps and mechanisms would you recommend to the government in order to ensure the protection of Canada's food supply in the event of the geopolitical uncertainty going on around the globe? I'm wondering if you have specific recommendations that you would put before this committee as some practical steps that can be taken right now to help alleviate the concerns of many Canadians about their food security and the future of the fishing industry on all our coasts.

I'll start with you, Ms. Melia, and then we can go from there.

Ms. Shendra Melia: Unfortunately, I don't think that's a question I can answer. Perhaps my colleague from Industry Canada can answer that question. My responsibilities are related to international investment treaties. Food security is certainly not one of the issues that I would say are within my responsibilities.

Mr. Richard Bragdon: Go ahead, Mr. Burns.

Mr. James Burns: I'm not sure you're going to like my answer either.

My responsibility is to help administer the Investment Canada Act, which governs the review of inbound foreign investments, such as investments that have already taken place or that are below a particular monetary threshold and have not triggered a net benefit review. These are the conditions precedent.

I can say that on any investment, if a foreign investor makes a significant acquisition of control, the Minister of Innovation, Science and Industry has within his authority the ability to consider a range of economic factors that touch on our food security as well as the nature of the economic activity related to a particular investment, including the effect of an investment on competition within an industry; the compatibility of an investment or an investor with our national industrial, economic and cultural policies; and the contribution of the investment to Canada's ability to compete in world markets.

If the minister is not satisfied that this investment would meet our net benefit test, then certainly the minister has within his authority the ability to block that investment. More often than not, in the engagement with investors and different parties, the minister will accept binding undertakings that would help ensure a certain level of production in Canada or keep the management team Canadian or keep the headquarters in Canada. These are some of the typical undertakings that are accepted by the minister in certain cases.

It probably doesn't answer your larger question about what recommendations we'd put forward to support food security, but certainly the protection of a marketplace in Canada is one thing that helps ensure that we have the ability to do that.

● (1720)

Mr. Richard Bragdon: Yes. Thank you, Mr. Burns, because it definitely plays a role and it is related.

Obviously I'm referencing, maybe through a layman's lens, the concerns we hear on the ground relating to ensuring a future for the Canadian fishery, owned by Canadians as much as possible, employing Canadians as much as possible, in a way that provides wonderful, safe, healthy, nutritious protein to the world's markets and benefits our own communities and also the world. I think that's a question that's on our minds.

Ms. Melia, in regard to your opening remarks, you stated, “Parties to investment treaties maintain their right to regulate domestically to achieve a legitimate policy objective, such as the protection of health, safety and the environment.” Where are these legitimate policy objectives defined? Are these policy objectives defined in Canada's trade and investment agreements?

I don't know how much time we have, Mr. Chair.

The Vice-Chair (Mr. Mel Arnold): Your time is up. If we could get that in writing, that would be fine. Thank you.

We go now to Mr. Cormier, who is online.

Go ahead, please.

[*Translation*]

Mr. Serge Cormier (Acadie—Bathurst, Lib.): Thank you, Mr. Chair.

Mr. Burns, earlier you said that transactions that are not in Canada's interest are certainly reviewed or examined. On that subject, my colleague Mr. Bragdon just asked some questions I had in mind.

In my riding, there are 15 fish processing plants. Some of them are worth several million dollars. Let's take the situation where a group of foreign investors, regardless of country of origin, would approach some of these owners and offer $25 million to buy a particular plant. If I understand what you've said correctly, the minister would have a say, so to speak, or would be made aware of this transaction and could see that everything is done in accordance with the law. Am I mistaken or is that what you just answered my colleague?

Mr. James Burns: Thank you very much for the question.

[*English*]

I would note two things. Yes, the Minister of Innovation, Science and Industry, in consultation with the Minister of Public Safety, has the ability to review any investment in Canada on grounds of national security.

The second piece I would flag for you is simply that the net benefit provisions of the Investment Canada Act kick in only in the event that an investment is above a particular monetary threshold. Therefore, an investment of around $25 million would not be subject to net benefit review in the same way that a large-scale investment that exceeded the thresholds would be subject to review.

[*Translation*]

Mr. Serge Cormier: Thank you.

I have another quick question, and anyone can answer it.

Do the provinces have any role to play or any say in these investments or transactions?

[*English*]

Mr. James Burns: My understanding is that each province has the remit to review investments, and we consult regularly with our provincial and territorial partners. I would suggest that the provinces, territories and other partners have the ability to review and assess investments in their jurisdictions.

Mr. Serge Cormier: Thank you, Mr. Burns.

I am going to give my remaining time to my colleague Mr. Hardie.

● (1725)

The Vice-Chair (Mr. Mel Arnold): Okay. There are two minutes remaining.

Mr. Ken Hardie: Thank you. Everybody is being so generous today. That's so nice.

Mr. Burns, we've seen a number of different scenarios in which a threshold is set and then people game the system by coming in just under the threshold. In the case of what appears to be happening in Atlantic Canada with the acquisition of processors, does your department look at the cumulative investments over time to see, in fact, how much is being aggregated into one foreign investor?

Mr. James Burns: Our department, in the administration of the Investment Canada Act, works with a variety of different partners to gather intelligence to assess risk, and so, as you noted, investments below a particular threshold would not be subject to a net benefit review, but all would be subject to a national security review.

When you talk about cumulative investment, that is one factor that is raised in the context of a national security review, as you—

Mr. Ken Hardie: We're not necessarily talking about national security here. We're really talking about scooping away social, environmental and community benefits. This isn't a threat to our sovereignty, but it is a real threat.

I'm just going to park that one with you, but I also want to hear from anybody who wants to comment on money dumping. We've seen not necessarily money laundering—although that's something this committee has looked into in this study—but literally what we would call “stupid money” coming in, which people are trying to hide from a foreign government. They come over and invest in boats, houses, airplanes, luxury cars, fishing licences and quotas, and they overpay quite significantly simply as a way of getting their money out of one country and into the relative safety of this country.

Who looks into that?

The Vice-Chair (Mr. Mel Arnold): Can you provide a quick answer, or else something in writing? The time is up.

Mr. James Burns: Sure thing.

Under the Investment Canada Act, we review investments on a case-by-case basis. The facts of each case are assessed and carefully considered. We look at whether investments are beneficial to Canadians or whether, alternatively, they can lead to national security risks in the context of beneficial ownership.

My partners from GAC might have something to add.

The Vice-Chair (Mr. Mel Arnold): We'll have to move on now to Madam Desbiens.

[*Translation*]

Mrs. Caroline Desbiens: Thank you, Mr. Chair.

We feel like we're always reacting late, and that concerns us. Obviously, the pandemic hit us in the face and made us realize that the sovereignty of our assets was essential for the future. Suddenly, everyone's more concerned about it.

However, the committee has already done a study, somewhat along the same lines, to establish a balance. It's okay to have foreign investment; everyone understands that. But we need to strike a balance to ensure that Canada and Quebec continue to be the first to benefit from our natural resources. In fact, I think that's what every country in the world wants. That said, the majority of countries interested in our marine potential and our seafood products are those who otherwise have no access to this resource or who over-consume it. They have headhunters and are making inroads wherever this resource is available.

Now, people are realizing that we're divesting ownership of our seafood and dispossessing the owners, these people who pass on their knowledge from generation to generation. Perhaps we don't realize that when we dispossess the main players in the fishery, those with the most knowledge, of this resource, constantly impoverishing them, emptying villages and reducing know-how, everyone comes out the loser.

Is anyone capable of sounding the alarm and making people understand that not everyone can help themselves to the buffet without worrying about what we're going to eat tomorrow? We have to save for tomorrow and the day after. That's what life is all about; everyone knows that.

Could the Department of Fisheries and Oceans and the Department of Foreign Affairs, Trade and Development work together to put a mechanism in place to make sure we secure the base? It's fundamental. In Quebec, we have a lot of expert owner-fishers. Can we find a solution? Do you think the committee can, today, find some initial solutions?

The witnesses can answer me personally.

● (1730)

[*English*]

The Vice-Chair (Mr. Mel Arnold): We'll have to ask for that in writing, as you've used up more than your time allowed.

[*Translation*]

Mrs. Caroline Desbiens: I'm sorry, Mr. Chair, I thought I had six minutes.

Witnesses may send their response in writing to the committee.

Thank you.

[*English*]

The Vice-Chair (Mr. Mel Arnold): We'll ask for a written response, please.

Next is Ms. Barron, for two and a half minutes.

Ms. Lisa Marie Barron: Thank you, Mr. Chair. I'll try not to take up my entire question period asking the question.

Thank you for your responses.

Mr. Burns, I was reflecting a bit on some of the responses you provided before. I don't know whether this is going to be a personal question or not.

Basically, I was thinking about the fact that you were speaking to some of the reputational challenges that may occur to moving forward in this direction on changing the foreign investment around our fisheries and so on. At the same time, what we're seeing is a foreign extraction of our public natural resources. I mean, this is a finite natural resource.

Wouldn't it be to our benefit to take the time needed to restructure our licensing policies to ensure that the benefits are going back into our communities and local fishers here in Canada instead of being extracted into other countries?

Mr. James Burns: Your point about restricting licences is not something that would fall within the remit of the Investment Canada Act, but what I can say regarding reputational risk is that Canada is seen as a preferred destination for foreign investment, and that's partly because we have a secure marketplace. We have a degree of investor certainty that is put in place by having strong, robust marketplace frameworks. If one were to selectively choose—"we will be doing this in this sector, we'll be doing this in a separate sector and we'll be doing this in another"—it would undermine that sort of wider national consideration for a secure and transparent marketplace.

I would simply point out that it's something that would be front of mind for us, because our goal as a regulator is to ensure we have clear and transparent processes for review that allow commerce to happen in a fair and consistent fashion.

The Vice-Chair (Mr. Mel Arnold): Six seconds are all that's left, so that's not much.

I want to thank the witnesses for being here today and taking the time to appear for us. I think we got some good information that came out today. Thank you very much.

I'll move on to a piece of committee business. The witnesses are free to go if they like, if they'd like to depart.

For next week, on June 5 we're scheduled to spend the first hour receiving a DFO update on the government response to the 2019 report on B.C. licensing and to then spend the second hour on drafting instructions for the foreign ownership and concentration report. I'd like to ask the committee if they would like to push the foreign ownership and concentration drafting instructions to the following Monday, June 12, as the second hour of that meeting is currently vacant.

Would that be acceptable to everyone?

Some hon. members: Agreed.

The Vice-Chair (Mr. Mel Arnold): Okay. That's great. We've consulted with the chair's office and the clerk, and they've said that there are no problems with this. With that, we'll move the drafting instructions to the 12th.

Is there anything else?

Thank you. The meeting is adjourned.