



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

43rd PARLIAMENT, 1st SESSION

Standing Committee on Industry, Science and Technology

EVIDENCE

NUMBER 022

Monday, June 8, 2020

Chair: Mrs. Sherry Romanado



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• (1105)

[*English*]

The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoine, Lib.)): Good morning, everyone. I now call this meeting to order.

Welcome to meeting number 22 of the House of Commons Standing Committee on Industry, Science and Technology. Pursuant to Standing Order 108(2) and the motion adopted by the committee on Monday, June 1, 2020, the committee is meeting to study the Investment Canada Act.

Today's meeting is taking place by video conference, and the proceedings will be made available via the House of Commons website.

I would like to remind members and witnesses that, before speaking, please wait until I recognize you by name. When you are ready to speak, please unmute your microphone and then return to mute when you are finished speaking. When speaking, please speak slowly and clearly so that the translators can do their work.

As is my normal practice, I will hold up a yellow card when you have 30 seconds left in your intervention, and I will hold up a red card when your time for questions has expired.

I would like to now welcome our witnesses.

With us today we have Mr. Charles Burton, senior fellow, Centre for Advancing Canada's Interests Abroad, from the Macdonald-Laurier Institute.

Mr. Patrick Leblond is associate professor, public and international affairs, faculty of social sciences at the University of Ottawa.

From the C.D. Howe Institute, we have Mr. Daniel Schwanen, vice-president, research.

[*Translation*]

Mr. Willie Gagnon is the director of Mouvement d'éducation et de défense des actionnaires.

[*English*]

Each witness will present for eight minutes followed by rounds of questions.

We will start with Mr. Burton.

You have the floor for eight minutes.

Dr. Charles Burton (Senior Fellow, Centre for Advancing Canada's Interests Abroad, Macdonald-Laurier Institute, As an Individual): Thank you, Chair.

Good morning, everybody.

I'd like to speak on the aspect of your study of the Investment Canada Act that is to determine whether Canada should place a temporary moratorium on acquisitions from state-owned enterprises of authoritarian countries, and I am happy to speak this morning—

[*Translation*]

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Madam Chair, I don't think the interpretation is working.

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

[*English*]

Mr. Burton, I will pause your testimony for the moment, and we will just check with interpretation.

Are you on English or on the channel for interpretation?

Dr. Charles Burton: Yes, I am on English.

The Chair: Perfect. Thank you.

We're going to try that again. Would you say a few words, and we'll see if the translation is working.

Dr. Charles Burton: Okay.

The committee has been asked to conduct a study of the Investment Canada Act to determine whether Canada should place a temporary moratorium on acquisitions from state-owned enterprises of authoritarian countries.

Is that good?

The Chair: I'm not getting any translation at all. I'm just going to have the clerk verify with IT. There is absolutely no translation into French at the moment.

Just to let you know, they're trying to fix it in the room. If you could hold for one moment, we want to make sure that everyone can participate fully.

I believe we are now good to go. We will try that again.

Mr. Burton, could I ask you to start again. Thank you.

• (1110)

Dr. Charles Burton: I would like to speak to the aspect of your study on determining whether Canada should place a temporary moratorium on acquisitions from state-owned enterprises of authoritarian countries. My area of expertise is China, so I'll talk about Chinese state-owned enterprises in this regard.

I had a look at the Investment Canada Act, and I see that the definition of "state-owned enterprise" is "an entity that is controlled or influenced, directly or indirectly, by a government or agency" or by "an individual who is acting under the direction of a government or agency" or "who is acting under the influence, directly or indirectly, of such a government or agency".

In this regard I would point out that pursuant to the requirements of the company law of the People's Republic of China, a Chinese Communist Party committee led by its party secretary is required to be at the top of the management pyramid of People's Republic of China enterprises. According to our definition, while, for example, the firm Huawei does not self-identify as a People's Republic of China state enterprise, it is without question ultimately directed by Huawei's Chinese Communist Party branch general secretary, Zhou Daiqi, who is required under party discipline to comply with direction from Beijing. This discipline would apply to all the party members of Huawei, including the CEO, Ren Zhengfei. I would say that Huawei and indeed all enterprises from China meet the Canadian definition of state-owned enterprise for the purposes of the Investment Canada Act.

Just to supplement that, I would point out that the career paths of leaders in major Chinese state enterprises are determined by the Chinese Communist Party central committee's organization department. Typically a leader in a state enterprise may be transferred by the party to work as a governor or party secretary of a province, and then back to a senior role in another PRC state business entity.

I would very much agree with the government's recent policy statement on foreign investment review and COVID-19 that "Some investments into Canada by state-owned enterprises may be motivated by non-commercial imperatives that could harm Canada's economic or national security interests, a risk that is amplified in the current context."

I think it's clear that there is a strong integration of Chinese state enterprises into the political and strategic goals of China's Communist Party state. I note that Prime Minister Trudeau's former senior policy adviser for global affairs and defence, Roland Paris, indicated in an article last week that the PRC "uses state-directed firms and targeted economic rewards and punishments to gain political leverage over other countries." This seems to be a generally accepted view.

We have seen this applied with regard to China's arbitrary violation of canola seed contracts with Canadian enterprises. There are many other examples that I would be happy to outline in the question period if asked.

Furthermore, looking at this aspect of the enterprises not being like corporate entities in democratic countries, if you look at the PRC's much touted belt and road initiative to restructure global infrastructure in China's favour, many of the belt and road projects

funded by China are in fact money losers, but serve the People's Republic of China's geostrategic interests all the same, and we see this phenomenon of "debt trap diplomacy" in which China has acquired ports in repayment for high levels of debt incurred by these money-losing unfeasible projects.

This is going on not just in the development world. PRC-associated companies' acquisition of Chinese-language news media here in Canada and PRC-controlled social media applications such as WeChat actually enforce the People's Republic of China Communist Party's propaganda department censorship norms over communications taking place on the soil of Canada. WeChat is censored out of Beijing even though the communications may occur entirely in Canada, say, between an MP and constituents via this app. I find this highly disturbing and a threat to our democracy.

• (1115)

Ultimately, I believe we should apply the principle of reciprocity in our assessment of Chinese state investment in Canada. For example, the Government of China forbids foreign firms from acquiring Chinese mines and other natural resources, under the Chinese constitution, on Chinese national security grounds. The same would apply for high-tech acquisitions in telecommunications. This is not reciprocal here in Canada. They're able to acquire things in Canada that we would not be able to acquire in China.

Let me conclude by suggesting that the principles of reciprocity and fairness are what our trade and investment policies should reflect. We need to stand up for the international rules-based order by our actions and not just by our rhetoric.

Thank you very much. I look forward to your questions and challenges later on in this event.

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

Our next witness is Professor Leblond.

You have the floor for eight minutes.

[*Translation*]

Mr. Patrick Leblond (Associate Professor, Public and International Affairs, Faculty of Social Sciences, University of Ottawa, As an Individual): Thank you, Madam Chair.

I want to thank you, committee members, for inviting me here today. I'd like to discuss three topics related to today's meeting. The first has to do with the stability of the Investment Canada Act. The second topic is the definition of a strategic Canadian industry. What does "strategic" mean? The third topic has to do with takeovers by state-owned enterprises of authoritarian countries.

I'd like to start by talking about the stability of the Investment Canada Act. In principle, the act should not be amended in response to a pandemic, such as the COVID-19 pandemic, or any other one-time event. In principle, the act should be robust and stand the test of time. It should be amended only in response to structural changes, over the medium and long term, within the Canadian and global economies.

The Chair: I'm sorry to interrupt you, Mr. Leblond, but could you get closer to your microphone?

Mr. Patrick Leblond: Certainly. Is this better?

The Chair: Yes, thank you.

Mr. Patrick Leblond: The act has a dual purpose. First, it encourages investment in Canada, which in turn promotes economic growth and job creation. Second, it seeks to protect national security. This is a more recent development.

It's important to note that the act can only achieve its first objective if the rules remain unchanged. If the act is amended every time there is a recession or pandemic—situations that can be considered temporary—things get a lot more complicated, given the uncertainty facing foreign investors and local businesses that might want to potentially attract Canadian or foreign investment.

If the rules of the game are constantly changing, do we not risk missing out on potential investors and undermining competitiveness? Doing so might not only hurt economic growth and job creation, but also devalue our businesses. When there are fewer buyers and investors in Canada, then there is less capital, which could then drive down the value of Canadian companies.

And so, we need to be very careful not to amend an act every time a temporary situation arises. In theory, the act should be able to address these changes on a case-by-case basis. That is the first point I wished to raise.

My second point has to do with the definition of a “strategic Canadian industry”, as it appears in the statement. We have to ask ourselves what a strategic industry actually is. Is it an industry that is essential to the health of the economy and society as a whole?

Mr. Burton raised issues related to competition and issues related to democracy, for example. What is essential? The problem is that every person can have their definition of what is essential.

In coastal regions, be it the Atlantic or the Pacific coast, the fishing industry is probably considered essential. And yet, that doesn't mean that it is essential to the health of the Canadian economy as a whole or to society. People in Toronto can just as easily eat Maine lobster rather than lobster from Nova Scotia or the Magdalen Islands, even if the latter are better than those from Maine.

The same can be said of the mining industry in Quebec, the oil and gas industry in Alberta or the forestry industry in British Columbia. Are these industries essential to the health of the Canadian economy? From a regional perspective, the answer is yes. From a business perspective, they're indeed essential. From a job creation standpoint, they're essential. And yet, if that's true, could it not be argued that the value of what is deemed essential is diminished?

Who decides which industries are essential and which are not? Will that be up to individual MPs, or rather public servants? Who will be in a position to assess the differences between industries? What criteria will we use? The list of strategic Canadian industries could end up being quite long, since everyone will want their industry to be deemed strategic.

In Quebec, hardware stores suddenly became a strategic industry for the Quebec economy when it was announced that Rona would be sold to Lowe's. In France, for example, the yoghurt industry is a strategic industry. The French government indicated that it could not allow Danone to be sold.

Industries that, at first glance, don't appear to be entirely strategic from an economic standpoint can quickly become strategic for political reasons. It could then be argued that if every industry becomes strategic, then no industry is actually strategic.

• (1120)

We have to wonder whether it's worth having a list of so-called strategic industries. This could have some repercussions, in that each potential transaction would have to be reviewed. Is it necessary to set thresholds for a strategic industry? This could be a very cumbersome process.

The act, as it stands, sets out an approach for thresholds: regular thresholds; thresholds for state-owned enterprises; or cases in which thresholds do not apply, for example when national security is involved. In my opinion, the act, as it stands, is sufficient to deal with so-called strategic industries. National security is what is strategic. We're not talking about job creation or economic growth, because that would raise the notion of net benefit, which the minister will of course have to define for any acquisition.

In conclusion, I'd like to touch on acquisitions by state-owned enterprises of authoritarian countries. Again, what is the objective here? Mr. Burton spoke about reciprocity. That could be an objective, but I think it comes back to national security.

What's the difference between a state-owned enterprise and a private enterprise? Is it a matter of economic performance? In most cases, studies show that there is not really much difference in performance or operations when comparing a private enterprise and a state-owned enterprise. If it's not a matter of national security, is there a difference between a state-owned enterprise of an authoritarian country or a democratic country? Again, I think that the act, as it stands, is sufficient and simply needs some guidelines for enforcement.

Thank you for your time, and I'm happy to take your questions.

• (1125)

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

[English]

With that, we'll now move to Mr. Daniel Schwanen.

You have the floor for eight minutes.

Mr. Daniel Schwanen (Vice-President, Research, C.D. Howe Institute): Thank you, Chair. Thanks to the committee for this invitation.

The question of whether companies within strategic industries have been devalued or have lost value would be easier to answer if we had a clearer idea of what constituted a “strategic” industry, and there, let me pick up where Patrick Leblond left off.

Also in the same vein as what Patrick was saying, we already have provisions—let's not forget that—for scrutinizing foreign investments of any size, for any national security concerns. We already have a lower threshold and different ways of calculating value for scrutinizing foreign state-owned or influenced enterprises, as Mr. Burton was saying, than we do for non-SOE investments. We already have, of course, restrictions in place in a number of sectors that we obviously consider strategic, whether it's culture industries, telecommunications, transportation and others. That's already our current regime, so when we say “strategic”, we need to have a new definition in mind that means more than that. In fact, in light of the COVID-19 crisis, I would agree that we see that the supply of goods that Canadians rely on for their security and safety—for example, medical or food supplies—is more fragile than perhaps we had realized, and enabling Canadians to scrutinize investments that threaten those supplies would have to be properly seen as a strategic matter in my view.

Canadians also sense that new technologies will be at the forefront of our recovery from this crisis. Governments that have supported the development of new technologies via subsidies and the development of ecosystems that allow these technologies to be commercialized from a Canadian base, which is really ultimately the goal of policy, might want to discourage any panic selling by those firms or technologies in the current context, which might jeopardize this policy goal.

We can think of other strategic firms or sectors whose disappearance might trigger a really catastrophic loss of Canadian production capabilities in a number of sectors. The auto sector has often been mentioned in this respect. I would urge the following consideration. The loss of this kind of economic activity is not the same thing as selling a firm operating in these sectors to a foreign entity. FDI, in general, has been very good for the Canadian economy as long as foreign-owned firms, state-owned or otherwise, follow Canadian rules and regulations. To me, that's really the crux of the matter.

Having said this, I do not see generalized panic selling, and the market, as we've seen, has rebounded. What I hear is that, in general, government support measures and lenders that use liquidities, which are in turn supported by governments, of course, and the Bank of Canada, do, by and large, support their clients and provide the bridges, the lifelines, that allow companies some room to breathe and to continue operating through the emergency closures and a temporarily reduced demand.

Of course, some companies will not survive the crisis in their current form or will survive it only if they are allowed to restructure and refinance or become more sustainable under changed business models reflecting changes in demand and safety requirements, and in general, a different perceived risk return profile on the part of investors for different industries. I'm thinking of the airline industry, for example. As companies contemplate their future and seek more secure financing, or seek to restructure in some cases, foreign investment can again be a very useful way of providing capital to these companies or to channels through which capital is provided. I would again be careful of any knee-jerk reaction against FDI per se.

• (1130)

The other thing is that the changes these companies are going through are really a global phenomenon. It would be one thing if one Canadian airline company was alone in suffering, but all the airlines around the world are suffering, so it's not necessarily the case that competitors have the means to come in and pounce on Canadian firms. Again, I would be worried about imposing some new restrictions. Everybody is struggling, and while some investors will see opportunities for consolidation and perhaps even bargains, it's not necessarily such a bad thing to attract capital, including foreign capital, into these firms as they restructure, as long as this does not jeopardize public policy goals.

The trick is to give us the tools to quickly sift through investments that are potentially inimical to Canadian interests while retaining the door as wide open as we can to others. In the ordinary course of business, takeovers should be allowed, particularly as boards of public companies have more leeway now under provincial securities regulations to consider alternatives to a proposed takeover. This is something fairly recent.

What should this committee consider or recommend? It should think about clarity of criteria regarding any additional security over and above what we already have. This clarity could be obtained through examples or guidelines of what investment or investor might be considered problematic for Canada at the current juncture or going forward. It doesn't necessarily have to be rigid definitions that provide this clarity. It can be enhanced national security guidelines, for example.

I would also recommend swiftness of decisions on proposed acquisitions, with very clear guidelines. Swiftness of decisions is key to maintaining the balance between remaining open to foreign direct investment, with the benefits that FDI brings, and ensuring that the public interest is protected.

Having said this, my understanding is that it would be very difficult—certainly not easy—to change, in a timely fashion, the current thresholds that trigger the net benefit test. In this context, the key tool we can wield is expanding, in effect, the guidelines in the national security review to include matters that concern strategic questions of security and safety of supply and of potential systemic loss of otherwise competitive Canadian economic activity, as I fairly narrowly defined.

Last, we're thinking here about temporary changes, but I'm not exactly sure, to the extent we actually go through these changes, that they should be temporary. We could make them permanent. I think that would be very helpful to policy, going forward.

[*Translation*]

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

We will now move on to Mr. Gagnon, director of the Mouvement d'éducation et de défense des actionnaires.

Mr. Gagnon, you have the floor for eight minutes.

Mr. Willie Gagnon (Director, Mouvement d'éducation et de défense des actionnaires): Hello, everyone.

I'd like to start by saying that we believe the Investment Canada Act is legislation that is absolutely essential in any nation, no matter how democratic, but that it clearly does not go far enough. This act is the final link in a chain of provisions that should be much longer than it is. It's the culmination of a whole suite of measures, two of which are primarily aimed at protecting head offices in this country.

The two measures I'm referring to are multiple voting shares and the 66% takeover threshold. Everyone knows that under Quebec and Canadian law, when a company has a Canadian charter, it can't be acquired unless two-thirds of its shareholders vote in favour. This means that a takeover bid can be blocked by a shareholder who holds 40% of the shares but isn't a controlling shareholder, as is the case with Saputo.

The other measure is multiple voting shares. With multiple voting shares, it's possible for one shareholder, whether minority or otherwise, to hold the majority of a company's voting rights, which means—

• (1135)

The Chair: Mr. Gagnon, could you please bring the microphone closer?

Mr. Willie Gagnon: Can you hear me better now?

The Chair: Yes, thank you.

Mr. Willie Gagnon: This means that if a company has multiple voting shares, a controlling shareholder with multiple voting shares can block a takeover bid. The protection of the company rests on the shoulders of a single shareholder, who is generally the company founder.

We long ago adopted the conclusions of the report entitled “The Maintenance and Development of Head Offices in Québec” that was published in 2014 by the Task Force on the Protection of Québec Businesses. This report contains numerous recommendations that could also be useful for the country as a whole.

The report relied mainly on a brief submitted by Mr. Martel, an attorney who had researched safeguards already in place in certain U.S. states that we should import here to protect our businesses. For example, the buyer's voting rights can be temporarily withdrawn for a given period, and transactions, or business combinations, with the buyer can be restricted. I should also mention poison pills, which everyone has heard of. They involve diluting the buyer's shares by allowing other shareholders to buy shares at a certain price. In addition, fiduciary duties could be enshrined in corporate law in favour of stakeholders. Staggering directors' terms means the process for replacing all the members of a board of directors is spread out over a period of several years. This complicates the takeover process, because it takes more than a year to replace the entire board. That can sometimes deter potential buyers from attempting a takeover.

We focused particularly on the fiduciary duties of company directors, especially with regard to the treatment of stakeholders. As you may already know, British law sets out all of the fiduciary duties towards stakeholders, along with a list of all stakeholders. Allow me to quote directly from the United Kingdom Companies Act 2006:

[*English*]

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company.

[*Translation*]

According to the law, corporate directors in the United Kingdom have a duty to consider the interests and rights of all stakeholders, including the state and the environment. Therefore, all the issues raised previously by all the other speakers concerning the acquisition of a corporation, whether by a foreign state that is a dictatorship or a state where there is little respect for human rights, would be part of the legal, judicial and fiduciary responsibilities of corporate directors if we had such provisions in Canada. These issues would not have to percolate until addressed by provisions such as those of the Investment Canada Act. Due to the current situation in the country, considerations concerning the fiduciary duties of corporate directors is left to case law.

I would refer you to the 2008 ruling in BCE Inc. v. 1976 Debentureholders.

...it may also be appropriate, although not mandatory, [for the board of directors] to consider...shareholders, employees, suppliers, creditors, consumers, governments and the environment.

Here, in Canada, it is not mandatory and it is left to case law. We would be well served by going beyond the reflections of this committee on these issues, beyond the Investment Canada Act, and see what is happening upstream to cause files to be subject to this law.

• (1140)

There is also the 2016 study by Mr. Allaire on the head offices of major corporations in Quebec. This study lists corporations at risk of being taken over. In Quebec, they do not have the protections already in place, that is they do not have multiple voting shares or a group of shareholders holding more than 40% of shares. The study lists 16 firms at risk of takeover, including Metro, Gildan, SNC-Lavalin, Dollarama, Valeant and TransForce. You can have a look at the list.

One of the problems with the act in its current form is that the department determines whether the transaction is of net benefit to Canada, but it does not have to disclose the reasons why that is the case. In our opinion, there should be more transparency in that regard.

The Chair: Thank you very much.

[English]

We will now move to our rounds of questions.

Our first round of questions goes to MP Rempel Garner. You have the floor for six minutes.

Hon. Michelle Rempel Garner (Calgary Nose Hill, CPC): Thank you, Madam Chair.

As just some broad comments based on the witness testimony, I went into this study with a fairly open mind because of the amount of coverage that has been placed on this issue in recent months and weeks, and I would give two observations.

First of all, I believe Dr. Leblond stated some good points with regard to our having to have consistency within our regulatory framework in order to attract investment, yet on the other hand, we also have to ensure that we're not literally selling Canada for the sake of short-term gain. It's getting that balance that I think is what's at stake here.

As the world changes, it's incumbent upon Parliament to see if we actually do have that balance struck within our legislative and regulatory framework, and that I'm not convinced of right now.

I believe it was Dr. Leblond as well who talked about the fact that while there's no definition of "strategic industry", the premise was therefore made, "Well, if everything is strategic, nothing is strategic." I would argue that a strategic industry would be one that, if sold or if majority control were given to an authoritarian country, the sale or shift in control would threaten Canadian sovereignty. That would be a strategic industry in and of itself. I'm not sure that the ICA right now gets to the core of that, so perhaps I'll start with that premise.

My question is to Dr. Burton.

We have in Canada right now a process in place for visas and for deciding whether Canada requires a visa. It's a visa framework review. We have a set of criteria through which we decide whether citizens of a certain country can come to Canada on a visa status or a visa-free status.

Is there anything similar to that type of a framework within our current law whereby we look at a country—let's say it's an authoritarian country—and say certain criteria have either been met or not met, and review all the investments coming in from a certain country based on those criteria? Is there anything in our current framework that takes that type of approach?

• (1145)

Dr. Charles Burton: I don't think we are adequately on top of this because of essentially the nature of the Chinese state investment. Other countries that are doing studies comparable to our own, such as the U.K., the U.S., India and Australia, all mention China in their mandates.

I think that when we look at Chinese investment, we have to be aware that typically the investment is often for strategic purposes rather than for profit necessarily. Of course they want to make money, but often they don't, and you can look at the CNOOC-Nexen deal as an example. In fact, when you look at the thresholds for investment, often the Chinese state firms use multiple firms with multiple investments to get under the wire of our thresholds, but they actually violate what I would regard as the intention of our act.

We don't have any process that I'm aware of that looks at people who are planning to come to Canada for investment purposes. In the—

Hon. Michelle Rempel Garner: I have only a few minutes left.

I think that's a really good point when we're talking about what a strategic Canadian industry is. We know for a fact that some authoritarian countries definitely have their strategic priorities with regard to FDI, foreign direct investment, laid out with regard to our country. I think that's important to note as well.

I do take to heart the testimony that any major changes or overhauls to the system would take time. In the meantime, I will ask two questions, Dr. Burton.

Do you believe that in the short term a moratorium should be placed on SOEs from authoritarian countries? Do you think that it is incumbent upon Parliament to do a more comprehensive review of our FDI investment framework, given the changes in the global context?

Dr. Charles Burton: Yes, I do. I do support the idea of a temporary moratorium pending further investigation by Parliament and the setting of clearer criteria for these kinds of investments. We need more awareness of how this works, where the Canadian interest lies and more clarity on the idea of net benefit.

I'd like to see a more open and transparent process that would give us more awareness of the basis for government decision-making in this regard. The Canadian people should be more aware of what's going on and how our government is responding to it.

Hon. Michelle Rempel Garner: With the time I have left, Mr. Schwanen, could you give us a sense of the total investment profile right now? What is the investment profile for FDI in Canada right now from authoritarian SOEs? Are we primarily attracting FDI from authoritarian SOEs?

Mr. Daniel Schwanen: No, it depends on the sectors. I can see that some governments with strategic objectives would want to come in here, whether they're authoritarian or not, take over a Canadian company, and then not act in Canada's interest. To me, that really is the question. That's the key thing for me.

I can see how that would be the case in sectors like mining and resources. I would just say our regime is currently able to deal with those as is, almost.

The Chair: Thank you very much

Our next round of questions will go to MP Lambropoulos. You have the floor for six minutes.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thank you, Madam Chair.

I'd like to thank all of our witnesses for being here in order to help us with this study today to answer our questions.

I understand that FDI is great and good for Canada, generally speaking. If we're able to attract foreign investment, obviously the economy is better, and the value of our country goes up. As FDI decreased globally in recent years, in Canada it's been on the rise, which is great for Canada.

Mr. Schwanen, you mentioned that we should discourage Canadian companies from panic selling in order to make sure that Canada and Canadian-owned enterprises remain and that we stay strong. If we're not going to scrutinize further foreign investment during this period, and if we don't make the act stronger, what are the ways you think we can discourage companies from panic selling during a time of crisis such as the one we're in right now? How can we make sure that Canadians don't sell their businesses to foreign investors while still receiving some help from them, if it's needed?

• (1150)

Mr. Daniel Schwanen: Thank you very much for that question.

I'll go straight to the heart of what I was trying to say. I lost track of my text there for a minute.

As you know, any investment can be scrutinized for national security reasons. What I was saying is that in the current context, those reasons can be expanded. We have guidelines that the government publishes. Let's maybe publish expanded guidelines. This is what we—at least in the current context, but maybe going forward—consider to be national security: the food supply chain and the medical supply chain. Frankly, that's the deal with some of the concerns from SOEs as well. Are you threatening to steal Canadian technology, for example? These sorts of considerations we can deal

with right now by expanding those guidelines. That's really what I was saying.

The best defence is to keep the Canadian economy strong and the valuation of Canadian firms fair. I think that some of the policies that we've seen in place and the support by the Bank of Canada and our banking system in general really help companies navigate without being undervalued unfairly.

The last point is that sometimes a Canadian company will need to find investors to stay afloat and keep jobs in Canada. We don't want to close the door to what would be a perfectly good foreign investment, if we can avoid that.

Those are my main points.

Ms. Emmanuella Lambropoulos: All right. Thank you.

Professor Leblond, you spoke along pretty much the same lines as Mr. Schwanen. You also mentioned that we should be more clear about what we mean when we say “strategic”. Do you have any recommendations on how to make this clearer, if we're going to be changing anything?

Mr. Patrick Leblond: Yes. Obviously, the issue of trying to define what is strategic is that, in my view, most of what we would consider strategic probably falls under national security, whether, as Daniel mentioned, it's technology or whether it's infrastructure, and we can think about energy, ports, roads, telecommunications, the media and culture. In terms of society and our economy, these are all things that we would think of as being strategic.

Within the broad definition of national security, and even the issue of threatening sovereignty, I agree with Daniel that we can potentially expand the guidelines to make them clearer, but we don't need to change the law per se. There is sufficient flexibility right now to address these issues. If we think, for instance, about having some kind of control or sovereignty over the production of medical equipment, personal protective equipment or these kinds of things, well, this is a national security issue, right? Health is a national security issue. If it's cybersecurity in terms of technology or dual-use technology, it's the same thing.

I think we have the means under national security to address the issue of what is meant by “strategic”. Otherwise, the danger with trying to define what is strategic is that it will vary from region to region across this country. Ultimately, it will be devoid of any meaning. It will be used solely for political reasons. People will be asking why this or that company or industry is protected and not theirs. In other cases, you'll have people saying they don't want to be protected. As a shareholder, they want to be able to sell to a company in a way that maximizes their value, and as a result of deeming their industry or company strategic, they'll actually be losing money or realizing less value.

I think we have to be very careful in using the term “strategic”. Often what we mean is “national security”, and we have that now in the law. I think that's really important.

Ms. Emmanuella Lambropoulos: This is for either you or Mr. Schwanen. Would you say that currently the Investment Canada Act has enough teeth in it to protect national security and Canadian national interests?

Mr. Patrick Leblond: I would say so. I think maybe we can revise the guidelines. Maybe, again, companies like transparency; I agree with the idea that we should be as transparent as possible in our decisions and also in our guidelines—i.e., “Here are the expectations.”

Now, if we want to stipulate clearly that we consider some industries or some sectors or some issues to be of a national security concern, then we should say so, and investors will be very clear about it. If we think state-owned enterprises, especially from totalitarian governments, potentially pose a national security threat, we should say so. Then at least we have the leeway to deal with that.

• (1155)

Ms. Emmanuella Lambropoulos: Thank you.

The Chair: Thank you very much.

[*Translation*]

We will now begin our next round of questions.

Mr. Savard-Tremblay, you have the floor for six minutes.

Mr. Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot, BQ): Thank you, Madam Chair.

I would like to thank all the witnesses for their presence and presentations.

My question is for Mr. Gagnon.

First, let me commend the Mouvement d'éducation et de défense des actionnaires, MÉDAC, for what it has accomplished since it was established. Shareholders' rights are often violated, and I would like to thank you for the work you have been doing for quite a few years. How long have you been doing this work? It must be more than 15 years.

Mr. Willie Gagnon: It's been 25 years. Our organization was founded in 1995.

Mr. Simon-Pierre Savard-Tremblay: It was founded in 1995 by a great Quebecker, I might add. Thank you for taking over for him.

You said at the beginning of your presentation that it was pretty clear that the Investment Canada Act is essential and that any country that is the least bit evolved will protect certain sectors, try to prevent head offices from moving away and provide some oversight for its most valued sectors.

More recent aspects of Quebec history have very clearly demonstrated the importance of having policy levers and institutions that work in partnership with private companies, while always maintaining a state-level strategy. This is less obvious in Canada's case. With respect to the Investment Canada Act, you said that it's fine, but it's clearly not enough.

Since you gave some examples of what's happening in other countries, particularly Great Britain, it really made me want to ask the following: Should Canada be looking at what's happening in the United States, this bastion of the free market?

Mr. Willie Gagnon: Let me repeat that this legislation is a measure of last resort. It's really at the end of the road when we need it. We're saying that a number of measures are already on the table and that they need to be implemented. The challenge we're facing right now basically has to do with harmonization. When it comes time to implement certain measures, the problem is the hybrid regime that exists here in Canada. Certain corporations are registered at the federal level and others at the provincial level, but neither level can act alone in every area.

The most significant progress in that regard is the result of cooperation amongst the provinces, specifically through the work of the Canadian Securities Administrators, currently chaired by the president of the Autorité des marchés financiers. That association can take several initiatives. Corporate management culture in Canada has changed in many ways, for example, because of TSX rules. TSX imposes rules on companies that the legislation does not necessarily impose.

It's high time we had a national network to deal with all the problems associated with harmonization. We should be reviewing all of that, and we need to establish several steps that would help protect Canadian businesses, not only through legislation like this one, but some kind of atomic bomb. On a side note, the thresholds set for a company to be able to benefit from protection under this act are starting to get a little high for some companies. Take Bombardier for example. The company has about 2.5 billion shares, each worth about \$0.50, but it just barely meets the threshold to be eligible for the protection mechanisms under the act. If someone wanted to purchase Bombardier tomorrow, it would be impossible to protect the company under this legislation.

Mr. Simon-Pierre Savard-Tremblay: I can see things going from bad to worse for Bombardier, but in the coming months, the act—

The Chair: Mr. Savard-Tremblay, we can't hear you very well.

Mr. Simon-Pierre Savard-Tremblay: I was just commenting on Mr. Gagnon's remarks to say that things might go from bad to worse for Bombardier. It's possible that, in the short term, the law may no longer protect Bombardier.

Mr. Willie Gagnon: Bombardier's situation is not due to the current crisis. The stock price fell to a level that would make Bombardier ineligible.

The act should be amended to protect major corporations like Bombardier. There's a whole list of companies that won't benefit from the protective mechanisms in the act. We also need to look at issues like the creation of Restaurant Brands International, which owns Tim Hortons and Burger King. Its head office is in Canada for tax reasons. They're Canadian companies, but they serve foreign interests, which is not in Canada's interest.

We need to ask questions about all kinds of things. We can conceive of a system with different steps and all levels of government responsible for a number of measures. These are complex issues that won't be resolved by waving a magic wand. This law of last resort is not nearly good enough. There's one aspect in particular we mustn't forget: once a company is eligible, the process for deciding whether or not it can be protected is essentially opaque.

Mr. Simon-Pierre Savard-Tremblay: I'd like to get back to my first question about American policies.

Could you tell us a bit about that?

Mr. Willie Gagnon: I went over that in my presentation. There are basically five possible measures, but I won't have time to list them all. The one that interests us most is enshrining in law a corporate fiduciary duty to respect the interests of all stakeholders. We've been fighting this fight for years, and it's a very good policy that would have a profound effect on the economy as a whole. Every province should have this law on its books, and it should be part of Canadian law too because it would impact the Canada Business Corporations Act in a number of ways. The Canadian Securities Administrators would benefit from studying this, and they would have the power to suggest it.

• (1200)

The Chair: Thank you very much.

[English]

Our next round of questions goes to MP Masse.

You have the floor for six minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Madam Chair, and thank you to our witnesses for being here.

It's an interesting topic. It's something the industry committee first delved into back in 2002-2004 with China Minmetals. We had no national security screen at that time with regard to oversight of the Investment Canada Act. In fact, there were over 9,000 files, and not one had actually been reviewed or taken down from the acquisition process at that time.

Today, we have this discussion. We need to actually characterize what people can relate to. There was Rona. There you go. How well did that work out for Canada? Lowe's took it over and closed stores, so there was less competition for consumers.

We had Zellers as a retail operation. Target came in from the United States. Zellers was actually making a profit and paid its workers more than its competition. Then Target withdrew from Canada, closed Zellers, and we had less competition.

Eaton's was taken over by Sears. We know how Sears ended up in Canada, actually committing pension fraud against workers, which to this day the government has not addressed, as this unfunded liability has been borne basically by working-class people at their expense. Again, that was allowed to take place under the Investment Canada Act.

Others were Alcan, Inco, Falconbridge, Stelco and Electro-Motive in London. There were issues related to MacDonald, Dettwiler, and we fought and stopped that. Even the Aecon construction com-

pany in Canada was proposed to be taken over by Chinese construction firms at that time.

Ironically, where I am, where I've been fighting since 1998 for a new border crossing, Aecon would have been denied building the new Gordie Howe International Bridge because the United States didn't want the Chinese government involved. We are actually building that crossing right now, which is responsible in my area for 40% of the daily trade between Canada and the United States, about \$1 billion and about 10,000 trucks per day.

Had Aecon been taken over by the Chinese at that time, it would have made the project or bid null and void, reducing it to basically a competitive process of one bidding agent left over from the three that were tendered. Again, competition at the expense....

I think about the fact that we have our Canada Pension Plan as well when we talk about not being able to say no to anything because it's a laissez-faire market and we have no real interest in determining winners or losers. I've heard that terminology before, and it hasn't really worked out very well for Canadians.

I think about our Canada Pension Plan, which has invested in private health care facilities in Ontario for seniors, making a profit at a time when we needed the military to come in and clean up things there. I think about British Columbia, where right now Anbang, which the Chinese state government really owns, is treating and caring for our seniors because Canadians can't afford to do so ourselves, or we've left it open to them to decide as to those practices.

I find this discussion void of the real consequences in the employment aspect and also the statutory importance of having a strategy to go along with competing in the world.

It is interesting, because Canada is one of the few states that doesn't have sectoral strategies. If you look at Kia Motors, which competes here in Canada, and Volkswagen and others in the automotive sector where I come from, you see that they are heavily subsidized by state governments, either through direct investment or through their pensions, and there are also industrial strategies. In fact, even Mexico, which recently signed an agreement with the United States, and you could even argue Trump with regard to his behaviour concerning re-industrialization, have moved national strategies and resources, and somehow we're supposed to just forget all of that and look at the part coming in.

I do want to pose one question with regard to this discussion, though, and it is to any of the witnesses who have come before us here today. We are talking about China in particular, but what about private equity firms? Is there an interest out there to actually have some public disclosure when Canadians invest? Should there not be public disclosure by municipalities, provinces and federal governments? In particular, with regard to ownership, tax deductions, credits for innovation and research, as well as direct subsidies, and that includes reducing corporate taxes, do we not have an interest to guarantee that those companies at least have some domestic control, and shouldn't we provide that screen for private equity firms as well as the state of China?

• (1205)

If anybody wants to answer, I'd be happy to listen. If not, then I can continue this, because this is simply unacceptable. It's absurd that we are the only country, I think, in the industrialized world that has this type of a laissez-faire policy in place and we basically say, "Good luck. It's too complicated. You sort it out."

Mr. Patrick Leblond: Daniel, do you want to take that one?

[Translation]

Mr. Daniel Schwanen: Yes, Mr. Leblond.

[English]

Do we have time?

Mr. Brian Masse: You do.

The Chair: You have 15 seconds.

Mr. Daniel Schwanen: I wish to say that focusing on foreign ownership per se is not exactly the issue. We've had lots of Canadian investments that went bust all by themselves, including in foreign countries. We have a long list of those.

The question is whether the Canadian or foreign investor follows Canadian policies, follows Canadian regulations and follows Canadian laws. We all have the same interests in a thriving economy. The question is whether being a foreign investor by itself—because of who controls foreign investors, for example—is really threatening that ability, that sovereignty of Canada to be able to enforce its own rules, regulations, labour laws, etc., over its own territory.

If it doesn't threaten it, then I think foreign investment should be welcome. All investments can do very well, but a lot don't do well, and that applies to whether they're Canadian-owned or not.

The Chair: Thank you very much.

We'll now move to our second round of questions.

The first round goes to MP Gray. You have the floor for five minutes.

Mrs. Tracy Gray (Kelowna—Lake Country, CPC): Thank you, Madam Chair.

I thank all of the witnesses for being here today.

My first questions are for Dr. Burton.

You previously described Canada's relationship with China as one of economic coercion. Do you believe this would mean that Canada would be less likely to look at reviewing or rejecting Chi-

nese state-owned enterprises and their attempts at acquiring Canadian corporations?

Dr. Charles Burton: That's an excellent question.

I do think that the pre-existing economic leverage that China has in Canada—important Canadian firms that have extensive business dealings with Chinese Communist networks and at the same time have influence over decision-makers, particularly, let's say, in the Prime Minister's Office—has inhibited our ability to properly review whether Chinese investments in Canada are in the net benefit of Canada. This particularly leads to the kind of thing that Professor Paris referred to as economic leverage.

The situation in Britain now is that the British government is considering not using Huawei in its 5G after all, and the Chinese embassy has threatened Chinese investments in the British nuclear sector. When the Australians suggested that there should be an independent study of the origins and nature of China's response to COVID-19, the Chinese government threatened to limit exports to China of Australian wine. It's already limited barley and meat, is threatening coal and is suggesting that Chinese tourists and students would be less inclined to go to Australia.

When you have a situation in which, unlike other state investors, the Chinese government apparently directly uses the economic leverage of its existing investment in Canada to further its political aims, we have a problem in terms of our sovereignty. I think that includes further investments or the review process of whether we should be transferring high-tech technologies with potential military applications to China.

The Chinese government has set up very many conditions to Canada, by implication or directly, to suggest that if we don't go along with what the Chinese government wants in pursuing its interests in Canada, we will lose the Chinese investment, which means threatening employment and prosperity in Canada. It's very dangerous to deal with them, frankly.

• (1210)

Mrs. Tracy Gray: Thank you for that.

I have another question.

You've also recommended that Canada end co-operation with China's United Front Work Department. Of course, this is the agency of the Communist Party of China.

Can you elaborate on what influence you believe this department has in the context of Chinese state-owned enterprises potentially investing in Canada?

Dr. Charles Burton: The United Front Work Department of the Chinese Communist Party is designed to bring people from outside of the Chinese Communist Party into compliance with the goals and agenda of the party, both domestically in China and internationally, including in Canada. There's quite a sophisticated engagement with persons of Chinese origin, who may be menaced by the agents of the Chinese regime operating in Canada, some of whom may be diplomats, and also engagement with key Canadian policy-makers in terms of benefits or implied benefits if they support policies that are more in the interests of China than in the interests of Canada.

I do think that part of what you're saying is that our government has not responded sufficiently to the concerns expressed by the RCMP and CSIS with regard to the activities of agents of the Chinese state engaging in coercive or menacing activities or influence peddling of different types, and that's part of the whole thing. The Chinese government doesn't want that. I believe that we should investigate with much more vigour this matter of agents of the Chinese state operating in Canada and that the existing reports that have apparently been shelved by the government should be brought into implementation, because this is really a matter of protecting our Canadian sovereignty and democracy.

Mrs. Tracy Gray: Thank you.

I have another question here. The Investment Canada Act currently contains thresholds for triggering a review of a foreign entity acquiring a Canadian company, which is \$428 million if the acquiring entity is a state-owned enterprise. If this enterprise value is below the threshold, there is no review. It's just notified. What triggers could Canada look at adding or amending in the Investment Canada Act to flag or potentially filter out some of these types of acquisitions, in your opinion?

The Chair: Unfortunately, we don't have any time for that.

I just want to remind members that this card means there are 30 seconds remaining and this red one means there's no more time. We want to make sure that everyone gets their time slot, so I'm asking you to please respect the time limits that have been given to you, as agreed upon on February 18.

With that, we'll now move to Mr. Ehsassi. You have the floor for five minutes.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Madam Chair, and thank you to each of the witnesses for appearing before our committee.

I should say that a lot of the discussion I've heard today has been somewhat befuddling, because I see very little reference to the Investment Canada Act. Many of the issues that have been raised or flagged have essentially no bearing on the provisions of the Investment Canada Act.

Allow me to start off by asking Mr. Burton a question.

Mr. Burton, could you unpack your main or principal recommendation? As I understood it, you're saying that there should be a moratorium on all investments by state-owned enterprises. Am I correct in that?

• (1215)

Dr. Charles Burton: No, I mean state-owned enterprises from authoritarian states. I think in this context the only one that we have concern about at the time is the People's Republic of China.

Mr. Ali Ehsassi: As you know full well, if we look at the legal framework that exists in numerous other countries—and I suppose it would only be fair that we look at our peer countries—are you aware of any country that is contemplating a ban on investment by state-owned enterprises?

Dr. Charles Burton: In terms of China, I think that currently there are studies by the governments, the parliaments, of the U.K., Australia and India, and by the Congress of the United States. They're doing studies comparable to what you're doing. I think it's still too soon to say what the consensus will be on this matter, but my guess would be that concern about Chinese predatory investments in Canada in the context of COVID-19 is something that other countries are looking at very closely.

Mr. Ali Ehsassi: Mr. Burton, you're essentially saying that there should just be a moratorium and we should just stop it. Do you know of any other G7 country or OECD member that is seriously considering a complete ban on investments by state-owned enterprises?

Dr. Charles Burton: From China, yes, not from other countries.

Mr. Ali Ehsassi: Would you clarify for us what country is seriously considering it?

Dr. Charles Burton: The United States yesterday made an announcement. Congress is considering such a thing. Also, there are currently parliamentary hearings in Australia, India and the U.K. on this question.

Mr. Ali Ehsassi: Yes, but each one is considering how to strengthen their system. They're not proposing a complete ban on investments. With your moratorium, Mr. Burton, would you see any unintended consequences if we completely ban investments?

Dr. Charles Burton: We're looking at a temporary moratorium, pending further review by yourselves. I'm not suggesting that this would be a permanent measure, but I think the study that has been ordered to look into this possibility is appropriate, recognizing that we're in a particular situation with COVID-19. Certainly one of the factors in the motion was to consider a temporary moratorium, and I support it.

Mr. Ali Ehsassi: I could understand a temporary moratorium with respect to certain sectors, which is what I've been hearing from other capitals, but generally speaking, I haven't heard anyone speak of an outright ban.

Mr. Gagnon, if I could go to you now, I understand that you're mostly talking about provincial measures that can be harnessed and utilized. Could you tell us what the relevance of those provincial measures are to the Investment Canada Act? In other words, is there any provision in the Investment Canada Act that has impeded the ability of provincial regulators to do the right thing?

[Translation]

Mr. Willie Gagnon: I'm not necessarily talking about provincial measures. The measures we want to advance should be applied at both the provincial and federal levels.

You know that there's a provincial law, but also a federal law on business corporations. When we look at all the businesses in Quebec and throughout Canada, we see that some are registered under the federal system and others under the provincial system.

In order to have some measures apply to all businesses, we need to amend both federal and provincial legislation.

[English]

Mr. Ali Ehsassi: Specifically, how does that relate to the Investment Canada Act?

[Translation]

Mr. Willie Gagnon: This legislation does not go far enough and would be unnecessary if these measures were applied like we are suggesting. We wouldn't need legislation like this if the other laws could be amended in such a way as to help protect corporations.

[English]

Mr. Ali Ehsassi: Thank you.

The Chair: Thank you.

Our next round of questions goes to MP Patzer. You have five minutes.

Mr. Jeremy Patzer (Cypress Hills—Grasslands, CPC): Thank you, Madam Chair. My questions will be for Dr. Burton.

Dr. Burton, there's a question I think we need to ask when talking about state-owned enterprises buying up Canadian assets. If it weren't for these SOEs, who else would be in the field and looking to buy up these assets? I think that's one question people want an answer to. If not for SOEs, who else is in the playing field?

• (1220)

Dr. Charles Burton: I must say that this is not really my area of expertise, but my assumption is that if you have a failing Canadian asset, unless it's going to be viable and profitable, then only states that have a geostrategic interest in acquiring that asset will make the investment. My concern is that China will be able to use the fact that there's unemployment and economic distress in a certain sector to acquire assets, and then use that as leverage to achieve other of its geostrategic goals. The state has the resources to do that. If China feels that it's a national geostrategic priority, they will do so.

We do know that China has already engaged in extensive investments, mergers, acquisitions and outbound investments since January of 2020 in a wide variety of countries and regions—the U.S., the U.K., Germany, France, Canada, India, Hong Kong, South Korea and Australia—so clearly the Chinese state has the capacity to coordinate of its geostrategic interests and can go in there at a moment of economic weakness and engage in investment activities that we might regard as predatory.

Mr. Jeremy Patzer: If Canada were to continue directly or indirectly making investments in other countries' projects and industries, how would that impact our domestic industries or infrastructure projects here?

Dr. Charles Burton: I presume that any investment that Canada makes abroad is made because we wish to attain profitability, not because we wish to impose a political, non-democratic agenda on the country involved. I'm not suggesting that we should restrict Canadian firms from making investments abroad because we need to preserve that capacity inside Canada, but this kind of question I would defer to my colleagues, who are more knowledgeable about international economics.

Mr. Jeremy Patzer: I have just one other quick question for you, Dr. Burton.

What role do foreign investment banks, such as the Asian Infrastructure Investment Bank, have in the acquisition of enterprises around the world, whether in Canada or abroad? Are there any high-profile natural resource development projects that have been acquired by these sorts of firms?

Dr. Charles Burton: The Asian Infrastructure Investment Bank is a Chinese-controlled investment bank alternative to the World Bank and the Japanese-dominated Asian Development Bank. It seems primarily to serve the interests of China's geostrategic program of the belt and road. There are no projects in, say, Canada, but we have made a substantial contribution to that Asian investment bank, which I believe would serve China's interests more than those of Canada in the investments they're undertaking in Asia.

Mr. Jeremy Patzer: Thank you for that.

I'm going to switch over to the C.D. Howe Institute. The C.D. Howe Institute has called for significant reforms to the foreign direct investment review process. You've previously said that we need to be taking technological or policy changes into account as well.

With huge technology changes such as 5G on the way, along with the recent COVID-19 restrictions, would you modify your proposals in any way, especially from a national security standpoint?

Mr. Daniel Schwanen: I do think national security should be the focus.

One of the things we also said, though, is that as we use that national security lens to look at proposed investments, which by the way could be an investment of any size—it could be one dollar by anybody, so that takes care of a lot of potential situations—we have guidelines explaining what we mean by “national security”, “critical infrastructure” and so on. We could expand those guidelines and get the authority we need, if you like, or give foreign investors the clarity they need in terms of what we mean by “national security”. That could cover a lot of situations.

That explains why we're focusing on national security and, more generally speaking, on the ability of the Canadian government, the Canadian governments—including provincial governments—to make sure that foreign investors follow Canadian laws, regulations and policies the same way that Canadian investors do. That's really the focus of our policy recommendations.

Mr. Jeremy Patzer: Thank you.

The Chair: Thank you very much.

Our next round of questions goes to MP Erskine-Smith. You have the floor for five minutes.

• (1225)

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much.

Mr. Burton, I take it that it is your view that any state-owned enterprise investment from China should be barred at the moment. There should be a moratorium on any investment whatsoever.

Dr. Charles Burton: Yes, I am saying even enterprises that may not identify as Chinese state enterprises—and I mentioned the Huawei company—

Mr. Nathaniel Erskine-Smith: State-owned or affiliated, I understood that.

Dr. Charles Burton: That would be my position.

Mr. Nathaniel Erskine-Smith: How does that view square with the 2012 agreement that the previous Conservative government under Stephen Harper signed, the foreign investment promotion and protection agreement with China, which presumably said, eight years ago, that we're open for business?

Dr. Charles Burton: There is a cause for concern that the Government of China would engage in legal action against the Government of Canada if we decide to restrict Chinese state investment in Canada. I believe that is a strong possibility.

Mr. Nathaniel Erskine-Smith: This question is for the C.D. Howe Institute.

You indicated in your comments that the policy statement from the investment review division of ISED was sensible. Is it your view, then, that we expand upon that policy statement by way of guidelines that expand and provide greater detail?

Mr. Daniel Schwanen: That's correct, yes. It's to give more specificity to the guidelines, which may also include being more welcoming. Right now the statement, I believe, mentions food security and medical, and that's quite understandable, but it also leaves the door open to more scrutiny of pretty much anything under the national security guise.

I agree that national security is the right lens and we should define it and that should include strategic industries, but we should be more specific about what we mean by that. That is the gist of my comments.

Also, if I may, we shouldn't necessarily leave this to national security specialists. In other words, national security specialists, who really do often prevail in these kinds of arguments—and rightly so, they're the specialists—should explain what kinds of mitigation measures a foreign investor might propose to the government or

might be willing to undertake to make sure that any national security risk is mitigated. That's what I meant: Can we be more specific and open while upgrading our ability to protect the Canadian economy?

Mr. Nathaniel Erskine-Smith: For those who have not turned their minds to that policy statement, the government, as of mid-April, has stated very explicitly that all state-owned enterprises or private investors assessed as being closely tied or subject to direction from foreign governments will be subject to enhanced scrutiny under the act.

I take your point, though. It may well be a recommendation from this committee that there ought to be greater specificity, and we could expand upon those general principles, but I take it you think the government is on the right track on that front.

Mr. Daniel Schwanen: Yes, for sure. I think it was mentioned that other countries are on that track as well, but they are being more specific, and we're not. That's why a lot of my comments are about whether we can be clearer about what we need.

Mr. Nathaniel Erskine-Smith: That makes sense.

In some ways enhanced trade makes a good deal of sense. It's been brought to my attention that we don't have a significant solar industry here in Canada, but we do have businesses that want to be a part of solar installations, including one of the biggest solar installations in Alberta. We have a tariff, though, on solar panels from China that undermine some of those Canadian efforts to undertake these big installations.

You've previously said it would be a big mistake not to engage further with China, Mr. Schwanen. Would you support eliminating tariffs along those lines?

Mr. Daniel Schwanen: I would support anything that sustains Canadian industry and cleaner energy in particular, so to the extent these high tariffs prevent the development of that industry, absolutely, I would support reducing or eliminating tariffs, generally speaking.

Mr. Nathaniel Erskine-Smith: My last question is for you, Mr. Schwanen. It's difficult, because obviously we know China is one of Canada's largest trading partners. It is inevitable, given the size of China's economy. However, we see human rights violations. A number of countries violate human rights and it's a challenge to police all of those efforts through trade. However, when we see China's willingness to use our economic reliance and trading relationship to punish Canada for following the rule of law and arresting Huawei's CFO, and we see them kidnap and mistreat Canadian citizens, how are we to respond to that?

• (1230)

Mr. Daniel Schwanen: We're not here to do China any favours. Some exchanges, some investments even, might still be in the interests of both, and we should cautiously pursue those while restricting others, absolutely.

The Chair: Thank you very much.

[*Translation*]

We are now starting the next round of questions.

Mr. Lemire, you have two and a half minutes.

Mr. Sébastien Lemire: Thank you, Madam Chair.

My question is for Mr. Gagnon from the Mouvement d'éducation et de défense des actionnaires.

You mentioned in your intervention what is being done at the European Central Bank.

Should we actually be including in the law the stakeholders, in other words the shareholders, the employees, the suppliers, the creditors, the consumers, the governments and the environment to ensure that we capture the best interests of these parties?

Mr. Willie Gagnon: People say that these types of measures would result in a change in culture and properly applied governance practices in businesses and in Canada. That's what makes the laws as effective as possible. We know that a law is only effective if people obey it.

Over the years we have seen that the Investment Canada Act has allowed the government to reject three transactions since 2008. Ottawa rejected the bid for MacDonald Dettwiler and Associates from British Columbia by the American company Alliant Techsystems, Ottawa rejected the bid for PotashCorp in 2010, and then rejected the bid for Aecon in 2018.

You see, what this legislation does is essentially serve the interests of the Department of National Defence. When corporate governance goes well, these issues do not end up in the hands of the government; they are resolved at the source. What is more, the benefit of cleaning up corporate governance is that it's the best way to get long-term results on these issues.

Mr. Sébastien Lemire: Thank you, Mr. Gagnon.

In the same vein, I want to go back to the first of Mr. Martel's five recommendations, which was about withdrawing the buyer's voting rights.

Could you explain how we would benefit from protecting our stakeholders?

Mr. Willie Gagnon: Taking away these voting rights puts the decision to reinstate them in the hands of the other shareholders, once they've seen how the takeover is going to go. Then the other shareholders can either void the new buyer's power or attach conditions to that power.

That leads us to consider conditions that could be imposed on buyers, such as multiple voting or measures that would limit the rights of foreign firms on Canadian soil.

Mr. Sébastien Lemire: Thank you.

The Chair: Thank you very much.

[*English*]

Our next round of questions goes to MP Masse.

You have the floor for two and a half minutes.

Mr. Brian Masse: Thank you, Madam Chair.

Obviously, I don't believe all foreign investment is equal. Maybe, Mr. Leblond, you could tackle this one specifically.

How did Rona's being sold to Lowe's help Canadian consumers and Canada in general? Maybe you could lay that out. I want to hear the opposite to what I'm concerned about. Perhaps you could reflect on that, or any other of our witnesses could. I'd like to know specifically how Lowe's taking over Rona helped Canadian consumers and Canada in general.

Mr. Patrick Leblond: I'm not an expert who has studied the Rona acquisition. I was more making an issue about what is strategic and what is not.

I believe that you raised the issue of job creation and what happens after an investment. You mentioned a number of them that have ultimately been failures, whether it's the acquisition of Zellers by Target or the acquisition of Rona by Lowe's. The question I was raising is, are these strategic assets that need to be addressed in a separate way from other businesses?

The law as it is allows for.... When the government assesses net benefit, obviously one of the considerations is job creation or job maintenance. We can question if that was done in the right way at the time of those acquisitions. That's one question. There is also the issue of undertakings. We know that the law allows the government to impose undertakings. To some extent the Quebec government did that with the Rona acquisition.

Afterwards—

• (1235)

Mr. Brian Masse: We have just a few seconds here and I'm so sorry, but—

Mr. Patrick Leblond: The big issue is whether we actually follow up on these things and whether we hold these companies to what they actually promised. That, to me, is the crucial thing.

Mr. Brian Masse: We saw our laws with U.S. Steel become a debacle and workers robbed of their pensions.

I just don't think all foreign investment is equal.

Thanks, Madam Chair.

The Chair: Thank you very much.

We'll start our third round of questions.

The first round goes to MP Genuis.

Welcome to INDU. You have the floor for five minutes.

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you very much. It's great to be with you.

Mr. Burton, maybe I'll start with you with a few different questions.

Can you share a little bit very specifically about how state-owned enterprises work specifically in the People's Republic of China? People may come from a framework where they think of a state-owned enterprise as overseen by an independent board of directors with the mandate of maximizing profit. Maybe this is a problem in general with how we view the Chinese system. We presume a sort of institutional separation between public and private, military and non-military. Could you share your thoughts on how a state-owned enterprise actually operates in China and how that might be different from what we're used to?

Dr. Charles Burton: It's very difficult to establish an equivalence between Chinese state enterprises or large Chinese government associated enterprises and anything that exists in liberal democratic countries because these enterprises are closely connected to the ministries of the Chinese state that they respond to. They are required to be governed by their Chinese Communist Party branch. If you look at the organogram of any of them, including Huawei, the Communist Party branch is at the top and the board of directors is below that.

From that point of view, they are designed to realize the overall interests of the Chinese state and are therefore able to draw on all the resources of the Chinese state, including military intelligence or other resources to engage in cyber espionage or the ability to acquire information about their competitors' technology and economic operations.

In Canada, BlackBerry for example couldn't call on the CSE to assist them in knowing what Samsung is up to. In the Chinese context, this is natural; it's integrated. They're all the same.

Mr. Garnett Genuis: Can I pick up on that? Could you talk a bit more about the integration between the commercial and the military?

I think this would surprise a lot of people as well, that ostensibly private companies are constantly looking for opportunities to find all kinds of military applications through the direction of party committees, and this has been escalated dramatically under Xi Jinping. This isn't just particular sectors; this is ubiquitous in what is expected on the commercial side within the Chinese economy.

Dr. Charles Burton: The Chinese Communist Party establishes a five-year plan with goals for furtherance of their interests in key strategic sectors, including high technology. Therefore, the industries are involved in acquiring this information either through commercial deals with foreign companies contingent on the transfer of intellectual property and technology or through theft. For example, cyber espionage or espionage engaged in by agents of the Chinese state are involved in these relationships with foreign firms or universities where PLA-associated scholars have been found to be collaborating with Canadians in key sectors without identifying their People's Liberation Army association.

All the industries in China belong to these systems. Each ministry has a system, and this includes the military. A lot of things that we think are commercial enterprises are actors whose primary mandate is to further the interests of the Chinese strategic and military apparatus. That's been pretty well established.

• (1240)

Mr. Garnett Genuis: To your recommendation about a moratorium on all state-owned enterprise investment from China, would it be possible, as some might want to do, to say this sector might have military applications or might be more strategic, and this sector isn't, or is it more likely that those applications exist in a very broad spectrum of sectors?

Dr. Charles Burton: I think the Chinese state is not likely to be investing in failing Canadian industries and sectors that are not in the geostrategic interests of the state as reflected in their planning process, which is comprehensive and very thorough. I think we have to look at any Chinese investment that is controlled by the Chinese Communist Party, which all of them are required to be by virtue of their citizenship in the People's Republic of China. I think we'll find that most, if not all of them, are serving the interests of the Chinese state and are not simply about enhancing the profitability of a company in Canada through a shrewd investment by private or corporate considerations. They're state considerations.

The Chair: Thank you very much.

Our next round of questions goes to MP Longfield. You have the floor for five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thank you, Madam Chair, and thank you to the witnesses.

I'd like to come back to the Investment Canada Act, which is really what we're studying.

Mr. Schwanen, as was mentioned earlier, Canada has taken some steps to protect Canadian businesses from foreign investments or takeovers in terms of what we're going through now with COVID-19. When it comes to the recovery, how would we know when the buttons should be pushed to open up our foreign investment again?

Mr. Daniel Schwanen: The short answer is that it would depend on the sector. As you know, some sectors are not going to recover for a long time. If you took the sectoral approach and you figured that sector was so crucial and strategic to the Canadian economy that, if it was acquired by a foreign entity, it would threaten Canadian economic policy, sovereignty or our recovery, then you might want to extend by sector.

The more general point I'd like to make goes back to what Patrick was saying at the beginning of his presentation, which is maybe this is, as it is for a lot of firms, an opportunity to examine more permanent questions. Maybe this crisis is really an opportunity for us to ask: What is strategic? What is national security? Maybe we have a broader view of what that entails.

Mr. Lloyd Longfield: Thank you.

You mentioned a term that I jotted down about being knee-jerk in terms of policy changes, and—

Mr. Daniel Schwanen: Sorry.

Mr. Lloyd Longfield: No apologies.

I sat on several international boards of companies operating in Canada. I was the Canadian director, so I was there to say what you could do in Canada, what you couldn't do in Canada, how Canada might differ from European or Asian countries in terms of how we implement policy. Often the board would just say, "Okay, that's a Canadian thing, we get it, but in order to do our overall...how could we work within the Canadian context?"

So far today, we've talked about a lot of things dealing with the Canada Business Corporations Act versus the Investment Canada Act. We actually do have laws in place to protect Canadian businesses from doing things that would be illegal in Canada. Could you make a brief distinction between the corporations act and the investment act and how they might work together?

Mr. Daniel Schwanen: They do work together, so I was very interested in Monsieur Gagnon's presentation for that reason. It's not like you're a foreign company here and you can run roughshod over Canadian law. As Monsieur Gagnon mentioned, the Canadian Securities Administrators has recently made reforms to allow boards to consider the broader implications of a foreign investment, better than before. Those things do work together, and it does mean the Investment Canada Act is there for maybe a different purpose, having to do with our ability to implement policy, our sovereignty, our national security, which is what I was driving at. All of these things are complementary, yes.

• (1245)

Mr. Lloyd Longfield: Thank you very much.

That's what you mentioned in terms of clarity of criteria and enhanced guidelines. I think that point was very well taken in terms of the Investment Canada Act.

I'm going to go over to Mr. Leblond.

Nate Erskine-Smith mentioned a Chinese-owned solar company that was operating in Canada. Canadian Solar in Guelph might be that company. It faces solar tariffs from the United States, a lot more tariffs from the States than China. The national policy around security concerns where energy, including solar energy, could be part of what we're looking at.... We've seen Canadian businesses recently look at their valuations decline. How do we balance getting investments into industry with some of these types of security or tariff concerns?

I'm sorry, we only have about 20 seconds or less.

Mr. Patrick Leblond: Probably even less.

The answer is that it should not matter what the valuation of a company is, whether we are in COVID or not. I think if we deem something of national interest or national security, including the inability to provide ourselves with certain goods, whether it's solar energy or something else, well, this is a national security issue. Right now, I agree with Daniel that we can improve the process, but we have what is there in the law to actually do this, and it's irrelevant whether we're in COVID or not in COVID.

Mr. Lloyd Longfield: I agree 100%.

Thank you.

The Chair: Our next round of questions goes to MP Rempel Garner. You have the floor for five minutes.

Hon. Michelle Rempel Garner: Thank you, Madam Chair.

I'm trying to take a different tack here. Rather than just looking at the issue of complete moratoriums or lowering the threshold in the ICA for a review, I want to zero in on the point you made, Mr. Burton, about how certain countries might employ different companies to take over certain parts of a business or an industry so that it doesn't trigger the review. Using that concept and marrying it with the concept of the visa framework review, could we look at a policy option that basically says if a country does *x*, *y* and *z*—let's say, takes Canadians hostage—then we would consider placing the country on a list where all investments or potential investments would trigger a net benefit review under the ICA? That would do two things. It would give Canada leverage in a situation, and it would arguably allow a discussion on whether or not that investment is in the best interests of Canadians to occur in a much clearer framework. Is that perhaps something that we could consider?

Dr. Charles Burton: I don't know about the legalities of it in Canadian law or how you would frame it, but I very much like the idea that we have sanctions against regimes that we find are engaging in activities that are violations of the international rules-based order. We don't deal with North Korea, for example.

I think something similar is important. If we see that these companies are associated with a state that is engaging in behaviour that is grossly violating the principles of the WTO—for example, the barring of our canola seeds—that we would look at it as these companies being required to abide by the demands of their state.

Aside from that, we also have serious issues with Chinese state companies' compliance with Canadian environmental and labour regulations, because they function in Canada in ways that they function in other countries that have looser regulations. I think we have to look at the whole thing—

Hon. Michelle Rempel Garner: Exactly.

Dr. Charles Burton: —a comprehensive assessment.

Hon. Michelle Rempel Garner: I've watched the non-enforceability or violation of WTO decisions in certain countries unfold over the last two years, essentially the imposition of sanctions on our goods. The public commentary has always been that we don't have the leverage. I would argue the opposite. Certain countries that do these things still want to buy out Canadian industries that have strategic value to their country.

Taking the point of saying that we don't want to completely chase away FDI, we don't want to be a banana republic or more of an unstable place to do business than we are under the current government, but we would definitely want to say there's a certain line we draw as a country where we say we're going to stop selling you our mines.

Should Parliament be considering that?

• (1250)

Dr. Charles Burton: I think that certainly we should be considering that, and I think we should be working in collaboration with like-minded allies like Australia, New Zealand, South Korea, Japan and the United States to try to come up with some standards that we would all apply so China would not be able to pick and choose.

Hon. Michelle Rempel Garner: As a legislator, a concept I struggle with is separating the concept of hostages, sanctions on our goods, violation after violation, but then saying it's okay that we sell this strategic asset after all these things happen. At what point do we as legislators say we're being taken advantage of here and it's not holistically in the best interest of our country to do business in this regard?

Dr. Charles Burton: I would return to what I said before about reciprocity and fairness. If it's not reciprocal, then why do we allow China to do things in Canada that Canada cannot do in China? I think we have to start making it clear to the Chinese government that their state firms have to abide by reciprocal and fair principles.

I think it's unlikely that we can achieve that with the current Chinese government, and that's why I suggest a temporary moratorium while you all consider this more closely.

Hon. Michelle Rempel Garner: Thank you.

The Chair: Thank you very much.

Our next round of questions goes to MP Jowhari. You have the floor for five minutes.

Mr. Majid Jowhari: Thank you.

Mr. Leblond, in your opening remarks and in your responses to many of the questions from my colleagues, you talked about the fact that it's very hard to define an industry as a strategic industry. You talked about the possibility of looking at it more as a sectoral strategy.

Can you expand a bit on that? On top of that, Mr. Schwanen led with the fact that the new technology companies are going to lead us out of COVID-19. I want to merge those two as a follow-up question for Mr. Schwanen.

Can you talk about sectoral strategy and whether the threshold plays a role in that, or whether the threshold should play a role in that or not?

Mr. Patrick Leblond: The issue of industrial policy was mentioned earlier, where in a way we would have broader, more comprehensive strategies with targeted sectors or types of technologies, such as artificial intelligence or things like that. We would monitor that and decide what do we do to promote these industries and promote more investments in research and development and all that.

That's one way to go, but that has nothing to do with the Investment Canada Act. If we want to modify the act in those industries that we have deemed strategic, which is ultimately a political process, then we would want to reduce the thresholds for international investments, because we want to study those more closely.

Mr. Majid Jowhari: Thank you.

Canada enjoys about 98% of its economy under small and medium enterprises. We've made significant investments over the last five years on organizations across various sectors—advanced manufacturing, environment and agri-food. A lot of these SMEs don't have assets of \$489 million or revenues of \$1.07 billion, but they're primed for takeover as they get through their scaling stage, and they're looking for investment. Those investments are coming from all over the world, not only China.

What are your thoughts on that?

• (1255)

Mr. Patrick Leblond: This is a difficult question.

In a way, you could say, well, foreign investors can't buy a Canadian company unless that Canadian company has reached a certain scale, thereby forcing investors and entrepreneurs to reach that scale, but that also imposes great limits on entrepreneurs. They might say they don't want to have to wait until their company has reached \$5 billion to be able to sell it. Maybe they won't want to sell it, and then decide to go to the U.S. to do their entrepreneurship. That's where they'll get their capital. That's where they'll set up.

Mr. Majid Jowhari: In my opinion, that's exactly what is happening. Most of our investments in those development areas are going down to the U.S. for many reasons. What should our response to that be?

Mr. Patrick Leblond: I mean, this is a broader debate, one for which I'm not sure we have a lot of time. It takes us outside today's meeting, in a way.

One issue, for instance, is government funding for R and D. When governments give funding for companies, in terms of tax credits or other things, to develop R and D and patents, should governments own a share of those patents? Should they own a share of those companies and maybe have some kind of say on what actually happens?

This is not so much about the Investment Canada Act. This is really about a different approach to securing at least government money. If it's private money, then we have to—

Mr. Majid Jowhari: Thank you. I have about 30 seconds, and I really want to hear from Mr. Schwanen as well.

Mr. Schwanen.

Mr. Daniel Schwanen: I agree. I think as Patrick mentioned, of course if the government has an investment in IP or in a company, absolutely they want to make sure it grows for the benefit and advantage of Canadians. That's why we're developing the ecosystem. Canada is really great at attracting talent right now. It's a magnet for talent. What you see is that even when foreign investors acquire a Canadian company, they leave the talent in Canada. This is what's happening here in Kitchener—Waterloo. There are some Montreal companies being taken over. They leave the talent in Montreal.

To me, that's what's really important and not necessarily the ownership. The ownership is not necessarily detrimental to Canadian policy interests; it really does depend. But I can see that the government would want to protect their investment in IP and in industry with some restrictions, yes.

The Chair: Thank you very much.

[*Translation*]

Mr. Lemire, you have two and a half minutes.

Mr. Sébastien Lemire: Thank you, Madam Chair.

My next question follows on the last exchange. I think there is a way to welcome foreign investment without necessarily handing over control. In my opinion, this could be as simple as allowing foreign companies to buy shares from any corporation—maybe even any quantity of shares—without giving them voting rights.

Obviously my question is for the representative from the Mouvement d'éducation et de défense des actionnaires. What do you think of that idea, Mr. Gagnon?

Mr. Willie Gagnon: Yes, that's one possible avenue. It raises technical questions under the act, and substantial amendments would have to be made to other acts on top of the Investment Canada Act.

This kind of thing is already happening, because there is such a thing as preferred shares, which prioritize a return on investment and payment of dividends but don't come with voting rights. It's easy to imagine such a system.

Mr. Sébastien Lemire: In today's debate, we've talked about a moratorium, rather than a permanent amendment to the act.

What do you think about that idea?

Mr. Willie Gagnon: In light of everything we've heard today, it's hard to see what arguments you could make in favour of imposing a

moratorium that wouldn't be permanent. For instance, the arguments used to justify distrust of China won't go away after the crisis.

How could anyone justify amending the act temporarily because of the crisis using arguments based on things that are going to be around basically forever? From what I understand, the situation in China won't be going away any time soon. The regime looks pretty secure. I don't really see any way of making this meaningful unless it's permanent.

Mr. Sébastien Lemire: Currently, the minister has the power to impose conditions to protect the national interest. What are your thoughts on that?

Shouldn't there be a little more transparency in how the conditions that are imposed are reported?

Should the public be better informed?

• (1300)

Mr. Willie Gagnon: Yes, definitely. You've put your finger on an important aspect.

We obviously want to know what principles, rules and criteria are being used to justify blocking a foreign takeover. We also want to know which ones were chosen and used. That will increase confidence not only among Canadian investors, but also among foreign investors who are interested in investing in a Canadian company.

There's always a benefit in having the rules be clear, and the same goes for the decisions that are made. There needs to be accountability.

Mr. Sébastien Lemire: I appreciate your insight.

Thank you very much.

[*English*]

The Chair: Thank you very much.

The next round of questions goes to MP Masse.

Mr. Brian Masse: Thank you, Madam Chair.

Right now the Huawei decision is kind of in limbo. Would anyone here have any objection if Huawei did a takeover of one of our telecom providers like Rogers? Would there be any objection to that under the scenarios you laid out?

I'm interested to hear if anybody has an objection to Huawei's being able to take a large market share into the Canadian telecom industry right now.

Dr. Charles Burton: Could I speak to that?

Mr. Brian Masse: Absolutely, it's an open floor. It's on the record for everybody to have an open spot.

Thank you, Mr. Burton.

Dr. Charles Burton: The Huawei company has quite a strong connection to the Chinese military; its CEO is a former military man. There are concerns as to why the Chinese government is so resistant to the Huawei CFO's being sent to the United States, out of perhaps fear she would provide evidence to the U.S. government about Huawei's connection to the Chinese military and security apparatus.

We have concerns that Huawei could get knowledge of key Canadian infrastructure in the course of its installation of a system or would be able to use it for purposes of data collection and cyber espionage, as we've seen with the Chinese government's previous hacks into the NRC and, before that, the Treasury Board and other agencies. It's a big concern, and I certainly wouldn't like to see Rogers renamed Huawei.

The other problem is that, even when you have these large takeovers, it's difficult to get the state companies to abide by their commitments. As seen in Nexen, there was a commitment to main-

tain the existing Nexen management, but after a while, we saw the Canadians were removed and the management was assumed by Chinese communist officials, so it's highly problematic.

With regard to your question of whether we should allow Huawei to take over a major Canadian telecommunications provider, I would like to say a capital no with several exclamation marks.

Mr. Brian Masse: That's pretty clear.

Does anybody else have a comment? Okay.

Thank you, Madam Chair.

The Chair: Thank you very much.

That's our time for today.

I'd like to thank our witnesses for being with us today.

The meeting is adjourned.

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