HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Transport, Infrastructure and Communities

TRAN • NUMBER 074 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, October 3, 2017

Chair

The Honourable Judy A. Sgro

Standing Committee on Transport, Infrastructure and Communities

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● (1530)

[*English*]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I'm calling the meeting of the Standing Committee on Transport, Infrastructure, and Communities to order.

We are dealing with, pursuant to the order of reference of Monday, June 19, Bill C-49, an act to amend the Canada Transportation Act and other acts respecting transportation and to make related and consequential amendments to other acts.

I have a script that I've been asked to read, so that everyone understands exactly how we go through this procedure. I'd like to provide members of the committee with a few comments on how committees proceed with the clause-by-clause consideration of the bill.

As the name indicates, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is subject to debate and a vote. If there is an amendment to the clause in question, I will recognize the member proposing it, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on. Amendments will be considered in the order in which they appear in the package each member received from the clerk. If there are amendments that are consequential to each other, they will be voted on together.

In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or beyond the scope of the bill, both of which were adopted by the House when it agreed to the bill at second reading, or if they offend a financial prerogative of the crown.

If you wish to eliminate a clause of the bill altogether, the proper course of action is to vote against that clause when the time comes, not to propose an amendment to delete it.

Since this is the first exercise for many new members, I will go slowly to allow all members to follow the proceedings properly. If during the process the committee decides not to vote on a clause, that clause can be put aside by the committee, and revisited later. Amendments have been given a number in the top right corner to indicate which party submitted them. There is no need for a seconder to move an amendment. Once moved, an amendment will need unanimous consent to be withdrawn.

During debate on an amendment, members are permitted to move subamendments. These subamendments do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it. Once every clause has been voted on, the committee will vote on the title and the bill itself, and an order to reprint the bill may be required, if amendments are adopted, so that the House has a proper copy for use at report stage.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments as well as an indication of any deleted clauses.

I thank the members for their attention. I wish everyone a productive clause-by-clause consideration of Bill C-49, an act to amend the Canada Transportation Act.

Pursuant to Standing Order 75(1), consideration of clause 1, which is the short title, is postponed.

I will now call clause 2 to open up today's discussion.

Mr. Chong.

● (1535)

Hon. Michael Chong (Wellington—Halton Hills, CPC): Yes, on a very small point of order, very briefly, Madam Chair, I'm wondering if for future meetings we could ensure that we meet between 3:30 p.m. and 5:30 p.m. on Tuesdays and Thursdays, which is our normally allotted time, and if there are circumstances that require us to meet outside of those times, that we be given forewarning about those hours, preferably a week or so in advance, so that we can plan our schedules. I only became aware of this meeting, which sits until 8:30 tonight, yesterday afternoon, and it has caused my office quite a bit of work to find duty coverage and to cover the other responsibilities that I have.

I put this out there as maybe something we can all work toward for future meetings, that is, that we meet during those regularly allotted time slots, Tuesdays and Thursdays, 3:30 p.m. to 5:30 p.m., and if there are extenuating circumstances that require us to meet beyond those times, that's fine, but I would ask that we have forewarning of a week or so so we could plan our schedules accordingly.

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

One thing I wanted to mention is that if the committee agrees, we will put together groups of clauses that have no amendments, but if any of the members want to speak to any of the clauses to get some comments on the record, please make sure you flag that. That's perfectly acceptable, if you want to get some comments on particular clauses on the record.

Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): Madam Chair, I wonder if the clerk could tell us at this point, how many of the amendments he's ruled out of order because they don't directly pertain to the bill.

If there are some, you'll be notifying us before we go into it, so we don't waste time debating amendments you're going to rule out of order. Is that correct?

The Chair: Right at the beginning.

Mr. Ben Lobb: Okay, thank you.

The Chair: That's not a problem.

We have had tremendous co-operation among all of the party members throughout this whole process. I hope we will continue that, so that we might be finished this much faster than some of us have anticipated.

I'm going to move on now.

Shall clauses 2 to 8 inclusive be adopted?

(Clauses 2 to 8 inclusive agreed to)

(On clause 9)

The Chair: There is a Conservative amendment.

Go ahead, Ms. Block.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Madam Chair, I don't intend to spend a lot of time providing rationale to the amendments that our party has submitted. Certainly, almost everybody around this table was in attendance at all of the testimony that we heard from our witnesses, but suffice it to say that this amendment is in keeping with a recommendation from François Tougas.

Do I need to read the amendment into the record? I can just leave it at that and state that the rationale for that proposal was that Bill C-49 is not oriented toward fulsome disclosure, not to customers, not to the agency, and not to the minister. Therefore, the proposal that was provided by this witness is a simpler revision to the performance data provisions of Bill C-49.

The Chair: Is there any further discussion on the amendment proposed by Ms. Block?

(Amendment negatived [See *Minutes of Proceedings*])

Mrs. Kelly Block: Madam Chair, I do have an amendment that I would like to introduce at this time to clause 9. I move that Bill C-49, in cluse 9, be amended by adding after line 33 on page 4 the following:

> (4.1) The Minister shall, no later than three years after the day on which this section comes into force, appoint one or more persons to carry out a comprehensive review of its operation and shall, within a year after the review is undertaken or within such further time a the House of Commons may authorize, submit a report to Parliament on that review, including recommendations for any changes.

● (1540)

The Chair: It appears that the amendment of Ms. Block is out of order, as it impacts on the financial prerogative of the crown.

I'll ask the legislative clerk if he wants to add some further comment.

Mr. Olivier Champagne (Legislative Clerk, House of Commons): The appointment of one or more persons would typically require compensation for their services, so that explains the ruling.

The Chair: Thank you.

The floor is yours, Mr. Aubin.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): I have a question about the procedure, Madam Chair.

When amendments are presented to us in this impromptu way, could we be assured that translation has a copy before they come to us? The wording I have in front of me, which came after the translation, does not quite correspond to the initial text and it takes quite a bit of time to compare the two texts.

[*English*]

The Chair: Would you like us to hold this down?

Mr. Robert Aubin: No, it's okay.

The Chair: You're okay? All right.

(Clause 9 agreed to)

The Chair: Clauses 10, 11, and 12 have no amendments.

(Clauses 10 to 12 inclusive agreed to on division)

(On clause 13)

The Chair: Ms. Block.

Mrs. Kelly Block: Madam Chair, we have a motion to amend clause 13, replacing lines 9 and 10 with the following:

> purpose of carrying out its powers, duties and functions respecting any matter that comes within its jurisdiction under an Act of Parliament and, despite subsec-

This was brought forward by one of our witnesses, who believed that this was something quite important, in order for them to continue in their business of shipping.

The Chair: Is there any further discussion or comment?

Mr. Sikand, go ahead.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): I guess great minds think alike, because I have a similar amendment to make. I would like to withdraw—

Mr. Sean Fraser (Central Nova, Lib.): Sorry, I hate to interrupt. I am just looking ahead. I think you guys are talking about two different amendments.

Kelly, would you mind repeating which one it is? I am unsure which of your proposed amendments we are dealing with.

Mrs. Kelly Block: Sure. It's clause 13, lines 9 and 10 on page 6.

The Chair: It's CPC-2.

Mrs. Kelly Block: Yes.

Mr. Gagan Sikand: You're right. My apologies.

The Chair: Ms. Block, do you have any further comment on CPC-2?

Mrs. Kelly Block: The witness provided us with a rationale. They believed that the Canadian Transportation Agency should have the ability to utilize this data to fulfill all of its responsibilities as effective decision-making is best facilitated by having the ability to receive and analyze detailed information on all aspects of railway and system performance.

(Amendment negatived)

The Chair: Ms. Block, you have CPC-3.

If CPC-3 is adopted, LIB-1 cannot be moved. I believe this is where Mr. Sikand was looking at making a motion to withdraw.

Mr. Gagan Sikand: As I was saying, great minds think alike.

Since we've heard from the witnesses, and Ms. Block has already introduced that, I'd like to withdraw my motion.

The Chair: Okay, thank you.

Mrs. Kelly Block: I don't think this needs any further rationale provided.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 13 as amended agreed to)

(On clause 14)

● (1545)

The Chair: Ms. Block, go ahead.

Mrs. Kelly Block: Madam Chair, if I may, I would pass any points to be made on this over to my colleague Mr. Chong.

Hon. Michael Chong: Madam Chair, I have proposed some of these amendments, because the concern I have with the bill as it is currently worded is that it would allow the minister to approve a joint venture that would not be subject to a full competition review. I think that this would weaken competition in Canada. It would weaken the ability of the bureau to ensure a competitive economy in Canada.

By making these amendments, we can ensure that the commissioner of competition has a much bigger role to play in approving joint ventures, as they have in the past, when they have disallowed certain transporter routes in order to ensure that Canadians have the best prices available to them for travel.

The purpose of the amendment in front of us, and we're considering just the single amendment right now—

The Chair: That is amendment CPC-4.

Hon. Michael Chong: —is to have the process begin with the commissioner of competition in order to ensure that a proper competition review is undertaken and that it is the arm's-length, independent law enforcement authority in the Competition Bureau and the competition commissioner who adjudicate whether or not a particular joint venture is in the public interest.

The Chair: Thank you, Mr. Chong.

Could we ask the officials to comment on amendment CPC-4?

Ms. Helena Borges (Associate Deputy Minister, Department of Transport): The intent in the bill is for the Minister of Transport to assess whether there is a public interest in proceeding with a joint venture. As part of that assessment, there would be an assessment by the commissioner of competition to assess any impacts on competition, and the commissioner's assessment would focus on the competition aspects. He would then make his report available to the minister so that the minister can have a fulsome assessment of competition impacts as well as of public interest impacts. The minister would make the final decision.

The Chair: Is there any further discussion or debate?

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

Unless the officials tell me that I am wrong, it seems to me that, before Bill C-49, the Commissioner of Competition could, on his own initiative, block an agreement. So, my impression is that, although I agreed with all the amendments proposed by my Conservative colleagues—and that is an interesting realization, I confess—basically, the fact is that the minister can still circumvent the recommendation. The commissioner would therefore no longer have the means to block an agreement that, in his opinion, would be detrimental to competition.

Just to be sure that I understand the procedure correctly—because this is the first time I have done this kind of exercise—I could support each of the Conservative measures but, in the end, vote against section 14, because, in my opinion and in our opinion, it gives unreasonable powers to the minister and takes them away from the Commissioner of Competition.

Is my reading of the procedure correct?

[*English*]

The Chair: Yes, you could by all means do that. You could be voting for each one of these and then vote against clause 14 in its entirety.

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: Mr. Fraser.

Mr. Sean Fraser: Madam Chair, regarding these clause discussions, I don't like the vibe created in the room if we just sit silently. If we're opposed to a motion, I like to offer some logic, including perhaps on some data issues that impacted the first proposed amendments.

With respect to this one, one reservation I have is really about the public interest. I know that was the intent of the proposal, but I think the policy reason behind the proposal makes sense. I don't think the competition regulator is particularly well-positioned to assess the public interest. I think that is a policy decision.

For that reason, I'll be voting against the proposed amendment. I think that sometimes we owe it to one another to explain our rationale rather than sit silently.

● (1550)

The Chair: Mr. Chong.

Hon. Michael Chong: Madam Chair, whether the amendment passes or not, I want to make this point. I think it's really important to understand that Canada has some of the best competition framework legislation in the world. It began with the anti-combines act some 100 years ago, if my memory serves me correctly, and it evolved with the modernization of the Competition Act in more recent decades.

The Competition Bureau and the commissioner of competition, along with the tribunals, are considered world class in their enforcement, and to that end, we enjoy a competitive economy. The conditions imposed on Air Canada and United Airlines in the 2011 time period are evidence of that.

I think the current bill weakens our competition law. It allows the minister, frankly, to override a system that I believe is in the public interest, which is to have an arm's-length competition bureau enforcing competition law and leads to less choice for consumers and higher prices for the travelling public.

That's why I proposed these amendments. I'm not going to delay much further, but I want to make the point that this is a significant deviation from current competition law, which is, in my view, world class, and will weaken what is a world-class bureau and tribunal.

Thank you.

The Chair: Thank you very much.

If there is no further discussion on amendment CPC-4, I shall put the question.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We move to amendment CPC-5.

Hon. Michael Chong: Briefly, this amendment would simply require the commissioner to make public a summary that, as the bill is currently worded, the commissioner has the choice not to make it public. The amendment is a very simple one in the interests of transparency and open government. I think the more we can make public, the better. It also requires the minister to make the decision public. It's a simple amendment.

The Chair: Would the department like to offer any comments on amendment CPC-5?

Ms. Helena Borges: In fact, the intent behind Bill C-49 is to be as transparent as possible, but there are concerns about some of the confidential information that may be presented as part of the submissions. Throughout the act there are provisions to protect the confidential information. While the act didn't say that the reports had to be made public, we wouldn't necessarily oppose that, but we would ask that the confidentiality provisions would have to be safeguarded in order for a report to be made public, because certain information can't be in the public domain.

The Chair: Mr. Fraser is next, and then we'll go back to Mr. Chong.

Mr. Sean Fraser: As far as I can tell, there are three consecutive proposed amendments that relate to the same issue around transparency. I support the measures. I am conscious of the fact that there is proprietary information that might be compromised here, which the commercial participants for good reasons don't want to disclose. Is there a way that we can accomplish the attempt to achieve greater transparency while carving out commercially sensitive proprietary information of the commercial parties?

Hon. Michael Chong: Do I hear a subamendment?

Some hon. members: Oh, oh!

Mr. Sean Fraser: I don't have specific language prepared. I'm essentially asking for a subamendment here.

Ms. Helena Borges: May I respond?

The Chair: Yes, let's hear from the department, please.

Ms. Helena Borges: Yes, I think we could by adding language in the proposed amendments with respect to.... There are a couple of things. In the first amendment you would only want to make information available if the joint venture goes ahead. That's first and foremost. If it's withdrawn, then that information won't be made public. It may be considered, but it won't go forward. At the end of the amendment, it would be highly desirable that we include that, so it reads “a public summary of the conclusions of the report that does not include any confidential information”.

● (1555)

Mr. Sean Fraser: I'm sensitive to the fact that we don't have this in both official languages.

[*Translation*]

Hon. Michael Chong: If you make an amendment in English, the translation will—

[*English*]

Mr. Sean Fraser: I was going to ask whether we could perhaps set this aside. Maybe, if we could have a quick recess at some point in time, we could come up with proposed language to do this. I don't have it sitting in front of me right now. I don't expect it would take a long time, but in the interest of continuing, we could revisit this once we have some language put together.

The Chair: All right. We'll postpone amendment CPC-5.

(Amendment allowed to stand)

The Chair: l will go to amendment CPC-6.

Hon. Michael Chong: Madam Chair, this amendment proposes, simply in the same vein, to make public a decision in that regard. If there are concerns from the members opposite regarding this amendment, perhaps we could also set it aside, so that during our votes, which are coming up, we can figure out the wording that would work.

Mr. Sean Fraser: In amendments CPC-6 and CPC-7, the same issue applies.

The Chair: Why don't we just postpone clause 14 and come back to it when our great committee members find the right words.

(Clause 14 allowed to stand)

The Chair: There are no amendments to clauses 15 to 18.

(Clauses 15 to clause 18 inclusive agreed to)

(On clause 19)

The Chair: Mr. Aubin, would you like to speak to your amendment, please?

[*Translation*]

Mr. Robert Aubin: It will not be long, Madam Chair, I am almost there.

[*English*]

The Chair: We'll go slow with this process. There's always a lot of paper around.

[*Translation*]

Mr. Robert Aubin: It is about NDP-1, right?

[*English*]

The Chair: Yes, sir.

[*Translation*]

Mr. Robert Aubin: Thank you.

My argument in favour is very simple.

Bill C-49 contains a proposal that is not really a proposal, in my opinion. It is actually a solution designed to save time. What for? We could spend a lot of time discussing that.

As for the air passenger bill of rights, Canada does not have to reinvent the wheel because bills of rights of that kind already exist. Many witnesses spoke very positively about the European bill of rights, for example.

The purpose of most of the proposals in this amendment is to include in the bill the main rights that passengers could rely on in case of a problem. The NDP is not actually insensitive to the Liberal approach, under which all that work would be done by regulation, because, when conditions change, it is easier to amend a regulation than an act. We are also sensitive to certain of the details, like the amount of fines.

However, in terms of rights, it seems to me that the problems have been known for a long time, and it is possible to enact the equivalent of the proposals in the European bill of rights, for example. That is actually what the text of the amendment proposes. It is a concrete proposal that I invite my colleagues to consider and take a position on.

[*English*]

The Chair: Thank you, Mr. Aubin.

We'll go to the department, and then we'll go to Mr. Iacono.

Ms. Helena Borges: The bill states that the specifics of the compensation measures or any other measures would be developed in regulation. The reason we believe this is most appropriate is that it allows for proper consultation on the various elements that are listed in the legislation. By including them in the bill, we will not have time to consult with Canadians about what they believe are the important features that should be in there for compensation or for duty of care of the passenger.

If we then have to make changes at some point because the regime is altered, it's also much faster to make the changes through the regulatory system than having to change a bill or having to come back just to change the section of the bill for those amendments.

For those reasons, as is normal when we have something very detailed like this, it's more appropriate to do it through the regulatory process. I think that, as Minister Garneau committed to when he was here, we have every intention to get on with this and to have this regime in place in 2018.

● (1600)

The Chair: Is there any further discussion?

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: I understand. We are dealing with a fundamental difference in point of view.

The great majority of the witnesses we have heard, with the exception of the representatives from one or two major airlines, were of the opinion that we do not have to reinvent the wheel because the bill of rights already exists.

Are we going to use this whole consultation process to end up with something that already exists and on which there seems to be consensus, in order to respond to the pressure from a few airlines? The question has to be asked. It seems to me that we could actually take a position on the issue and provide Canadians, right from the moment that this bill receives royal assent, not a consultation, but a real passenger bill of rights. A number of parties have promised Canadians that on a number of occasions, including during the election campaign.

I feel that the time has come to adopt an air passenger bill of rights.

[*English*]

The Chair: Yes.

Mr. Iacono.

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Madam Chair, I would like to add to the department's comments that other jurisdictions such as the European Union and the United States have recognized the need for flexibility in the air passengers' rights approach, and both have included the details in their regulations, not in their legislation.

The Chair: If there any further discussion on NDP-1?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 19 agreed to)

The Chair: Clauses 20, 21, and 22 have no amendments.

(Clauses 20, 21, and 22 agreed to)

(On clause 23)

The Chair: We have amendment CPC-8.

Mrs. Kelly Block: Madam Chair, this speaks in particular to level of service. We heard from a number of witnesses some concerns about some of the wording in Bill C-49.

This bill includes an addition to the level of service provisions that requires the agency to dismiss a complaint if it is satisfied that the railway has provided the highest level of service that is reasonable in the circumstances. What we heard was that this unfortunately does not tell shippers what they must prove in order to succeed in a level of service complaint.

If the intent is that unless the railway has provided the highest level of service that is reasonable in the circumstances it will be found in breach of its obligations, then the proposed new subsection should be amended to say so clearly. That's what this amendment is intended to do, Madam Chair.

The Chair: Thank you, Ms. Block.

Does the department choose to comment?

Ms. Helena Borges: We believe that the language already in the bill achieves the objectives of the amendment. It specifies that the shipper is entitled to receive the highest level of service possible and that really, we don't need to add additional language that specifies that. It also includes the factors that the agency would have to take into account in determining that level of service, so we believe it accomplishes what the amendment is trying to say.

The Chair: Are there any further comments and discussion?

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: I have a question about the way the French is written because I do not really grasp it. According to the amendment, proposed paragraph 116(1.2) would read, “L'Office ne décide que la compagnie s'acquitte de ses obligations prévues par les articles 113 ou 114 que s'il est [...]”. The rule in French is that, if the word “ne” is used, it must be followed by “pas”. So it would be “ne décide pas”, but that is not the meaning of the amendment, if I understand it correctly.

Would it be right to say, “L'Office décide que la compagnie s'acquittera de ses obligations prévues par les articles 113 ou 114 que s'il est [...]”, which would be followed by the series of conditions that we want to do away with? It seems to me that the French wording, as presented, makes no sense.

● (1605)

[*English*]

The Chair: Would you like to add any comment?

[*Translation*]

Mr. Olivier Champagne: I am not a legislative drafter or a grammarian, but this “ne” is what is called the “expletive ne” and that it is optional. It's a matter of style, of how it looks. It would not be impossible to take it out, I imagine, but I do not think it is an inherent problem.

Mr. Robert Aubin: I would just like to know if I have grasped the spirit of the amendment.

Mr. Olivier Champagne: Yes, absolutely.

Mr. Robert Aubin: So the company is fulfilling its obligations, not withstanding the conditions that we want to take out. Is that the spirit of the amendment, in fact?

Mr. Olivier Champagne: Yes, that is what I understand myself, but the department could perhaps confirm it.

Ms. Helena Borges: I would like to ask my legal colleague to answer your question.

Mr. Alain Langlois (General Counsel and Deputy Executive Director, Department of Transport): I think you have understood the essence of the amendments correctly. The language used in the bill is formulated in the positive. So it would be: “L'Office décide que la compagnie s'acquitte de ses obligations si... ” rather than formulating it in the negative, as the amendment does. The reason why the positive is used in the drafting is that, elsewhere in the act, the agency is asked to determine whether the company has fulfilled its obligations. So that was done in the positive. The amendment proposed in the bill is consistent, in terms of the description of the required services for which the agency is responsible under the act. That is why this formulation was proposed.

Mr. Robert Aubin: Okay.

[*English*]

The Chair: Thank you very much.

Is there any further comment on amendment CPC-8?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 23 agreed to)

(Clauses 24 and 25 agreed to)

(On clause 26)

The Chair: We have amendment CPC-9.

Ms. Block.

Mrs. Kelly Block: Madam Chair, this section and this amendment have to do with access to competing railways. We heard an awful lot of testimony about long-haul interswitching. I think we would all agree that we heard from many of our witnesses that they thought this bill got a number of things right in many ways, but that the long-haul interswitching remedy was creating a lot of problems for our shippers, and in particular that the long-haul interswitching remedy in Bill C-49 is far less user-friendly.

I believe this amendment is being put forward to ensure that the extended interswitching that our shippers have come to enjoy remains in some way, shape, or form a remedy for them.

The Chair: Would the department like to comment, please?

Ms. Helena Borges: As both the minister and I said at one of the last appearances, the extended interswitching provision was really a temporary measure under the Fair Rail for Grain Farmers Act. It was introduced to address the very unusual situation that happened in 2013 and 2014, with the largest grain crop ever as well as a very difficult winter.

That provision presented numerous difficulties in terms of the cost-based rates. In continuing it, we were just propagating a problem: that there will at some point arise a scenario whereby the railways will not be investing in their infrastructure, which will then lead to the deterioration of the system.

For that reason, we did not renew that provision in this bill. The provision actually ceased to exist as of August 1 of this year because it was not renewed. That was in the previous bill.

The Chair: Mr. Fraser.

Mr. Sean Fraser: As a general comment, I think this amendment is, as you described, to say that some people like the extended interswitching and that in your view it's superior to the proposed long-haul interswitching.

To follow up on the comments made by our officials here, I think that Bill C-30 was the right thing to do. It was actually very smart at the time to help move product that was stranded, and I would have supported it at the time.

We've now had the benefit to consult across Canada. I keep thinking to myself that the starting point is not the draft legislation we all started with. Right now, there's not a system in place. I see long-haul interswitching as part of a pretty intricate balance that extends the ability of producers and shippers to move goods in different geographies, in different commodities.

When I look at some of the protections that are available here to shippers, I view this as a very positive bill from a shipper's perspective. I'm looking at data disclosure, retaining the maximum revenue entitlement, reciprocal penalties, adequate and suitable service.

I understand that there are some shippers in the grain industry in a limited geography who are familiar with a certain system, but I want to have my voice on the record as saying, given the starting point that we have right now, this is a pretty intricate balance that I think is really going to help shippers in different commodities, in different geographies, get their goods to market. I can't in good faith support an amendment that's going to essentially dismantle the long-haul interswitching system that is really the focus of a major portion of this bill.

● (1610)

The Chair: Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): I think the previous government wisely put a sunset clause on this because it was brought in to apply to a particular situation. Although the distance prescribed, 160 kilometres, was I think never used—it might have been used once in that period of time—what it did was introduce, if you like, a replacement for what would ordinarily or hopefully be a competitive situation.

The extended distance in the long-haul interswitching would do two things. First of all, it would open up more of the country to competitive rates. Second, it would also open up more commodities. The original provision was specifically, of course, to move grain. Now we have a lot of interest in the mining and forestry sectors in British Columbia, in northern Quebec, etc., and I think there are some amendments coming up that will also address those interests and, in my view anyway, enhance the ability of long-haul interswitching to do what it was intended to do.

The Chair: Ms. Block is next, and then Mr. Aubin.

Mrs. Kelly Block: I will follow up with one comment. This amendment was put forward by the Western Canadian Shippers' Coalition, so it wasn't strictly one commodity that was raising concerns. The province of British Columbia was included in this amendment, I think, to address some of the concerns that are also contained within the long-haul interswitching, which would be the exclusion zones.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: In the testimony we heard during the week, the value—if I may call it that—of the 160 km distance was clearly established by a good number of witnesses. It is not my intention to discuss it again, so I am inclined to support the proposed amendment.

I just have one question. The amendment as proposed specifies Alberta, British Columbia, Manitoba and Saskatchewan. I would just like to know why the 30 km distance stipulated in the act is maintained in the other provinces.

[*English*]

The Chair: Did you want to respond to that, or would the department like to comment on Mr. Aubin's suggestion?

Ms. Block.

Mrs. Kelly Block: I would simply indicate that this was the Western Canadian Shippers Coalition putting this forward, so they may not have thought they could speak for folks in the east.

[*Translation*]

Mr. Robert Aubin: Okay.

[*English*]

The Chair: Ms. Borges.

[*Translation*]

Ms. Helena Borges: It is a good question. The reason we did not renew that provision in the act really is because it applies to four provinces only, and the rest of Canada does not benefit from it. The new proposal that we are presenting in the bill, long-haul interswitching, covers the entire country and longer distances. It includes all the basic products that have to be transported from one place to another. We believe that the new proposal is better than extended interswitching.

[*English*]

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: My next question goes to Ms. Block.

In your opinion, would the idea of a 160-kilometre distance work for the whole country? Or are you set on the proposal keeping a distance of 160 kilometre for four provinces and a distance of 30 kilometres for the others?

● (1615)

[*English*]

Mrs. Kelly Block: If you were proposing an amendment to expand it across the country, I would see that as a friendly subamendment.

[*Translation*]

Mr. Robert Aubin: So I propose a friendly subamendment.

[*English*]

The Chair: It needs to be worded in legal language for the legislative clerk, and it needs to be in writing. We could defer this.

Hon. Michael Chong: It doesn't need to be in writing.

The Chair: If it's really simple, Mr. Aubin, the clerk says he can —

[*Translation*]

Mr. Robert Aubin: It is really simple. It seems to me to be enough to put a period after the word "interswitching". Then, by removing the names of the four provinces listed, the understanding would be that it would apply to them all. If the rest of the amendment were dropped, all provinces would be included.

[*English*]

The Chair: Mr Fraser.

Mr. Sean Fraser: I'm curious as to the department's view on this. It strikes me that when the interswitching of 160 kilometres was developed, there was serious consideration about how much of the grain that needed to be moved was within 160 kilometres of an interchange point. I don't know what the infrastructure is like in northern Ontario, for example, and whether 160 kilometres makes sense at all. I assume, given the consultation process that went on with the minister, towards which many of the witnesses were very complimentary, that the figure he landed on for long-haul interswitching of 1,200 is no coincidence.

Can you elaborate on whether 160 kilometres is a workable distance, given our geography and infrastructure across Canada in different regions?

Ms. Helena Borges: We believe that the provision on long-haul interswitching is really aimed at captive shippers who are further away, who don't have close proximity to an interchange. Thus 165, 175, or 200 kilometres wouldn't do anything for them, and that's why the bill has the figure of 1,200 or 50% of the total distance. That is going to be of better value for many of the shippers across the country who only have the opportunity to use one railway, to give them a competitive alternative at the interswitch point.

The extended interswitching that was in the previous act was really meant for very short moves, and that was because the rates were at a cost base. For the LHI, long-haul interswitching, they are not at a cost base; they are based on comparable rate. We're thus talking about two very different mechanisms, but the real objective is to provide shippers who don't have competitive alternatives with a competitive alternative through the long-haul interswitching.

The Chair: I have a suggestion for the committee.

In order to give Mr. Aubin a bit of time to sort out just how he would like to make that friendly subamendment, should we allow clause 26 to stand for a short period of time to give Mr. Aubin an opportunity to ensure that his subamendment is prepared? Is that all right?

[*Translation*]

Mr. Robert Aubin: With all respect, Madam Chair, I proposed a very simple, friendly subamendment but I have had no reaction. If my colleagues agree with the proposal, we can move forward because there would be nothing to rewrite, there would just be something to remove.

[*English*]

The Chair: Let's say that the clerk is not clear on exactly what it is you wanted to achieve.

Mrs. Kelly Block: I too am not clear what the actual statement would be, how it would read. If I had it in front of me....

[*Translation*]

Mr. Robert Aubin: I could read it.

[*English*]

The Chair: Let's just allow clause 26 to stand.

[*Translation*]

Mr. Robert Aubin: Okay.

[*English*]

The Chair: Mr. Aubin, if you can work with your staff and Ms. Block's staff and put something together that the legislative clerk is comfortable with, we can deal with it again.

We'll allow clause 26 to stand, then. Everybody is good with that.

(Clause 26 allowed to stand)

(Clauses 27 and 28 agreed to)

(On clause 29)

The Chair: Before you start, Ms. Block, let me say to Mr. Aubin that amendment NDP-2 is identical to amendment CPC-10, so it cannot be moved until there is a vote on amendment CPC-10.

Ms. Block will speak to it now.

● (1620)

Mrs. Kelly Block: I'm sorry, can you repeat that?

The Chair: CPC-10 is, I believe, your amendment.

Mrs. Kelly Block: Yes, it is.

The Chair: Amendment NDP-2 is identical to amendment CPC-10.

Mrs. Kelly Block: Madam Chair, I believe this amendment was put forward by several witnesses. We know that at least three witnesses we heard from came forward with this exact recommendation. It has to do with clauses within the long-haul interswitching section, which, with all due respect to my colleagues across the way and to our departmental officials who characterized Bill C-49 as a crowning achievement when they were here to provide testimony to us at the very beginning of our study, every single witness without fail—

The Chair: I need you to clarify whether you're speaking to amendment CPC-10 or the one that your staff has just handed out.

Mrs. Kelly Block: I'm speaking to amendment CPC-10.

The Chair: Thank you.

Mrs. Kelly Block: Without fail, every witness who spoke to us about long-haul interswitching said that for the most part, they could live with long-haul interswitching but that there were a number of amendments that needed to be made in order for it to be effective for them. That's why this amendment is in front of you today.

The Chair: Does the department want to comment?

Ms. Helena Borges: Given that we are talking about two separate provisions, one proposed and one already in the act.... The act already contains a 30-kilometre interswitching zone, which any shipper can use. They can take the traffic within that 30 kilometres and have it switched to another railway. That is done at a cost-based rate. You use the long-haul interswitching when you are beyond the 30 kilometres. You would be going way beyond that. You don't, then, have to have access to the 30-kilometre interswitch. In fact, you're going further than that. If you had the 30-kilometre...that's what you would in fact be using, not the long-haul interswitching.

This is, then, really conflicting with the long-haul interswitching. It duplicates it.

When the railway is asked to move a product to an interchange under the long-haul interswitching, it's already in that direction, but it will be longer than the 30 kilometres, because they don't have access to the 30 kilometres.

I think the amendment conflicts with a provision already in the act, and it conflicts with a proposed new portion of the act, that being long-haul interswitching.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: No. Are we not talking about amendment CPC-10, which reads like this: “destination du transport, dans la direction la plus judicieuse[...]”?

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Robert Aubin: Okay.

I am trying to understand what the officials are saying. I am going to take a few minutes to read the text.

My first comment was not about that; it was about congratulating Ms. Block for pipping me at the post in presenting the amendment. However, since we are proposing exactly the same thing, I was clearly going to acquiesce.

However, I am now going to take a few minutes to read over the text again in the light of what we have been told.

[*English*]

The Chair: Thank you very much.

Mr. Hardie.

Mr. Ken Hardie: Maybe staff can address this. We had discussions come up about trying to avoid a shipper having to basically send his goods in the wrong direction in order to get to an exchange point. My understanding is that if in fact the 30-kilometre interswitching distance applies. Thirty kilometres is not a big deal, but if no such exchange point exists within the 30 kilometres, then in fact the shipper would be free to choose the exchange point that is in the direction he wants his material to go.

Ms. Helena Borges: That's correct.

Mr. Ken Hardie: Okay.

Mr. Alain Langlois: I would like to refer the committee to proposed section 136.1 in the bill. In the legislation, if one of the points of debate between the shippers and the railways is what the nearest interchange is, proposed section 136.1 of the bill provides that it's the interchange that's in a reasonable direction for the movement of the traffic. The concept that a shipper is going to be forced to go in the wrong direction is thus addressed by proposed section 136.1 of the legislation.

● (1625)

The Chair: Is there any further discussion on amendment CPC-10?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is amendment CPC-11.

Mrs. Kelly Block: Do we not deal with...?

The Chair: Well, amendment CPC-10 failed, and amendment NDP-2 is the same as CPC-10, so it doesn't require a separate vote.

We're on amendment CPC-11.

Mrs. Kelly Block: Yes, thank you very much, Madam Chair.

This is the one that has been circulated.

Amendment CPC-11 is deleting lines 5 to 42 on page 23, which contains the proposed section that has the exclusion corridors built into it. Although we're hearing that long-haul interswitching and all the remedies contemplated in this bill are an answer for our captive shippers, we heard testimony from many of our witnesses saying that this would do no such thing. In fact, it serves to act like the competitive line rates that they used to have to use and which were rarely used. Therefore, we have put forward this amendment.

The Chair: Would the department like to speak to this amendment?

Ms. Helena Borges: Let me repeat, the long-haul interswitching is meant to give captive shippers the access to a second carrier that they do not have today. Shippers already located within the 30-kilometre interswitch distance have access to a second carrier and in some cases more than a second carrier, so they already have competition and access to more than one railway.

The other exemptions in there refer to traffic such as intermodal traffic, automotive traffic. They also already have access to competitive transportation alternatives. That's why they were excluded.

There were other exclusions proposed because of the nature of the handling of particular traffic, such as radioactive goods or oversized shipments, because it would be really difficult to switch that traffic between one carrier and another.

All of this is to say that the exemptions that were put in were well thought out and that there was a valid reason for each and every one of them: either that they have competition or that there would be difficulty in switching that traffic between carriers.

We cannot support this in the context of what the LHI was meant to do from a policy perspective, which was to give the captive shippers a new remedy that they don't have today.

The Chair: Mr. Hardie.

Mr. Ken Hardie: I was just going to ask Ms. Block why she wanted all of this section to be deleted, because in the movement of toxic inhalation hazardous material, radioactive material, etc., where additional handling through an interswitching arrangement could increase the risk of some sort of mishap, you could have some pretty dire consequences.

The Chair: Ms. Block, would you like to respond?

Mrs. Kelly Block: Yes, I would like to respond to two things.

First, with all due respect, I think it's highly inappropriate for the departmental staff to tell us what they can or cannot support in terms of an amendment that's come forward from a parliamentarian when we are working through a bill clause by clause.

I appreciate the explanation of the bill as it is written by the departmental officials, but knowing what they can and can't support I think is inappropriate. I think it's for the parliamentarians to determine that.

The Chair: Yes, agreed.

Mrs. Kelly Block: Second, I think the answer to the question put to me by Mr. Hardie would be that we heard from the chemistry association and the fertilizer association that there is already legislation in place that governs the movement of toxic inhalation hazardous material, as well as other dangerous goods. They felt that this actually excluded them from using the long-haul interswitching remedy, which the two would need.

● (1630)

The Chair: Do you have any further comments, Mr. Hardie?

Mr. Ken Hardie: Again, I would ask staff about the current provisions to deal with the TIH radioactive material or oversize traffic, etc. Would the current provisions that Ms. Block referenced stand as preventing the shippers of those goods from using long-haul interswitching?

Ms. Helena Borges: Yes. In the current provisions in the bill, toxic inhalants are excluded from using the long-haul interswitching.

Mr. Ken Hardie: No, I'm sorry. What I meant is that if Ms. Block's amendment carried and all of this were taken out of the bill, would the existing provisions prevent the shippers of these goods from using long-haul interswitching?

Mr. Langlois.

Mr. Alain Langlois: If we remove all the exceptions from the list in proposed subsection 129(3), then there is no impediment for TIH shippers in using the remedy to ship the goods.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

My question goes to the officials, but also to Ms. Block.

Ever since the beginning, when we talked about interswitching, it was about the economic advantage that a shipper can get. Now, we have just been told that all those who are subject to an exception would have no right to the competitive advantage. I wonder whether we are putting the problem in the right place.

In the transportation of hazardous materials, I understand that we do not want to increase the risk by doing this interswitching, but is that the real problem? If we are transporting hazardous materials, like petroleum in the DOT-111 cars, the problem is not about the interswitching but about the cars themselves. In my opinion, we should solve this problem in a way other than through this provision in the bill. I see no reason to deprive a grain producer, or a producer of anything else, of an economic advantage, if the problem is with the car in which products are transported.

Am I wrong?

Ms. Helena Borges: There is no ban on transporting products, as long as they are kept in appropriate containers. As you said, the provision in the bill provides an option for shippers who have access only to one carrier for their goods. That is the reason they are excluded. All hazardous material can already be transported by train.

Mr. Robert Aubin: Companies could also use trucks as another means of transportation, correct?

Ms. Helena Borges: Yes, and they can use boats too.

Mr. Robert Aubin: But that was not a real choice, according to a number of witnesses.

Thank you. That helps me to make up my mind.

[*English*]

The Chair: For the information of the committee, before we vote on the amendment, if CPC-11 is adopted, CPC-12, NDP-3, and CPC-13 cannot be moved, because this is effectively deleting that section.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next we have amendment CPC-12. For the information of the committee, again we have like minds. Amendment NDP-3 is identical to CPC-12.

Ms. Block, would you like to speak to this?

Mrs. Kelly Block: Madam Chair, I spoke to a prior amendment that I think was very similar in nature in terms of outlining the movement of traffic in the reasonable direction, so I won't take any more time.

● (1635)

The Chair: Are there any comments on CPC-12?

Does the department want to add a comment?

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Just to say once more that experience wins again. Ms. Block was faster than me, but I agree, both on the amendment and on the rationale.

[*English*]

The Chair: We'll vote on CPC-12.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Now we have amendment CPC-13.

Ms. Block.

Mrs. Kelly Block: Yes. It states that Bill C-49, in clause 29, be amended by deleting lines 28 and 29. This speaks to my first amendment on this section, which did not pass, and we would be supporting recommendations by a number of witnesses to remove the following:

> for the movement of TIH (Toxic Inhalation Hazard) material;

I think they spoke more around the common carrier obligations of a railway when it comes to moving this kind of material, and they said that if they do not have access to the long-haul interswitching remedy as a result of the goods that are being carried, there's a thin edge to the wedge there.

The Chair: Are there any further comments on CPC-13?

Mr. Fraser.

Mr. Sean Fraser: Our departmental officials suggested previously that for certain kinds of goods excluded from long-haul interswitching, it isn't because we don't like them. There are some specific reasons about their handling.

I'm wondering if you have comments with respect to this amendment so you could explain this in greater detail.

Ms. Helena Borges: Yes. This is one of those I mentioned, actually: TIH and nuclear materials. Because they require special handling, there are liability considerations that go into the setting of the rate and the tariff for the movement of those goods. If you have the good transferred from one railway to another railway, the mechanism for attributing those liability considerations becomes very complicated. That's why they were excluded. It's for that reason: because they do get into a conflict between what one railway may do and what the other railway was contracted to do.

Mr. Sean Fraser: Is there nothing limiting their access to other remedies?

Ms. Helena Borges: No, not at all. In fact, I think a lot of these shippers have access to the other remedies in the act, such as the level of service provisions, final offer arbitration, and all the other elements that are already in the legislation.

Mr. Sean Fraser: Thank you.

The Chair: Ms. Block.

Mrs. Kelly Block: Just to make a point, uranium is not transported by rail because the rail lines have made it far too expensive an option. For those companies that need to transport uranium, it's transported by truck.

They are not meeting their common carrier obligations. They have gotten around it by making it far too expensive for uranium to be transported by rail, so it's transported by truck. That's the remedy that's available to our uranium producers right now in Canada.

The Chair: Are there any further comments on CPC-13?

(Amendment negatived)

The Chair: Next we have amendment LIB-2.

Mr. Hardie.

Mr. Ken Hardie: This amendment seeks to address something that came up in the examination of the long-haul interchange scheme that was put forward. It concerns the exclusion corridors and the limitations on shippers that were outside those exclusion corridors and needed access. The exclusion corridors themselves, as we understand, do provide ample competition for shippers, because there are at least two railways operating in those corridors, and in many cases more.

In order to open up long-haul interswitching to more places in the country, the places that need it, I'm proposing adding after line 42 on page 23 the following:

> (4) For the purpose of paragraph (3)(b), an interchange located in the metropolitan area of Montreal is deemed to be outside the Quebec-Windsor corridor for a shipper who has access to the lines of only one class 1 rail carrier at the point of origin of the movement of its traffic at a point north of the Quebec-Windsor corridor in the Province of Quebec if the nearest interchange in Canada is located in the Quebec-Windsor corridor.

The practical outcome of this would be to open up long-haul interswitching and, obviously, competitive rates in communities in northern Quebec, such as Chibougamau, Val-d'Or, and Lac-Saint-Jean.

Similarly, I'm proposing the following:

> (5) For the purpose of paragraph (3)(b), an interchange located in the City of Kamloops is deemed to be outside the Vancouver-Kamloops corridor for a shipper who has access to the lines of only one class 1 rail carrier at the point of origin of the movement of its traffic at a point north or southeast of the Vancouver-Kamloops corridor in the Province of British Columbia if the nearest interchange in Canada is located in the Vancouver-Kamloops corridor.

Again, this would open up long-haul interswitching competition, this time for communities in southern B.C. in the Columbia-Kootenay area, as well as north, up through Blue River, north of Kamloops, and all the way to Prince George and that area.

I believe, Madam Chair, that this addresses some limiting impacts of those exclusion zones and, per my earlier comments, certainly opens up the ability for shippers of other commodities in the mining sector and the forestry sector to have access to competitive rates.

● (1640)

The Chair: Could the department comment on amendment LIB-2?

Ms. Helena Borges: Thank you.

The reason we excluded interchanges in those two corridors was simply because of the amount of traffic that moves in those corridors. The interchange points in those corridors normally offer competition, but we recognize the point you made about the captive shippers, particularly in northern Quebec and northern B.C., and in fact in northern and southern Alberta as well, which is that where they have access to only one railway, the nearest interchange point for some of them happens to be the point inside that corridor.

For example, in British Columbia, the interchange point is Kamloops. The other interchange points are further south. In fact, with the way we worded it in the bill, they would be precluded from interchanging traffic at that point. I think giving them access to Kamloops will enable a lot of those shippers in those remote area to have access to a proper interchange.

I think the same point applies to the Quebec-Windsor corridor for the traffic in northern Quebec, because they have access to only one railway. In the corridor, the logical interchange point would be Montreal, because there would be no other in-between interchange point. I think the member is correct: this would give them the opportunity to interchange at those two locations.

The Chair: Mr. Hardie.

Mr. Ken Hardie: I was just wondering about this. What I've read here is our take as to how this could be worded. Would departmental officials potentially have the wording that would fit appropriately into the bill?

Ms. Helena Borges: I think we would. In particular, I think the wording for Quebec is a little easier, in that we can just focus on the north, but on the wording for the Vancouver-Kamloops area, the way the corridor is defined right now, in the definition section in the bill, it's really from Kamloops west.

If we're going to make Kamloops the interchange point, it would be better to exclude it from the definition and start the corridor just west of Kamloops. We can change the longitudinal definition in the bill. Right now, I think it's 120.25°. We would move that further west to the nearest point, which is probably Ashcroft, British Columbia. They have an interchange there, which would be at 121.21° longitude. That's a simpler change to make.

Mr. Ken Hardie: Thank you.

The Chair: Are there any further comments?

Mrs. Kelly Block: I would just say that I am really thankful for the fact that members opposite heard some of the concerns of our captive shippers in northern British Columbia and northern Quebec and managed to find a way to amend this section.

● (1645)

The Chair: Good.

(Amendment agreed to)

The Chair: On amendment NDP-4, Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

The intent of this amendment is to refer to subsections 127(1) and 127(2), which, under the heading "Interswitching", describe a process under which all interested parties can ask the agency to order an interchange and under which the agency has the power to require a rail carrier to provide facilities suitable for interswitching at interchanges.

We think that the same should apply both to "interswitching" and "long-haul interswitching". We are proposing this amendment in the interests of consistency.

[*English*]

The Chair: Is there any discussion on NDP-4?

Mr. Fraser.

Mr. Sean Fraser: On this one, Monsieur Aubin, I had trouble understanding what it's getting at. I appreciate your introduction.

I wonder if the department can add some clarity as to the impact this would have. I may come back to Monsieur Aubin because I'm still a little foggy on what they are trying to achieve here, but if the department could offer its comments to begin with, that would help clarify things in my mind.

Ms. Marcia Jones (Director, Rail Policy Analysis and Legislative Initiatives, Department of Transport): I can respond to that and clarify a couple of the points.

To be clear, the LHI remedy is designed so that short-line rail carriers are not subject to an LHI order, so if this amendment is aimed at subjecting short-line rail carriers to interswitching or long-haul interswitching provisions, that was a deliberate design of the remedy. Of course, care was taken in designing the LHI remedy so that shippers on short-lines are able to access LHI at the point of connection with the class I railway.

In terms of what provisions apply for the movement of traffic within a 30-kilometre radius, the interswitching provisions will continue to apply.

I hope that addresses your questions.

Mr. Sean Fraser: I'm curious. Was it short-lines that you were trying to get at with the proposed amendment?

[*Translation*]

Mr. Robert Aubin: I am not sure I grasped the question correctly, but I will say that the objective of the amendment is to harmonize the possibilities, the rules that apply to short-haul interswitching and to long-haul interswitching. The same obligations have to apply. With class 1 rail carriers, for example, there would be a need to provide suitable facilities. That would work both for short-haul and long-haul interswitching.

Mr. Alain Langlois: The rules on short-haul interswitching, which appear in section 127 of the act, will continue to apply to traffic transferring between a shortline to a class 1 railway. The provisions of the act that deal with short-haul interswitching will continue to apply for that kind of movement. If the distance is over 30 km, as already provided for in the act, ultimately, as Ms. Jones has pointed out, long-haul interswitching will not be possible if the railway is not a class 1.

[*English*]

The Chair: Are there further questions or discussion on amendment NDP-4?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: On amendment CPC-14, for the information of the committee, again our great minds are working alike. Amendment NDP-5 is identical to CPC-14.

● (1650)

Mrs. Kelly Block: Madam Chair, again, I would point out that numerous witnesses provided testimony to the committee and made this recommendation to us. To quote what we heard:

> [W]e are also very concerned about the ability of the longhaul interswitch provision to address shipper concerns over ratesetting. In other words, the way that Bill C-49 is currently written, it places a floor on LHI rates, indicating that a rate cannot be less than the average of per-tonne kilometre revenue of comparable traffic. The bill needs language that gives the CTA the ability to consider commercially comparable competitive rates when determining the interswitching rates.

They recommended:

> The CTA should also give regard to the actual cost to move the shipment, not what the railways have managed to charge in the past when monopolistic powers were at play.

Thank you.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

First, I would like to reassure the chair that Ms. Block and I have not been consulting each other. However, it is clear that we have heard the same witnesses. If two parties often come to the same conclusions without consulting each other, it is probably because there was a broad consensus among the witnesses.

I have to say that I am a little disappointed to see the speed with which the amendments are being rejected given that, in my opinion, there seemed to be a broad consensus about them.

My hope is that, on this side of the table, we will be able to succeed where success was not possible before.

We have a duopoly situation. So, if we compare the previous prices and we are not able to include them in the range of competitive prices, there is no point to the process. The goal of the amendment is to make sure that the items being compared can also be based on a competitive measure.

[*English*]

The Chair: Are there any further comments?

Mr. Fraser.

Mr. Sean Fraser: I appreciate where you're both coming from.

One of the things I really struggled with was trying to comprehend how LHI is going to create a competitive rate when you're dealing with pseudo-competition realistically.

One of the things that stuck out for me from the testimony we heard was that right now, Canada has maybe the most competitive shipping rates worldwide. I don't know if we had explicit testimony that considered every single country, but we're certainly among them.

I remember there was a witness, I believe from Teck Resources, who explained that some of these bigger captive shippers are operating in more or less a competitive circumstance when they have a lot of bargaining power at the table. I forget the gentleman's name, but he explained that when we compare the rates they were getting, despite the fact that they were captive to the rates they were getting in competitive U.S. markets, they were pretty much on par.

I'm very concerned about upsetting the balance that has been struck in long-haul interswitching. I see certain measures being proposed in the amendments that could cause the railways to not be economic. I think we have a lot of measures for shippers that I'm very, very happy about, but if the railways aren't thriving as well, the whole system could collapse on itself.

I'm hypersensitive to measures that will in a major way change the balance that has been struck through the consultation process that, frankly, a lot of witnesses said was quite good. I'm very hesitant about these very major amendments to the long-haul interswitching system.

The Chair: Mr. Hardie.

Mr. Ken Hardie: The interswitching regime that was brought forward in the Fair Rail for Grain Farmers Act provided for interswitching rates to be set. They weren't subject to any kind of commercial test.

In this case, and maybe this is something that staff can speak to, it says, “determine the rate by having regard to the revenue per 5 tonne kilometre for the movement by the local carrier of comparable traffic in respect of which no long-haul interswitching rate applies.”

First of all, “having regard to” suggests that there is some subjectivity there. Maybe you could explain what that leeway might be. Second, why would you look at the rates in areas where there were no long-haul interswitching rates available to use as a comparison?

● (1655)

Ms. Helena Borges: Sure. I can add clarification there.

The legislation provides that the agency will set the rate based on comparable traffic, as you mentioned. Proposed subsection 135(3) actually lists the factors the agency can use to determine comparable traffic. That traffic wouldn't necessarily have an LHI rate. It would be traffic that moves similar kind of traffic a similar distance, under similar conditions. It would be commercially based traffic, or traffic that is moving right now without being subject to any remedy at all.

When the agency sets the traffic, it does two things, what we call a blended rate. The first 30 kilometres will be a cost-based rate, equivalent to the regular interswitching, the 30-kilometre interswitching. That's regulated. By nature, that will be a very low rate. The rest of the rate will be based on this comparable traffic, which will be taking into account other traffic that moves. It's really trying to get a sense of what other kinds of traffic move a similar distance with a similar kind of handling and all that. That will determine how the agency sets the rate.

They have quite a bit of discretion in terms of how they build the comparable traffic, but the factors for them to take into account are listed on page 26 of the bill.

Mr. Ken Hardie: I don't have that in front of me right now, but I can look at it later.

If you're looking at rates for comparable traffic, would that then include rates that were arrived at competitively, if you like, in the exclusion corridors?

Ms. Helena Borges: Correct.

Mr. Ken Hardie: Okay.

The Chair: Is there any further discussion on amendment CPC-14?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Ms. Block, you have passed an amendment to the clerk. I guess we'll call it "CPC-17", or put it at the end.

Could we possibly hand it out so that members can look at it in advance?

Mrs. Kelly Block: Yes, absolutely, so long as they're not confused that we're doing it right now.

The Chair: No. Right now we're going to amendment CPC-15.

Mrs. Kelly Block: Thank you.

I think the rationale for this amendment is very similar to the rationale I provided for the previous amendment, as we are changing the wording from "revenue" per tonne to "cost" per tonne.

The Chair: By the way, amendment NDP-6 is identical. Bright minds think alike, evidently.

Is there any further comment on CPC-15?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: So amendment NDP-6 was negatived too.

We'll now go forward with the one just given to members by Ms. Block. It is referred to as amendment CPC-17-A.

You can go ahead and speak to that.

Mrs. Kelly Block: Sure. Notwithstanding that we've had rulings already on similar amendments that I've put forward, such as a review no later than three years of this bill coming into force, and appointing one or more persons, I guess I would state two things.

I respect the ruling of our assistants in this. I guess that might suggest that it wouldn't happen within the department itself to review the legislation. If the ruling is that there's a cost to it because we don't know who would be appointed, I think we assumed it would have been Transport Canada.

Finally, I'm just disappointed that this review wasn't included in the legislation originally, as it seems to be something that a number of witnesses said would be a really good idea, especially given the new remedy that's included in this legislation, the long-haul interswitching. A review would have seen how effective it was and whether or not it was accomplishing the purpose for which it was created.

The Chair: Ms. Block, I'm going to rule this out of order, because again, it has an impact on the financial prerogative of the crown. Amendment CPC-17-A is not in order.

We'll now move to amendment LIB-3.

Mr. Fraser.

● (1700)

Mr. Sean Fraser: Madam Chair, there is a bit of a wrinkle to this one. In an attempt to accommodate some other related or similar amendments that could be built in to one, I fear if we pass one, we may mistakenly negate the others.

The essence of the proposed amendment is to give more notice to shippers on the potential removal of an interchange and to confirm that the removal of an interchange does not impact service level obligations. I think the other parties represented at the table had similar amendments.

In addition, I think it was Ms. Block, although it may have been another member, who raised something that I hadn't thought of. It had to do with keeping the agency looped into the process of removing interchanges.

I think there is something being circulated right now—I've included a French-language translation as well—that proposes a subamendment to my own proposal here as a way to try to accommodate the different pieces.

There are essentially three main pieces to the proposed subamendment.

The first would see the number of days increase from 60 to 120 so that shippers have more notice. This is something that I believe both the Canadian Oilseed Processors Association and the Western Grain Elevator Association asked for, so that nobody is surprised and they have a little more certainty.

With regard to the second proposal, there was differing language between the parties, and I hope this captures the same spirit. I've added a proposed subsection that reads:

> (3) For greater certainty, the removal of an interchange under subsection (2) does not relieve a railway company from its service obligations.

I can't recall who put forward the other version I saw. I think both Monsieur Aubin and Ms. Block had something that talked about if the level of service was compromised. I had some concerns around the use of what I viewed to be ambiguous language because I didn't know what "compromised service" would be. I thought it was a little clearer to state that this does not impact their service obligations.

Finally, I've added into the subamendment that an interchange can only be removed from the list after the previously mentioned steps are taken and a copy of the notice is sent to the agency.

That's my proposal. I think everyone has received a copy.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Madam Chair, I do not know how I am to interpret the fact that all parties have the same ideas as I do. It is probably because we are working in a spirit of welcome collegiality.

Mr. Fraser, our two amendments indeed have much in common, but could we blend them into a single one on a friendly basis? It would let me support your amendment if you could amend it to add "under sections 113 or 114" after the words "subsection (2) does not relieve a railway company from its service obligations". NDP-7 would then read "would compromise its ability to fulfill its service obligations". If we could add "under sections 113 or 114" at the end of your amendment, we would be saying exactly the same thing.

[*English*]

Mr. Sean Fraser: I think we're getting into some technical nuance that might have consequences that I'm not thinking of. I'm curious if the department could clarify the potential consequences of this suggestion.

Ms. Helena Borges: *Oui*, I'm going to ask the lawyer.

[*Translation*]

The lawyer is going to answer.

[*English*]

Mr. Alain Langlois: Strangely enough, the English version can't refer to section 113 or section 114 because section 111 of the act defines service obligations as including obligations found in sections 113 and 114.

The French version does, however, have to mention "*ses obligations prévues par les articles 113 ou 114*" because in French, it's not a defined expression in the act.

Mr. Sean Fraser: Okay.

Ms. Helena Borges: Just to clarify, in the English version we can refer to "service obligations", but in the French version we have to specifically refer to sections 113 and 114, which both specify what the service obligations are. It's just a linguistic differentiation. The intent is okay.

● (1705)

Mr. Sean Fraser: There's no actual substantive consequence.

Ms. Helena Borges: No.

The Chair: Please, go ahead, Mr. Champagne.

Mr. Olivier Champagne: Basically, I think this would need to be moved directly as your amendment because you're kind of moving the amendment and subamendment at the same time. For this to be more understandable, I think you need to move it directly as the second box that we have here plus what we just said about the French version. That would make things understandable for me.

Mrs. Kelly Block: Procedurally, would it then be appropriate for this LIB-3 amendment to be withdrawn and this new amendment now put on the table for us to consider?

Mr. Olivier Champagne: That's what I am proposing.

Mr. Sean Fraser: I have a bit of homework to do already with one that we've set aside.

I'm getting confused myself, and my French is terrible, so it might be best if I recruit some help from the bench behind me and revisit this with an actual paper copy that I can put in front of everyone.

Is that okay?

The Chair: That is a great idea.

All right, we are going to hold down LIB-3 as well.

(Amendment LIB-3 allowed to stand)

The Chair: Okay, on CPC-16.... We'll stand the remainder of that. We've done very well with that clause, but we'll stand the remainder of clause 29 until later.

(Clause 29 allowed to stand)

The Chair: There are no amendments to clauses 30 to 41.

Is there anyone wishing to comment? If not, can we vote on clauses 30 to 41?

Some hon. members: Agreed.

(Clauses 30 to 41 inclusive agreed to)

(On clause 42)

The Chair: We have amendment CPC-17.

Mrs. Kelly Block: Madam Chair, you have the amendment before you, and it reads that clause 42 be amended by replacing line 35 on page 34 to line 3 on page 35 with the following:

> (a) forecasts, for each commodity and principal destination corridor, the total monthly volume of grain expected to be moved for the crop year by the prescribed railway company; and
>
> (b) identifies the operational plans established by the prescribed railway company to enable it to move the grain that it is required to move during the crop year, which are to include information, related specifically to the movement of grain, on hopper car fleet size, fleet utilization assumptions and train operations.

This again was put forward by a number of witnesses in terms of transparency in regard to data.

The Chair: Would the department choose to comment?

Ms. Helena Borges: This bill, in addition to provisions that are already in the act, requires that the railways make available lots of data, and that data will be made available through performance reporting. Some of it will be made available to the department and to the agency for rates, so already we have a lot of information, and that information is in the public domain. There will be more data coming.

In addition to that, in this bill the minister is given the flexibility to ask the railways to provide the relevant information for the carriage of their crops for the crop year, and how that information will be communicated, the form it will take, the details of the data to be provided, will be done through the regulatory system. We believe it is better to leave that to the regulation, because we need to consult with all the parties, the shippers, the railways, to make sure we are getting the information of greatest value to the users of that information. The minister also reserves the right to ask the railways for their contingency plans on an annual basis.

I think we have in the bill what the amendment is proposing, and it's really the mechanism, whether we do it through regulation or through the bill. We believe it is more appropriate to do the details in the regulation.

● (1710)

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: This is a rare time when I do not have an amendment equivalent to Ms. Block's, but that does not prevent me from supporting the amendment because I find that it will specify the requirements. If I understand correctly, in addition to having to demonstrate their ability to do the work, the railway companies will also have to provide a forecast, which will allow everyone to honour their timelines and contracts. That is a fine clarification that I am going to support.

[*English*]

The Chair: Are there any further comments on amendment CPC-17?

(Amendment negatived)

(Clause 42 agreed to)

(Clauses 43 to 45 inclusive agreed to)

(On clause 46)

The Chair: We have amendment CPC-18.

Mrs. Kelly Block: Madam Chair, this is adding an additional point to (b) under proposed paragraph 161(2)(b):

> if the shipper intends to proceed with the arbitration as set out in section 164.1, a statement to that effect;

I believe that would provide greater clarity in terms of the shipper's intentions.

The Chair: Are there any comments on amendment CPC-18?

Mr. Fraser.

Mr. Sean Fraser: It's just about a procedural oddity. Maybe the clerk can clarify.

There are two related provisions here, and if I'm not mistaken, CPC-18 might not work unless CPC-19 is adopted. Am I wrong here?

The Chair: We'll let the clerk....

Ms. Block, they're both your amendments.

Mrs. Kelly Block: I would have deferred to the legislative counsel in terms of the ordering of these amendments, on which should come first and which would have nullified the other.

Mr. Sean Fraser: If we have to consider them in reverse, that's fine.

The Chair: They're very closely related to each other, so it wouldn't matter which one went first.

CPC-18 comes first.

Mrs. Kelly Block: Okay.

The Chair: Are there any further comments on CPC-18?

Mr. Fraser.

Mr. Sean Fraser: I do apologize if I've mixed them up a little bit, because I've considered them together. I essentially see that there has been a system set up that's created a sort of small claims court. I fear if we tinker with it in the manner that Ms. Block has suggested, we're going to end up with a circumstance in which people may end up just forum shopping, essentially, for what is most advantageous, which could lead to them clogging up one side or the other.

I think Monsieur Langlois would be best positioned to offer some insight on this. I think there was a deliberate choice as to how to set up the arbitration process.

Mr. Alain Langlois: Yes. Right now there are two possibilities. There is the amount currently in the legislation but it's proposed to be increased to $2 million. If the freight charge is below $2 million, then a summary process is triggered unless the shipper decides to actually elect to go to the longer process. If the freight charges are above $750,000 under the current act, or $2 million under the proposed legislation, then you're going to the longer process.

I understand the second amendment to be that you would give the shipper the choice from the outset to pick which one they want to go with, irrespective of the freight charge that is involved in the FOA, which would allow the shipper to pick and choose between the two processes, irrespective of the dollar value of the FOA.

● (1715)

Mr. Sean Fraser: Thank you.

The Chair: I see no further comments on CPC-18.

(Amendment negatived)

(Clause 46 agreed to)

(On clause 47)

The Chair: We have amendment CPC-19.

Ms. Block.

Mrs. Kelly Block: Again, I would submit that this was an amendment that was put forward by the Western Canadian Shippers' Coalition. It was a change from what was in the summary process. It basically changes lines 12 to 17, which have a fair bit of detail and a monetary figure in the current amended piece of legislation.

I think this is just stating that sections 163 and 164 do not apply.

The Chair: Are there any questions or comments on CPC-19?

Mr. Hardie.

Mr. Ken Hardie: Again for staff, as I understand it, there's a desire to give smaller companies a mechanism they can use that may not be as time-consuming, difficult, or expensive and to keep the big guys out of that process, which was the reason the dollar figures were included in the original version.

The Chair: Could I interrupt for a moment? The bells are ringing for our vote. Do we have unanimous consent of the committee to work for five more minutes?

Some hon. members: Agreed.

The Chair: Thank you.

Continue.

Ms. Helena Borges: Mr. Hardie's point is correct. There are the two processes that Mr. Langlois specified for smaller shippers. The summary process would be more efficient. It's a paper-based process, but it's only for claims up to $2 million. Those above the $2 million would go through the normal FOA process.

It's trying to help the smaller shippers access this remedy more efficiently.

The Chair: Are there any further comments?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 47 agreed to)

(Clauses 48 to 51 inclusive agreed to)

(On clause 52)

The Chair: Ms. Block, do you want to speak to CPC-20?

Mrs. Kelly Block: The amendment is that Bill C-49 in clause 52 be amended by deleting lines 11 and 12 on page 39.

I think we had put forward an amendment earlier removing this clause, and we removed it here for consistency.

The Chair: Does the department want to add anything?

Ms. Helena Borges: The purpose of introducing reciprocal penalties was so that the penalties applied to the shipper also applied to the railway and that there be some level of "let the arbitrator decide" the level of—I'll call it reasonableness—in terms of what the penalty should be.

If we remove this, it means that the penalty could be applied in an imbalanced way in that it would be applied to the railway but not necessarily to the shipper in a balanced and reciprocal manner. The provisions require that the agreements have reciprocal penalties for both sides.

● (1720)

The Chair: Is there any further discussion on CPC-20?

(Amendment negatived)

The Chair: We have amendment CPC-21.

Would you like us to hold off and take the break now?

Mrs. Kelly Block: Yes, I think I would.

The Chair: We will return on amendment CPC-21 on clause 52.

I would ask everybody to come back quickly. If we continue at this pace, we may be finished earlier than we thought.

Thank you all very much.

The meeting is suspended.

● (1720)

(Pause)

● (1825)

The Chair: I call the meeting back to order.

Thank you all very much for coming back so quickly.

We are on clause 52, amendment CPC-21, moved by Ms. Block.

Would you like to speak to it?

Mrs. Kelly Block: Yes. Thank you very much, Madam Chair.

Again, I will refer to some testimony that we heard with regard to this recommendation. It was, again, from Mr. Tougas. He said:

> C-49 imposes an obligation in new s.169.37(3) on an arbitrator to render decisions in a balanced way. The Agency enjoys a reputation for fairness and impartiality and has enjoyed deference from the appellate courts. Arbitrators are rarely appealed. Why would such a provision be necessary? The SLA process exists precisely because a rail carrier will not provide what the shipper requires. If it turns out, upon examination, that a shipper does not require the service it seeks, the shipper won't get it. An arbitrator has discretion in such circumstances to make the judgement calls that arise upon the very infrequent submission to SLA by a shipper.

SLA is service-level arbitration.

We recommended this amendment based on that testimony.

● (1830)

The Chair: Mr. Fraser, go ahead.

Mr. Sean Fraser: Just for clarity, is this CPC-20 or CPC-21?

The Chair: It's CPC-21.

Mr. Sean Fraser: Okay, I do have a comment. I just want to make sure I am looking at the right provision.

I remember Mr. Tougas' testimony well. I think there is a valuable part of this provision right now, when it talks about considering efficiency in the system. When I am looking at the efficient network of rails that we have in Canada.... An arbitrator is going to have to decide whether the dispute at present fits within something I'd compare to a bus service. If we remove this provision, we would be saying, essentially, that an arbitrator decided that this is a fair rate for a taxi that takes you from a specific spot to another spot, rather than in a way that works in an overall system. If I am sitting as an arbitrator, I don't think it's unreasonable for me to say, "How can I render a decision that's fair, and in the best interests of an efficient system as well?"

Just as a side point, I forget, off the top of my head, which witness gave the testimony, but I do recall someone mentioning that, except in two cases, shippers have won every final offer arbitration that we have considered.

I don't think it's inappropriate to include efficiency. I don't know if the department officials want to add anything to that comment.

Ms. Helena Borges: This relates back to the provision on reciprocal penalties and balance. If the penalties are balanced, that's going to incent efficiency. If they are sided in one direction or the other, they are not going to incent efficiency in the way that a decision made on reciprocal penalties would. It doesn't mean that the arbitrator has to be giving to the shipper exactly what he does to the railway, but it means that there has to be balance in how the penalties are applied. If we remove this, then there is no obligation for that balance, which is really the purpose of this provision, and shippers have been asking for that for a very long time.

The Chair: Is there any further comment on CPC-21?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 52 agreed to)

The Chair: Clauses 53 to 59 have no amendments.

Mrs. Kelly Block: Clause 59.1, Madam Chair....

The Chair: That will be after clause 59.

Mrs. Kelly Block: Madam Chair, if you include clause 59, what happens to the amendment that I have provided in regard to proposed clause 59.1?

The Chair: It comes afterwards.

Mrs. Kelly Block: Okay, so it's not part of clause 59.

The Chair: It's a new clause altogether.

● (1835)

Mrs. Kelly Block: Thank you.

(Clauses 53 to 59 inclusive agreed to)

The Chair: Now we are going to do new clause 59.1.

Mrs. Kelly Block: Clause 59.1 would amend Bill C-49 by adding, after line 23 on page 41, a new clause which speaks to this:

> The Minister shall, no later than three years after the first day on which sections 2 to 59 of this Act are all in force, appoint one or more persons to carry out a comprehensive review of the operation of this Act in relation to the Canada Transportation Act

You have the rest in front of you.

Before you rule on that, I think there might be a subamendment.

The Chair: Are there any subamendments on this new clause 59.1?

[*Translation*]

Mr. Robert Aubin: I was actually waiting to hear the conclusion and the explanation.

I am wondering how useful it is to appoint one or more people to conduct a complete review. If the review is already the responsibility of the department, it seems to me that we could simplify the amendment.

Here is what I would like to propose.

[*English*]

The Chair: Mr. Aubin and Ms. Block, we need you to officially move 59.1.

Mrs. Kelly Block: Does that mean I need to read the whole thing?

Mr. Olivier Champagne: If you move it as is, the chair will probably declare it inadmissible, so it cannot be subamended—

The Chair: You cannot move the subamendment.

Mr. Olivier Champagne: —or you can decide to move it with the modification already there.

The Chair: Effectively, it's out of order.

Mrs. Kelly Block: Okay, so am I going to move this amendment, and we're calling it CPC-21-A?

The Chair: Yes.

Mrs. Kelly Block: Okay, I move that Bill C-49 be amended by adding after line 23 on page 41 the following new clause:

> 59.1(1) The Minister shall, no later than three years after the first day on which sections 2 to 59 of this Act are all in force, carry out a comprehensive review of the operation of this act in relation to the Canada Transportation Act, and any other Act of Parliament for which the Minister is responsible that pertains to the economic regulation of a mode of transportation or to transportation activities under the legislative authority of Parliament.

The Chair: Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I would simply like to understand one thing. In what has just been read, it states, “The Minister shall … appoint”, then the idea of people being appointed is removed. If I understand correctly, the minister no longer has to appoint anyone. It should read “no later than three years after the first day on which sections 2 to 59 of this Act are all in force, the Minister shall proceed”, as there is no longer an appointment. Is that it? In my opinion, the word “appoints” should be struck out at the beginning of the amendment.

[*English*]

The Chair: Yes, all right.

To the department, do you have any comment? Have you had time to review this?

Ms. Helena Borges: I haven't, but I understand that the amendment is for a review of the legislation.

The minister can at any time review the legislation. In fact, I think the previous minister demonstrated, with the recent review by Mr. Emerson, that that was moved up in time. The provisions of the act were also reviewed in 2013 and 2014. The act can basically be opened at any time, and the minister has the authority already to do this. We don't think that an amendment is needed at this point to accomplish that.

We haven't included anything in this bill in regard to that, but the minister already has existing authorities for reviews.

The Chair: Mr. Hardie.

Mr. Ken Hardie: Right now the minister's review is, if you like, voluntary. I wonder if we should consider something that requires a review, which this amendment does, although the track record is that the act has been reviewed very frequently, certainly much more frequently than every three years. We could put it out there that there is value in having some sort of a mandate to do it at a specific date on the calendar.

● (1840)

Ms. Helena Borges: If there were to be a review, as I think Ms. Block said, every three years, that would be a pretty short time period, because by the time these amendments would take effect.... Some of them are taking effect six months or a year after the provisions are passed. Would that provide sufficient time for evidence to demonstrate the working of the act? That would be a consideration to take into account.

Other pieces of legislation do have mandatory review periods, but usually reviews are no more frequent than every five years, and in some cases ten years, depending on the legislation, so three years is a pretty tight time frame.

The Chair: Mr. Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): Madam Chair, I would have to agree with the members of staff for the most part. Transportation is looked at not only in isolation with transportation-related issues but also with respect to ongoing monitoring of the economy.

If we look at the CPA review, that was the case. The previous government, rightly so, recognized the economic downturn situation we were in at the time and, of course, also recognized how much it would impact the review of the Canada Transportation Act. When this government came into office, we also recognized not only the need for review of the act but also the need to review and put forward an actual transportation strategy that would align with our economic strategy. I think that goes without saying for the most part, because transportation is a big part of our economic strength.

With that said, I think this would simply be redundant.

The Chair: Ms. Block.

Mrs. Kelly Block: Madam Chair, I would just put forward that Bill C-30 was introduced in 2013-14 to address some very unusual circumstances, and here we are in 2017, three years later, saying we have all the information we need to conclude that while the extended interswitching was great for the circumstance for which it was created, we need to allow that measure to sunset and move on to another remedy.

I would respectfully disagree that three years doesn't give one enough time to review a piece of legislation to see if a certain remedy is working. That's apparently what happened with extended interswitching here, so I would welcome somebody perhaps lengthening that time, but I think with long-haul interswitching, it would be a really good idea to review that legislation to see if it is in fact accomplishing the purpose for which it has been created.

The Chair: Mr. Chong, then Mr. Aubin.

Hon. Michael Chong: Madam Chair, I'd like to propose an amendment to the amendment, which would be to replace the word "three" with the word "five".

The Chair: Okay, thank you.

Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: I'll say two things.

First, I agree that what we're discussing requires review. I find the three-year period sufficient as long as it's three years after the first day on which sections 2 to 59 are in force. What we were told was that a transition period is not part of the calculation. It's three years from when everything will be in place, which I think is quite reasonable.

The second aspect is to give the department full responsibility rather than assigning the evaluation to another committee. There are two elements in the amendment that must be taken into account: the obligation to conduct an evaluation after three years and that it is the direct responsibility of the department.

It's not up to me to decide whether the friendly amendment will be in order or not, but as far as I am concerned, I agree with those three years.

[*English*]

The Chair: Is there any further discussion? Is there any comment from the department?

Ms. Helena Borges: Maybe in response to looking at specific provisions of the act, I believe section 49 of the act gives the minister the power to review anything, any issue, any specific part, any part that you want to look at. We've used that power in the past to review, for example, level of service. There were two big studies that were done in the past seven years related to level of service.

The act already provides that to the minister, so if there is something that is specific, if you want the LHI to be reviewed, the minister could review that and ask for that review to be conducted either by the department, the agency, or some external party.

● (1845)

The Chair: Is there any further discussion?

Not seeing any, we have a subamendment moved by Mr. Chong, changing "three years" to "five years".

(Subamendment negatived [See *Minutes of Proceedings*])

The Chair: Then we have Ms. Block's amendment, "no later than three years after the first day". You have it in front of you.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 60 agreed to)

The Chair: Amendment LIB-4 is proposed clause 60.1. Who would like to speak to that?

Mr. Iacono.

Mr. Angelo Iacono: Madam Chair, you have an amendment in front of you that proposes a change to the CN Commercialization Act, whereby it will allow CN to increase its shareholder ownership limit from 15% to 25%. It's a minor technical amendment. It could be made to the bill to make this increase effective upon royal assent. This would simplify the process for CN and align with the policy intent of the proposal.

[*Translation*]

It's a change requested by CN; they think it will help them.

This amendment seeks to ensure that the bill is fair and equitable to all stakeholders. No other railway company is subject to such limits.

[*English*]

Thank you.

The Chair: Is there any discussion or comment on amendment LIB-4?

(Amendment agreed to [See *Minutes of Proceedings*])

(On clause 61)

The Chair: We have NDP-8.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

In the next few minutes, you will see a number of amendments proposed by the New Democratic Party. They are all similar, because the discourse must be consistent.

In all the presentations, we were told that tapes of these voice and video recorders would not be used in any particular situation. The only thing on which all witnesses agreed was that these recordings should only be used by members of the Transportation Safety Board of Canada, or TSB. The bill should not contain any clauses that give the railways the power to do anything else because of criteria that are not quite clear. That's what we are trying to correct or eliminate.

Amendment NDP-8 proposes that Bill C-49, in clause 61, be amended by replacing lines 13 to 16 on page 42 with the following:

> (2) No company referred to in subsection (1) shall use the information that it records, collects or preserves under that subsection. Instead of explaining how the company should not do it in unfortunate situations, let's say from the start that it cannot do it.

[*English*]

The Chair: Ms. Block.

Mrs. Kelly Block: Madam Chair, in relation to that amendment, I would just remind our committee of the rail study we did. I don't even remember the timing or when we did it. It was shortly after we came back in the 42nd Parliament. Recommendation 12 in that study stated:

> That Transport Canada immediately develop legislative and regulatory structures to mandate the use of locomotive voice and video recorders by railway companies, and that effective rules be put in place to ensure recordings are used exclusively by the appropriate government authorities during Transportation Safety Board accident investigations or in subsequent criminal investigations to which they directly relate.

I believe Mr. Aubin's amendment is in keeping with the recommendation we made in the rail safety study report.

● (1850)

The Chair: Would the department like to comment?

Ms. Helena Borges: Yes, perhaps just to address the point of why we're making the LVVR data available to the company as well as Transport Canada, and not just to the safety board. Really, this comes from the recommendations the Transportation Safety Board made, those being that safety is paramount, and that in the rail system there are three parties that have a big role in safety.

One is the safety board, because it provides recommendations to us on how to improve safety, based on the accidents that happen. The other one is Transport Canada, because we set the legislative and regulatory regime for rail safety.

The third party is the actual railways themselves, and they have these safety management systems that help build a culture of safety. The LVVR data is considered a key input in that, and if we don't make that data available to them, they may have practices in place that are actually jeopardizing safety. It would be good for them to benefit from the data.

It is for this reason that the amendments propose access for the three parties: so that each party can use the information gathered to improve the part of the safety mandate that each one of us plays in the system.

The Chair: Ms. Block.

Mrs. Kelly Block: Madam Chair, I have a question for you. It's my understanding that we received a letter from the Privacy Commissioner in regard to this issue. Do you recall the substance of that letter?

The Chair: Does anyone remember that particular piece of correspondence?

Hon. Michael Chong: I don't.

Mrs. Kelly Block: You weren't here.

The Chair: I'm sorry, we don't.... The clerk would have to try to bring it up.

Mrs. Kelly Block: Okay.

The Chair: Maybe we can continue with the questions while she tries to locate it.

I have Mr. Hardie next.

Mr. Ken Hardie: Today in the House I sought an undertaking from the minister on this issue, because I am concerned that from the time legislation passes until the time regulations come into effect, there can be a lot of vague situations created where people really don't know what's coming. I got the undertaking from him today that the use of this equipment for disciplinary purposes would not be allowed—

Hon. Michael Chong: We also said that SIN cards would never be used by banks to verify opening of accounts.

Mr. Ken Hardie: Well, the fact is—

Hon. Michael Chong: I'm just kidding.

Mr. Ken Hardie: —that you can easily see a scenario, though, where an LVVR captures some pretty egregious conduct in a cab and I think a right-thinking, reasonable person would want some kind of discipline. This is where I believe the regulations will have to be as watertight as possible to ensure the right thing is done the right way.

The testimony by Ms. Fox, who has been calling for the use of this technology for quite some time, clarified that in an environment of trust, or in a just environment, you can easily see how this could be a very productive measure, but she also left unsaid the fact that especially in the union they don't consider it to be a very just environment.

There have to be some protections, but at the same time we have to meet the overarching need for public safety. I think things will certainly come clear in the regulations. It's something that we would need to keep a very close eye on.

● (1855)

The Chair: Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

I found Mr. Hardie's presentation particularly eloquent. He spoke about an environment of trust, and that's precisely what is lacking.

All the situations in which voice and video recorders cannot be used are being listed, but we are told that we are going to define them later in the regulations in order to specify them. We are against that. In any case, we aren't necessarily working on safety. If we really wanted to work on safety, it would have been good for Bill C-49 to propose measures against train operator fatigue. We had to face the same problem in aviation safety.

In our view, voice and video recorders are tools that allow the TSB to measure, after the fact, that is, after the accident, unfortunately, what was lacking or not. If we really want to talk about safety, we must review all the measures that affect events before an accident happens. Voice and video recorders do nothing to prevent accidents

Personally, I wouldn't want a voice and video camera installed in my office to monitor my daily work. I guess the Prime Minister and Mr. Hardie wouldn't like that either. Yet that is what we are offering to train drivers. We tell them that whenever they enter their office, meaning their locomotive, their actions will be recorded on a voice and video tape.

[*English*]

The Chair: Mr. Badawey.

Mr. Vance Badawey: Madam Chair, I have to say this emphatically, because I heard it throughout the testimony we heard that week, from everyone in the industry, that this is about safety and about being proactive, not reactive. We are trying to use this—when I say "we" I mean the companies, the government—video footage to prevent accidents and prevent people from getting hurt. That's what we're in the business of doing in government. It's to put that mechanism out there to enable those in the business to prevent accidents and save lives. I believe that LVVR can do that. Instead of being reactive and looking at a tape of what happened, we can be reactive and use it as a tool to teach, to learn, and of course to continually prevent accidents.

This is new information that we've learned through the testimony we received. This is the value of LVVR for training. We recognize that.

Last, the TSB doesn't want the information. They don't want to be the sole owners of the information. They would like and are encouraging the companies to in fact be proactive in using this footage for training, saving lives, and preventing accidents.

The Chair: At this particular moment, I have Mr. Fraser, then Ms. Block, and then Mr. Hardie.

Mr. Sean Fraser: Madam Chair, this is one of the issues that I struggled with in my deliberations on the bill, perhaps more than any other. I take privacy rights, my own and everyone else's, very seriously, and I have some concerns, particularly with the testimony from one of the railways that talked about potentially using this information.

When I was thinking of how we actually do this the right way, I considered that on the flip side of the coin, people's lives are literally at stake, and I think there's a potential to save lives by having LVVRs used properly. My recollection of the testimony—and I believe it was with department officials—is that the regulation was intended to be used in limited circumstances for a systemic audit to identify systemic safety concerns. Unless there was a specific accident that was not being investigated, it was limited to that scope. Provided we received honest testimony during our hearing, it is not possible for a company to use this for punitive purposes, except maybe in the extraordinary case where a systemic audit is being undertaken and an auditor happens to catch egregious behaviour, which is highly unlikely.

Can you confirm for us that the regulations will, beyond a shadow of a doubt, be limited to that systemic audit for safety concerns that are not about the individual, but are about what's happening in the system as whole, so we can implement policies to save lives?

Ms. Helena Borges: You're correct. In fact, I would point to page 43 in the bill, where it speaks about the information that can be accessed by the railway company. It's proposed subsection 17.91(2), which is in clause 62. It indicates that the information can only be randomly selected. That precludes the day-to-day watching of an employee for how they're performing, so that they can't do that. Based on that information, which goes to the next subsection, if they were to find through the use of the information a threat to safety of railway operations and if in accessing that randomly selected data they found something that was considered a prescribed safety threat, which is defined in the act, then they could use that for disciplinary purposes, if that were the case. However, that would be, I'll say, a very rare and egregious situation.

There are limits as to how the data can be selected. We will be enforcing that. The regulations will have how the data has to be treated. Somebody mentioned the Privacy Commissioner. As part of the development of the regulations, we have to develop a privacy impact statement that would show how the regulations would impact the privacy of an individual. We are working with that and we are contacting the Privacy Commissioner, as we need to make sure that we're doing it properly.

There are limits as to how the data can be accessed, limits as to how the data can be used, limits as to how the data will be retained. There are a lot of controls for that data.

● (1900)

Mr. Sean Fraser: Does the privacy statement that you've referred to include any analysis about how this is being implemented for minimal impairment?

Ms. Helena Borges: That's exactly it, as well as how it will be protected. For example, how the data has to be stored, who can access the data in the company, how the data has to be signed, I'll say in and out, so to speak, when the data has to be deleted, all of that will be included in that.

Mr. Sean Fraser: Is there further consultation with affected parties as you develop the regulations? In particular, I'm thinking of the unions representing the workers whose privacy rights could be affected.

Ms. Helena Borges: Totally. We deal with the unions, the railways, and other parties. We also deal, for example, with the commuter operators and the transit operators with VIA Rail as well, so there are various parties that we would be consulting with.

Mr. Sean Fraser: Thank you.

The Chair: Ms. Block.

Mrs. Kelly Block: Madam Chair, I want to thank the clerk for bringing up the letter that we received from the Privacy Commissioner on September 12. I think that could have been the last day of our committee meetings on Bill C-49. I think it's really important to mention that the Privacy Commissioner noted...and I'll only pick out a couple of statements out of this letter:

> However, we find the provision allowing rail companies to have access to these data for proactive safety spot checks is less clearly defined.

I think they're identifying a lack in the bill. Then he is also saying that:

> In our view, allowing rail companies to have broad access to audio and video data for non-investigatory purposes has a greater impact on privacy, and could open the door to potential misuse of the data or function creep.

I think we have to be aware that we have the Privacy Commissioner weighing in on this piece of legislation and pointing out to us where there may be a need for more clarity. I guess our committee has to decide whether or not we're fine to leave that clarity up to what may be put in the regulations. What is the result of this? What will happen if we've received this letter from the Privacy Commissioner in regard to a proposed bill and we do not take those concerns...?

The Chair: We all received the letter, so we all received the information. We're all very aware of his concerns. Sure, if the department wishes to speak to it, but we all received the letter and we all read the letter. He outlines areas of concern. I think overall, everybody is concerned with the same thing, which is to make sure that information doesn't get used for purposes that were not the intent.

Would you like to have a brief response to this?

Ms. Helena Borges: Maybe I'll ask Brigitte, who's been dealing with this and with the privacy element of it, if she can elaborate on the privacy controls that will be put in place as part of the regulations.

● (1905)

Ms. Brigitte Diogo (Director General, Rail Safety, Department of Transport): Thank you.

In terms of the proposal, it was really important to put in the legislation the two uses, or what the companies will be permitted to use the information for. It was really to ensure that there was no discretion or interpretation about the use of information, and that through regulation we would be defining clearly the privacy control that needs to be put in place.

When we talk about random selection of the data, the intent is to put in regulation what are the parameters that a company would need to put in place to do that random selection. Again, it's not leaving 100% discretion to railway companies to determine that process for the policies they would need to put in place to protect the information, to prevent unauthorized use, to ensure that there is a tracking of who has access to the data and for what, and to ensure that we build into the system an audit record. It's not just us taking the word of railway companies in terms of submitting to us documentation about how they are tracking information. We can match that against an electronic audit trail that would really be able to confirm that what we are seeing in the tracking documents is indeed what the electronic signature is telling us.

So the intent is for those policies to be submitted to Transport Canada for review in terms of the random sampling.

The Chair: Thank you very much.

Mr. Hardie, and then Mr. Aubin.

Mr. Ken Hardie: Just briefly, Madam Chair, if we are committed through the ministry and the department to the SMS, we certainly have to permit the use of this in the interests of maintaining a good safety system. It's obviously a management tool. We'll have to guard against fishing expeditions, but if control finds out that somebody has blown through a signal, I'd want to know what was going on in the cab at that time.

What happens as a result of that? Is there some sort of remedial training or whatever, or is discipline applied? That's an area where I would expect the regulations to be as prescriptive as possible. Certainly the union is there too, of course, to protect the members.

The Chair: Mr. Aubin is the last speaker on this.

[*Translation*]

Mr. Robert Aubin: I always see it as a problem when you can't take a position on future regulations because you don't have them. The more I listen to the interventions, the stronger I feel in my initial position. Although we wanted to tie everything together, we are always adding or opening a door somewhere, unless there is a rare exception.

I would like to know whether the officials remember Transport Canada's study, which was tabled in 2013. If my memory serves, it was in the previous Parliament. A working committee had brought together trade unions and employers and had come to the conclusion that these voice and video recorders were not necessarily a guarantee of safety effectiveness.

Do you recall that report?

Ms. Helena Borges: Ms. Diogo, you may answer.

Ms. Brigitte Diogo: Yes. Essentially, the report's findings were to let the companies do it voluntarily. We think the bill provides a framework for the possible use of the information, instead of leaving it to the discretion of the railway companies.

[*English*]

The Chair: Thank you very much.

All those in favour of amendment NDP-8?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We now have amendment PV-1, which you all have in front of you.

Mrs. Kelly Block: Do I have to move it?

The Chair: No. It's from an independent member, and it's moved automatically here.

The motion is to amend Bill C-49 in clause 61 by adding after line 20 on page 42 the following:

> (4) The information that a company records, collects or preserves under subsection (1) shall not be destroyed if it is used, or can reasonably be expected to be used, for any purpose authorized under this Act.

Is there any discussion on that amendment?

(Amendment negatived)

(Clause 61 agreed to)

(On clause 62)

The Chair: We have amendment NDP-9.

Monsieur Aubin.

● (1910)

[*Translation*]

Mr. Robert Aubin: Thank you, Madam Chair.

We have already given some thought to the amendments that have been tabled on this, and amendment NDP-9 is exactly the same. It is intended to ensure that the railways do not use the recordings after they have been collected and retained. It is in line with NDP amendment 8. I do not think it would be very helpful to waste a lot of time going back over the substantive arguments.

[*English*]

The Chair: Is there any further discussion?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We have amendment PV-2, another one from Ms. May, that Bill C-49 in clause 62 be amended by adding after line 4 on page 43 the following:

> (1.1) For greater certainty, the information that a company records, collects or preserves under subsection 17.31(1) is not to be used for any purposes other than the one referred to in paragraph (1), including managerial review or productivity and employee output measurement.

(Amendment negatived)

(Clause 62 agreed to)

(Clauses 63 and 64 agreed to)

(On clause 65)

The Chair: We have amendment NDP-10.

Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Give me a few seconds to find the right page, Madam Chair.

This amendment is in keeping with the others that we have tabled. At least we're consistent in our amendments.

We would like only the TSB to have access to the voice and video recordings, but this amendment doesn't give the minister permission to request the recordings.

[*English*]

The Chair: Is there any further discussion on amendment NDP-10?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 65 agreed to)

(Clause 66 agreed to)

(On clause 67)

The Chair: We have amendment NDP-11.

Mr. Aubin.

[*Translation*]

Mr. Robert Aubin: The justification is the same as for the previous amendments, and I have the impression that the outcome will be the same, as well.

[*English*]

The Chair: Are there any further comments or discussion on amendment NDP-11?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 67 agreed to)

(Clause 68 agreed to)

(On clause 69)

The Chair: Mr. Aubin, would you propose your amendment NDP-12, please.

[*Translation*]

Mr. Robert Aubin: Amendment NDP-12 proposes that Bill C-49, in clause 69, be amended by replacing lines 1 to 6 on page 49 with the following:

> (3) The costs incurred for the delivery of screening by the Authority under the terms of an agreement entered into under subsection (1) shall be borne by the Authority and may not be recovered from the other party to the agreement.

● (1915)

[*English*]

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

Based on the information from the legislative clerk, it is unacceptable as it is an amendment to a bill that was referred to committee after second reading. It is out of order if it is beyond the scope and principle of the bill.

I have to rule that NDP-12 is out of order.

(Clause 69 agreed to)

(Clauses 70 to 76 inclusive agreed to)

(On clause 77)

The Chair: We have amendment CPC-22.

Ms. Block.

Mrs. Kelly Block: Madam Chair, this is a recommendation that came to our committee through Mr. Tougas. Quite simply, the rationale would be because C-49 is not oriented toward fulsome disclosure, not to customers, not to the agency, and not to the minister, the proposal is a simpler revision to the performance data provisions of C-49.

The Chair: Are there any comments?

Mr. Sikand.

Mr. Gagan Sikand: Could I get the department's comments on this?

Ms. Helena Borges: The data provisions were set up so we make sure we have sufficient time for the railways to submit the information to us, and then after we get that information to make sure there is sufficient time in the case of the performance data for the agency to post that data. Also, as part of the coming into force, we're providing the railways with one year to submit that data, simply because this is new data that they haven't been submitting. We need to make sure they have the system set up to provide us that data. It gave that amount of time for the railways to submit it.

The Chair: Ms. Block.

Mrs. Kelly Block: I think if you look at it, more clarity is provided. The only thing that has been added here is “for each of its railway lines”. It's asking for a more fulsome report.

The Chair: Are there any further questions or comments on CPC-22?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Before you speak to CPC-23, Ms. Block, LIB-5, which follows, is identical to CPC-23.

Mr. Sikand.

Mr. Gagan Sikand: In keeping with our co-operative spirit and seeing that we ultimately do want to increase transparency and Bill C-49 increases the amount of data that needs to be submitted and calculated, I'd like to withdraw my motion.

The Chair: Would you like to speak to CPC-23, Ms. Block?

Mrs. Kelly Block: I could. We heard testimony, and it's obvious that all of us recognize that, seeing that two identical amendments were put forward. I'll leave it at that.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 77 as amended agreed to)

(Clauses 78 to 97 inclusive agreed to)

(On clause 98)

● (1920)

The Chair: We have amendment CPC-24.

Ms. Block.

Mrs. Kelly Block: Madam Chair, I think this amendment is pretty straightforward. It is recommending that clause 98 be amended by replacing lines 26 and 27 on page 65 with the following:

(7) Section 77 comes into force 60 days after the day on which this Act receives

In this amendment we've reduced the period from the anniversary date of when the act comes into force or receives royal assent to 60 days, based on testimony we heard.

The Chair: Are there any comments?

Mr. Sikand.

Mr. Gagan Sikand: I'd like to offer a subamendment, because I have something similar as well, that we increase the days from 60 to 180. Seeing as there is such a large amount of data that needs to be reported, it's kind of burdensome.

The Chair: You're moving a subamendment—

An hon. member: What's the number?

The Chair: Did you say 180?

Mr. Gagan Sikand: Yes, 180 days after royal assent.

The Chair: Are there any further comments?

Mr. Fraser.

Mr. Sean Fraser: Quickly, there are some numbers.... I'm inclined to go 180, but I want to make sure that this is not based on a number picked out of the air.

Is there an amount of time that makes sense from the department's perspective for a workable piece of legislation?

Ms. Helena Borges: We had originally included a year. This 180 days would be six months. I think that can be workable.

Part of it is going to be making sure that we're very clear on the data required, and we'll do that through the regulations. It's making sure that it's very clear to the railways what the data is that they need to file, when they need to file, and how they need to file it. To the extent that we can do some of this electronically, that should help them save time. I think we can make it work.

Mr. Sean Fraser: We did hear repeatedly that a year is too long a period.

To use the 60-day starting point, is that going to make it too difficult to make it meaningful?

Ms. Helena Borges: That would be pretty difficult. Two months is hard to get....

They have to go back and get data, because the requirement is also backdated. We're getting data from the previous year. With regard to getting all of that data organized—this is for the whole of their operations in Canada—for all of the commodity groups, two months would be very, very tight.

I don't think they can even do a systems improvement on their information technology systems in order to calculate the data in the way it needs to be presented to us, and for making it public to the shippers. I think six months can work.

The Chair: Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: I've noticed, since the beginning of your intervention on this amendment, that you spoke immediately of 180 days, whereas the friendly amendment proposes 60 to 180 days.

Is there a possible trade-off between 60 days and 180 days, or do you consider, in your experience, that the 180-day period is the only standard—less than the one year that was expected—that you might be able to respect?

Ms. Helena Borges: It will be difficult, given the volume of data we're going to receive. If it's a very small volume, we may be able to do it within 30 to 60 days, but at present it will be very difficult. Therefore, we want the data to be ready for public disclosure as soon as possible. We will have to make changes to the computer systems, and that's what we're concerned about. We know it will be difficult to do that in less than three or four months.

[*English*]

The Chair: All right, we have a subamendment to change 60 days to 180 days.

(Subamendment agreed to)

(Amendment as amended agreed to)

The Chair: LIB-6 cannot be moved, so that's deleted.

(Clause 98 as amended agreed to)

(On clause 14)

The Chair: We have to go back to a bit of work on clause 14.

Mr. Fraser.

● (1925)

Mr. Sean Fraser: This was me. This was when I didn't have language on the spot. I do have proposed language for these. This was in response to Mr. Chong's motion that would essentially seek to adopt his proposed amendments that were named CPC-5-A, CPC-5-B, and CPC-6, I believe.

Do we have copies of these for folks?

The Chair: I think we are doing clause 14 first.

Mrs. Kelly Block: It's CPC-5, CPC-6, and CPC-7.

The Chair: I am going to Ms. Block for CPC-5.

Mrs. Kelly Block: It's actually Mr. Chong.

The Chair: I'm sorry. Mr. Chong, go ahead.

Hon. Michael Chong: Great. Do we have a subamendment?

Mr. Sean Fraser: Yes. That's what I was going to explain. The spirit of it was essentially to exclude any confidential information.

Do we have copies of this for people to actually see? Is it being handed out now? Okay.

Hon. Michael Chong: Are we not moving them already?

The Chair: The legislative clerk is suggesting that you withdraw CPC-5 in favour of....

Mr. Olivier Champagne: If the committee agrees.... We are on CPC-5 right now.

Mrs. Kelly Block: I just need to understand. On what basis would we not just simply see a subamendment? Is the issue again that it is ruled out of order, or is there some procedural thing that I'm not understanding?

Mr. Olivier Champagne: I just want to make sure that.... Right now, it is too lengthy for me to be certain that it fits with CPC-5, so I think it's safer for the committee to unanimously decide to withdraw CPC-5 and just accept that this new amendment be moved.

Hon. Michael Chong: I am in agreement.

The Chair: Do we have unanimous consent to withdraw CPC-5?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: Sean needs to move his motion. What are we calling it?

Mr. Olivier Champagne: It doesn't matter.

The Chair: It does matter.

We have Mr. Fraser's motion.

Mr. Sean Fraser: I might phrase it differently than I would have otherwise, because I was planning on doing this as a subamendment.

Perhaps we can do it as subamendments to clause 14 in proposed subsection 53.73(3).

You all have a copy in front of you. Do I need to read them out?

The Chair: No, everybody has them.

Mr. Sean Fraser: We adopt the language as proposed in the written document before you.

The Chair: Is everybody okay with that? We are going to refer to it as 14A.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: We have CPC-6.

Mr. Olivier Champagne: My understanding is that CPC-6 and CPC-7 were not moved.

The Chair: They are not being moved. They are void.

Okay. That's terrific.

Hon. Michael Chong: Have we voted on Sean Fraser's amendment?

The Chair: Yes, it was unanimous.

Hon. Michael Chong: Okay. Madam Chair, I'd like to speak to clause 14 as amended, when we get to that point.

● (1930)

The Chair: I believe you have the floor.

Hon. Michael Chong: Madam Chair, I'll admit that we initially proposed some clumsily worded amendments to clause 14 earlier in our meeting to try to allow the legislation to give the minister the power to override concerns about competition in the name of the public interest. Clearly, those amendments failed, so now we have in front of us the main clause as amended by Mr. Fraser.

I just want to make the point—and I know members opposite are going to vote in favour of clause 14 as amended, or at least I expect them to—that I really am opposed to clause 14.

I think this is a real step back for competition law in Canada. I remember the changes to the Competition Act in 2004 that were introduced by the government of then Prime Minister Paul Martin, which worked their way through a minority Parliament, whereby we strengthened competition law in Canada by introducing civil remedies for the bureau to go after people who would engage in anti-competitive behaviours. Those civil remedies were significant in administrative monetary penalties, making Canada once again a world leader in competition law.

We've traditionally been a leader in competition law. I understand from memory that sometimes it isn't perfect. We introduced competition law in this country before the United States did, in an era where there was monopolistic competition, and through the decades that competition law has been continually strengthened.

It was made clear to us in committee here by the bureau in, I think, testimony that was fairly direct that this law weakens competition, because it would allow the minister to ignore competition in the name of public interest, which is not very clearly defined—in other words, in the name of politics—to allow for joint ventures to take place without the kinds of conditions that the bureau would put on them.

I'll be the first to say, as a member of Parliament who represents a greater Toronto area riding, that I support a robust airline industry in this country. I think both Air Canada and WestJet are great carriers and I think they provide excellent service, but I also believe in competition. I've heard from constituents time and time again that they feel that flying here in Canada is more expensive than it is abroad, and while there are a variety of factors that play into that, such as airport landing fees and airport rents and other factors, such as fuel taxes and the like, it's also clear that increasing competition would also lead to lower fares.

This is not an insignificant issue. We're talking about an industry that has tens of billions of dollars a year in revenue. I think Air Canada's revenues are in the range of $13 billion to $14 billion a year, and WestJet's revenues are in the range of $4 billion or $5 billion a year, and the rest are smaller airlines. You're looking at an industry that accounts for 1% of GDP. To allow an airline to enter into a joint venture without the bureau being able to impose conditions on it would obviously be hugely advantageous to an airline like Air Canada but disadvantageous to competition and to Canadian consumers. Especially in light of the fact that the airlines have been reporting record profits, which I'm very happy to see, and in light of the fact that they've emerged out of the great recession intact, I think this is a real step backwards. I just want us to vote on this with our eyes wide open, because I think the government has taken a pretty big step in this bill by proposing an exemption to the act that would allow the minister, in the name of public interest, to override competition concerns.

I don't know if Mr. Disend, from the industry department—sorry, I forget the new name—has any comments on this, but that's my big concern about this bill.

● (1935)

A lot of this bill deals with sectors of the Canadian transportation system that are not subject to the kind of competition the airline industry is. We've spent a lot of time on the rail issue, precisely because we have monopolistic competition in the delivery of western Canadian farmers' grains and oilseeds products, and we have an industry in this bill, the airline industry, that went from being government-owned, quite inefficient, and not customer-oriented to an industry that is a robust industry 20 or 30 years after those big changes were introduced, the privatization of Air Canada and the quasi-privatization of our major airports. This industry is growing, providing employment, profitability, and much better customer service.

I'm concerned about this. I would be interested to hear what Mr. Disend has to say about this particular clause 14 of the bill, particularly in respect to this. If clause 14 had been in effect in 2011, and the minister of the day and the airlines of the day, Air Canada, had decided to appeal to the minister in the name of public interest, and the minister had agreed in the name of that public interest to override the concerns about competition and allow the Air Canada-United Airlines joint venture to go ahead without any conditions, would that have strengthened or weakened competition in Canada's airline industry?

Mr. Ian Disend (Senior Policy Analyst, Marketplace Framework Policy Branch, Department of Industry): Obviously, I can't speak to the government's position on the bill as a whole. I can clarify that the way the bill is structured—and this was obviously stated by the Competition Bureau members when they were at committee—so that the commissioner of competition does not have the final say on a joint venture that has been applied for, obviously. That's not to say the commissioner's views are shut out of the process or not taken into account. One of the main reasons there's a public report aspect of it is obviously so that there is some accountability behind the minister of transport's ultimate decision.

The public can judge, essentially, based on the findings of the Competition Bureau, whether they agree with the public interest rationale. It's deliberately designed to be a transparent process that weighs different factors.

At the end of the day, I wouldn't say that bureau representatives stated this would weaken competition. I don't think they would want to speculate on what the outcomes would be following any passage of the bill, but obviously their role in the process becomes a little bit different, keeping in mind that at present already the commissioner of competition cannot unilaterally impose constraints. It's still done in an adjudicative process.

Effectively, the commissioner still has a forum to air his or her views on a potential transaction, purely based on antitrust principles and competition economics. At the end of the day, that gets weighed by the minister of transport, who rules on a broader variety of factors that take into account other considerations that might go beyond a more strict antitrust analysis.

Ultimately, I can't comment on what might have happened in the 2011 proposal by Air Canada and United. Obviously, a consent agreement was reached in that case that did seek to remedy routes, but that's not to say that something like that wouldn't happen, because obviously there's an opportunity for conditions still to be imposed upon approval of a JV.

The Chair: Mr. Hardie.

Mr. Ken Hardie: You gentlemen more or less covered in much more technical perfection the points that I wanted to make. I get the sense, and this is maybe a little inexperience speaking here, that the Competition Bureau has a fairly narrow view of what the public interest is.

Obviously they want to see robust competition. They don't want to see predatory activities taking place, but it occurs to me, just from other things that I've dealt with in my careers, that sometimes the public interest has to take a broader view. The spotlight has to shine a little more broadly. It would appear that this will certainly allow the Competition Bureau to do its job, but then put somebody like the minister in a position to apply the broader view of the public interest and adjust accordingly.

Of course, everything will be out in the open and under scrutiny. Certainly we'll be doing our jobs if we have a look at something and ask questions.

The Chair: Shall clause 14 as amended carry?

(Clause 14 as amended agreed to)

(On clause 26)

The Chair: Now we go back to clause 26, amendment CPC-9.

● (1940)

Mrs. Kelly Block: If you will refresh my memory, I think I spoke to this amendment, and there was going to be a subamendment considered.

The Chair: Yes. Do you have a subamendment, Mr. Aubin?

[*Translation*]

Mr. Robert Aubin: No, Madam Chair. I have nothing to add to what I tabled earlier.

[*English*]

The Chair: Okay, Ms. Block.

Mrs. Kelly Block: If we don't have anything in front of us to look at in terms of a subamendment—

The Chair: We will vote on the amendment you have put in front of us.

Mrs. Kelly Block: Since it has been a little bit of time since we first talked about it, I'd like to reiterate some of the reasons we brought this forward. A number of our witnesses told us many things about regulated interswitching. They believe that it has worked well as a pro-competitive remedy because rail carriers have been prepared to compete for traffic using it and because the applicable rates are known to all prospective participants at the time when they are negotiating potential routes, rates, and other conditions.

They have also noted that the long-haul interswitching remedy in Bill C-49 is far less user friendly. They made many points, but there are two that I would highlight at the end of this conversation. First, on a more fundamental level, LHI is very similar in concept and overall structure to the competitive line rate remedy that has been in the legislation since 1988. That remedy has been inoperative since the early 1990s because CN and CP have effectively declined to compete for traffic using the CLR. That was the conclusion reached in the statutory review of the National Transportation Act in 1993, which was almost 25 years ago.

Second, when speaking with regard to the four western provinces, the witness group stated that for most shippers in western Canada, the nearest interchange with a second carrier was an interchange between CN and CP, and they provided a map to us when they made their testimony. They stated that, like CLR, whether LHI provides competitive alternatives to any shipper will depend largely on whether CN and CP are prepared to compete with each other using this remedy. Unless they are, LHI will remain a concept on paper that has little or no practical application.

The Chair: Are there any comments or questions?

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 26 agreed to)

(On clause 29)

The Chair: I believe we were at LIB-3. There were a couple of subamendments being discussed.

Mr. Fraser.

Mr. Sean Fraser: Where we left it was at my misunderstanding of the fact that there was additional French language required to accommodate the fact that we had a turn of phrase that wasn't defined in both languages.

Do we have another copy of this to pass out? Okay.

There is some proposed language. I understand the legislative clerk has seen this already, so essentially what we are going to do is adopt Monsieur Aubin's language for proposed subsection 136.9(3) in the French version.

In the revised language that you are receiving, I note that it does not include the proposed subsection 136.9(3) for the English version, which was in the initial amendment document I sent around. That should still remain in the document. I believe it tackles a problem that was raised by multiple parties, because it ensures that when a company removes an interchange, doing so does not relieve the railway of its service obligations.

The Chair: Ms. Block.

Mrs. Kelly Block: I recognize that we had been speaking to an amendment that we put forward, CPC-16. In our amendment, we had added after line 17 on page 29 some proposed subsections similar to those Mr. Fraser is looking to include in his amendment, and he has changed that.

In our amendment, we asked that clause 29 be amended by adding after line 17 on page 29 the following:

> (3) A railway company shall not remove an interchange from its list without applying to the Agency for permission to do so.

I note that was not included in LIB-3, and it is not included in the subamendment, so I would just ask the mover of this subamendment to speak to that.

● (1945)

Mr. Sean Fraser: Sure.

The department might be able to offer some thought on this as well, but there's a process built in—I think it's a 90-day process—that allows a shipper to complain upon the removal of an interchange. They can complain to CTA, who would have input at that stage. Forcing that to happen each time might create an unnecessary step in the bureaucracy. If we increase the notice provision to 120 days, this will allow more time to get the word out there, reducing the impact on a shipper's service level obligations and allowing them to take advantage of the complaints process by launching a level of service complaint. I don't know that it would be necessary to include the language that you've suggested.

I would love to hear the department's point of view because, quite frankly, that wasn't part of my motion to begin with, and this is the thought process I've had during this committee meeting. I'm open to feedback and further commentary as well.

The Chair: Ms. Block.

Mrs. Kelly Block: I hear what you're saying in terms of what could happen as a result of a complaint and lengthening the time within which a shipper can complain.

I guess I would put to the committee that if a rail line has to apply to the agency to remove an interchange, we then forgo all of what you've just described as being an onerous process when dealing with a shipper's complaints. The agency would take a look and say, "No, the level of service that you are providing right now will not be there if you remove that interchange." We'd actually be simplifying the process by putting this clause in place that a railway has to apply to the agency if they want to remove an interchange.

Mr. Sean Fraser: I find your point of view interesting. One of the things that stuck in my mind is how we deal with a circumstance where there is no objection to the removal of an interchange. Are we still going to make the railway go through the process of seeking regulatory approval?

I'm thinking on the fly a bit here and we have experts at the table. Can you offer some clarity?

Ms. Helena Borges: According to the act, currently there is no notification required. The bill was proposing that the railway be required to provide notification, and that the notification stay up for 60 days. In all the consultations we had with shippers, that was the complaint we heard the most, that there wasn't any notification.

According to the amendment that was introduced, we'd be doing two things. The agency would have to be notified, and the period of time for the notice to be up would go from 60 days to 120 days. Also, as Mr. Fraser said, if a shipper had concerns, the amendment would allow a shipper to go to the agency and ask it to do a service review to determine if they would need to keep an interchange. The act also reduces the length of time required for a service level decision by the agency from 120 days down to 90 days, so that the agency would have time to do that service review.

If we wanted a process where every time a railway decided to discontinue an interchange they could do so, we would have to create a whole new system for how that would apply according to legislation, because right now there's no process to account for that. The proposed amendment would require even more subamendments to make sure we have a process that's transparent and works. We believe, however, that with the amendments, any shipper who has an interest in keeping an interchange open will have time to go to the agency and ask the agency to make a decision to keep it open.

● (1950)

The Chair: Is there any further discussion?

Mrs. Kelly Block: I just have one question about the process we're in right now.

We set aside CPC-16 to deal with what Mr. Fraser saw as overlap in these two. He believed if he amended LIB-3, that somehow would —

The Chair: Cover off the issues....

Mrs. Kelly Block: Yes, cover off the issues in CPC-16.

The Chair: And in NDP-7.

Mrs. Kelly Block: Yes, and in NDP-7.

If we don't agree that he's actually done that by changing LIB-3, do we then need to vote on CPC-16, NDP-7, and LIB-3 separately?

The Chair: Yes.

Mrs. Kelly Block: Okay.

The Chair: You still get to vote and comment on the others. For me, it's fine, but it may not be for the legislative clerk.

Some hon. members: Oh, oh!

The Chair: We're going to pause for a moment.

● (1950)

(Pause)

● (2000)

The Chair: We're calling the meeting back to order.

Thank you all for your patience.

We are going to vote on amendment LIB-3 as submitted by Mr. Fraser.

Mrs. Kelly Block: Can I just ask a question? Which LIB-3 are we dealing with?

Mr. Olivier Champagne: The new one.

Mrs. Kelly Block: The new one. Okay, good.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: All right, we have CPC-16.

Ms. Block, would you like to speak to it?

Mrs. Kelly Block: No, I think I have already done so.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We have NDP-7.

Mr. Aubin, would you like to speak to it?

[*Translation*]

Mr. Robert Aubin: No, the amendment has already been tabled.

[*English*]

The Chair: Okay, thank you.

(Amendment negatived [See *Minutes of Proceedings*])

(Clause 29 as amended agreed to)

The Chair: Shall clause 1, which is the short title, carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: Thank you to everybody for your patience, and to the departmental officials.

Mr. Badawey.

Mr. Vance Badawey: Madam Chair, I, too, want to congratulate the committee for moving this bill forward.

Madam Chair, in that spirit, I would like to move that the committee proceed to clause-by-clause consideration of Bill S-2, an act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another act, on Tuesday, October 17, 2017. Members should submit their suggested amendments to the clerk of the committee no later than 5 p.m. on Thursday, October 12, 2017.

The Chair: Mr. Chong.

Hon. Michael Chong: Madam Chair, are we meeting this Thursday?

The Chair: What is the will of the committee?

Mr. Vance Badawey: What do you want to do, Michael?

Hon. Michael Chong: I rearranged my schedule so I would be here from 3:30 to 5:30 on Thursday.

I was prepared to meet, so I'm just asking.

The Chair: We had normally scheduled the two days but, frankly, it's the will of the committee. By unanimous consent you can say that Thursday you'd rather we didn't meet, given the fact that we put in the extra hours this evening, along with the departmental officials. We can come back after the break and start on Bill S-2.

Mrs. Kelly Block: Was that the intent when we lengthened the meeting?

The Chair: No, I thought we would take all of this time, plus Thursday.

Hon. Michael Chong: So, are you telling the committee that we're not meeting Thursday because—

The Chair: I'm asking for some direction from the committee. If you would like to meet, we have sufficient work.

Hon. Michael Chong: Well, I'm here Thursday so....

The Chair: Okay. We're here Thursday, so we'll meet Thursday at our regular time. We have several outstanding items that we can bring forward.

Hon. Michael Chong: Chair, are we not then going to consider Bill S-2 on Thursday?

The Chair: We've passed a motion that we would start Bill S-2 on the following meeting after the break.

Hon. Michael Chong: Okay.

The Chair: We do have some outstanding committee business that we can deal with on Thursday. It'll probably be a shorter meeting.

Yes?

Mr. Vance Badawey: If I may, Madam Chair....

● (2005)

Hon. Michael Chong: Madam Chair, I understand that the amendments from me and Kelly are already submitted to the clerk of the committee. If there are other amendments to be....

The Chair: You're saying on Bill S-2.

Mrs. Kelly Block: Yes.

The Chair: Mr. Aubin, have you already submitted your witness list for Bill S-2?

[*Translation*]

Mr. Robert Aubin: I don't think the list of amendments has been submitted, but that's what I wanted to check.

[*English*]

Hon. Michael Chong: What will we be doing on Thursday then?

The Chair: We'll be doing committee business.

Hon. Michael Chong: Okay, thank you.

The Chair: All right, thank you very much. Thank you all.

Thank you to the department.

Have a nice evening.

The meeting is adjourned.