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Chair

The Honourable Judy A. Sgro

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• (0850)

[English]

The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)): I call to order the Standing Committee on Transport, Infrastructure and Communities, meeting number 24.

Ladies and gentlemen, welcome. We're pleased to have you here this morning to speak about Bill C-30 and we recognize the importance of that.

Our panel today includes Philip de Kemp, executive director of the Barley Council of Canada. We will also hear from the Chemistry Industry Association of Canada, the Mining Association of Canada, and Pulse Canada.

Go ahead, Ms. Block.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Thank you very much, Madam Chair, for indulging me.

I want to say how pleased I am. The clerk just informed us that the minister will be coming next Tuesday. I understand he will be here for 40 minutes, which will actually only give us one opportunity to ask questions of him. Is there any way he would be able to stay for a little longer than the 40 minutes we've been told he will be providing to us?

The Chair: I have asked if somehow he could give us the hour in order for everybody to ask questions. There will be a cabinet meeting happening. He left it that if it's at all possible, he will give us the extra time, but as of now, we'll have a 40-minute slot.

Maybe we can all be as precise as we can with our questions so that as many as possible can have a chance to ask them.

Mrs. Kelly Block: Okay, thank you.

The Chair: My apologies.

Whoever would like to start the presentations, please go ahead.

Mr. Philip de Kemp (Executive Director, Barley Council of Canada): Thank you, Madam Chairperson, and good morning, everyone.

My name is Phil de Kemp. I'm the executive director of the Barley Council of Canada and I still hold the position of president of the Malting Industry Association.

The Barley Council was formed a couple of years ago when the windup of the Canadian Wheat Board occurred. The council is made up of all the barley producer commissions from coast to coast, the beer industry, the malting industry, researchers, breeders, and anyone who has anything to do with barley.

In the *raison d'être* of the council, there are three major functions. One is market development, obviously; the second is research and innovation, and the third, a big portion right now, is international trade. We generally stay out of domestic policy issues, but because this whole transportation issue significantly impacts our ability to export and our reputation around the world, it was felt by the council that they certainly would like to weigh in on this, as we have over the last couple of years.

I know we're here to talk about interswitching, but in the four or five minutes I still have left I think it's important for me to give you a little history on the grain side in terms of the evolution of the grain industry and the participation of Canadian farmers. I'm going to refer to it as "walking the talk", basically, and putting in the capital and the resources involved in our end of the production chain.

I'll give you an example. Back in 1962, we had about 5,200 grain elevators in western Canada. At that time, we had about 25 million tonnes of crop production and about 10 million tonnes of storage capacity on those elevators across Canada. I'm sure you've seen the iconic pictures. They can hold maybe 800 tonnes or 1,500 tonnes in those old wood cribs. By 1980, that had drastically been reduced to about 3,300 elevators for a 35-million-tonne western crop, with about 8.75 million tonnes of storage in those grain elevators. By 2000 in western Canada, there were only 848 elevators on a 52-million-tonne crop production, with about 6.8 million tonnes of storage in the elevators. Just two years ago, we were down to 327 elevators in western Canada and facing a 70-million-tonne crop—we're probably looking at that again this year—and about 6.5 million tonnes of capacity.

What I'm trying to highlight here is simply what we have heard now over and over. I'm 58 years old, and I've seen this many times over the last couple of decades. We've had the Estey report, the Kroeger report, and the Emerson report, and we all keep continuing on the same line in terms of what is required as far as the grain handling industry in western Canada is concerned, both in terms of the shippers and, more importantly, in terms of the producers and the farmers. What I'm trying to highlight is the fact that during those original reports, the railways always said there were too many elevators and that we had to consolidate them because they needed higher efficiency throughput. Basically, the industry has done that. You've just seen that reflected in those figures. They're all basically 100-car spots right now. In many cases, a lot of those major terminals are inland terminals or large throughput facilities. They all have their own private locomotives just to move the cars to load the grain.

When you take a look at that, you see the reduction in the commercial elevator storage and you see the kinds of production numbers we have right now. The farmers have spent an awful lot of money, basically right off the combine, in storing that 70 million tonnes of grain. Over the course of the last two decades, they've walked the talk—I'll say it again—and really have brought in those efficiencies within the system.

Greg may be referring to this. I know he's part of the coalition as far as the reporting of the efficiencies of the railways goes. In last week's comments, he indicated that in the case of one particular railway, which will remain unnamed, just 75% of the railcars ordered were delivered.

I've just come back from China, and I have to tell you that in Qingdao, in the container port system there, I lost count at about 45 cranes. It's 17 million containers a year and 45,000 containers a day. It is highly efficient. It's incredible. The only reason I bring that up is that the shortage on the railway cars last week is equivalent to four Panamaxes. That's almost 100,000 tonnes. That's four ships at 25,000 tonnes each, and somebody has to pick up the phone, perhaps, and call their customer and say they may be a week or two late.

Canada's not the only country in the world exporting grains and oilseeds, and it is all about timely delivery, security of supply, and meeting your contract commitments. If you can't, then there are costs involved. Right now the costs are basically borne by the shippers and they're borne by the producers who can't deliver, and there are some cash flow impacts there.

Having said that, I'll segue into the issue of interswitching and the 160-kilometre range. You've probably already heard this from a number of people, but that basically incorporates about 92% of the grain-handling facilities in western Canada. I'll refer to that as a pseudo-competitive tool that at least allows the shippers to passively or actively try to negotiate better rates with the monopoly and turn it into a duopoly, meaning that if you're not getting the performance and you can't deal with one railway, then you can with the other.

Unfortunately, that's the only tool, if you want to call it that, in the tool box right now. I'm cautiously optimistic that we're going to see some significant recommendations and decisions by both the Minister of Transport and the cabinet as we move forward with respect to Canada's long-term economic prosperity, which is primarily driven by exports. For the vast majority, whether it's 90% or 95%, the people at this end of the table depend on doing by rail.

I'll segue into the Emerson report. I won't spend much time on that, but I think there's a general recognition by everyone in the grains industry—the shippers, the processors, the producers—that there are some fundamental issues that need to be addressed. They have to be addressed quickly, because we've been taking too long to do that.

One is that the CTA has to be given the authority and the power to try to settle things as quickly as possible, as opposed to having to go through these long-drawn-out legal proceedings with respect to performance. I think there has to be commercial accountability and contracts cutting both ways with respect to financial penalties. I

think that's going to clear up a lot of the issues, but we don't have that right now. We have a monopoly or we have an oligopoly.

Whenever there is a new piece of legislation, there's always a bit of a preamble as to what the legislation is all about and what it's trying to address. Right now, under the CTA, section 5 is a preamble, and it lays out a bit of the importance of trying to maintain competitiveness for the interests of everyone in Canada, etc.

I've been on this horse for a couple of years, and I think there are a few words that need to be changed in that to recognize it, and that is to understand that the wording that says it's in Canada's national economic security interest to ensure a competitive, viable...the words "economic security interest" raises its importance up a couple of levels. With this government or the previous government or governments in the past, I think we all recognize that Canada's future success and prosperity are going to be driven by exports, and there's no sense having exploratory discussions with China or elsewhere unless we have the ability to walk the talk and be able to meet those commitments, whether they're in grain or any of the other commodities represented here around the table.

I'm going to leave it at that. I know that some of the other people have talked about definitions for "adequate" and "suitable", or what have you, but I think the big one is the commercial contracts and the accountability on both sides of the issue. Our industry has been through this for decades now, with many reports produced. Even the Emerson report was two years ago this December, and we have to get moving, collectively, for all of the industries around the table.

• (0855)

The Chair: Thank you very much, Mr. de Kemp.

Mr. Podruzny, would you like to go next?

Mr. David Podruzny (Vice-President, Business and Economics, Chemistry Industry Association of Canada): My name is Dave Podruzny. I represent the Chemistry Industry Association of Canada and also Canada's chemical producers.

Industrial chemical producers move more than three-quarters of our products by rail. We do so because it's the safest way to do it and it's the most economical way to do it. It also produces the least amount of greenhouse gas emissions, and it's almost 17 times more efficient than moving the same volumes by truck.

Here we are talking about something that's dominated by a different sector, agriculture, but I will be emphasizing the importance of interswitching in rebalancing some of the market power that exists. We look at the Transportation Act, the regulations, and the agency as a way to rebalance what is otherwise a monopoly situation.

Chemical production in Canada exceeds \$53 billion. Our exports are \$38 billion. We're second in manufacturing in exports. We employ about 90,000 Canadians in communities right across the country and a significant portion—38%, second only to IT—are university graduates. These are good careers for communities right across the country.

Chemicals are more globally traded than any other product of commerce, so moving it efficiently and effectively is very important. Our members are very committed to working with government, with transportation partners, and with communities in areas of safety. Making sure we have the best standards in place is something we fully support. Safety is a top priority in our business. Perhaps one of the reasons we have such a high proportion of university graduates is that we deal with dangerous chemicals. We deal with things that need to be properly treated. We believe that many of our products should not be moving by truck; we believe they should be moving by rail to minimize the risk. Risk management is important.

We are responsible for and we own or lease all of the railcars that the railways move. That's an important aspect. We believe that we look after the risk associated with our product to the point of hand-off. We are concerned that railways maintain liability when they take the goods from us and then deliver them to another point. We are strong proponents of maintaining the common carrier obligation. We believe that Canada requires a commercially based and market-driven rail freight system, and we believe that the Transportation Act, the regulations, and the agency provide that.

The chemistry industry is a responsible one. Our responsible care ethic, which was developed in Canada, is now recognized by the United Nations and is in over 64 countries around the world. We believe that the expanded interswitching that exists in western Canada has provided a number of our members with important leverage in negotiating competitive rates, and we would like to see that maintained.

Keeping the transportation agency's dispute resolution on a strong footing is equally important. We are concerned about rebalancing, about market power, and, as was mentioned earlier, about reciprocity. I can tell you right now that among the hundreds of penalties for doing something wrong, there are none that we can apply against the railways; they all are the other way around.

If you look at our sites, you see that a third of our sites are covered in railway sidings, because we move a lot of product. Fully 12.5% of the volume of the railways is chemicals, fertilizers, things that you can relate to, things that need to get to the farm communities. The dangerous chemicals I mentioned are things that need to get to communities so they can have proper water treatment. They're an integral part of the Canadian economy. We take Canada's raw resources and convert them into valuable stuff, all kinds of products that are used in many of the manufacturing industries in the country.

I'll stop there. I want to give maximum time for asking questions.

Thank you very much.

● (0900)

The Chair: Thank you. I think you've heard already that we try to keep our presentations brief so as to make sure that the members get all their questions in. Thank you very much for your consideration.

Mr. Marshall, from the Mining Association, is next.

Mr. Brendan Marshall (Vice President, Economic and Northern Affairs, Mining Association of Canada): Thank you.

Ms. Chair, esteemed members, committee clerk, and fellow attendees, I'm Brendan Marshall, vice-president, economic and

northern affairs, Mining Association of Canada. MAC is the national voice of Canada's mining and mineral processing industry, and we're pleased to appear and to discuss this important matter with you.

The Canadian mining industry is a major economic driver, contributing over \$55 billion in GDP in 2015, employing approximately 374,000 people, and accounting for \$92 billion, or one-fifth, of Canada's overall total export value. As a consequence of this international reach, the mining industry is one of the largest users of Canada's transportation sector. From a rail perspective, the industry represents the single largest industrial customer group of Canadian railways. In 2015, for example, crude minerals and processed mineral products accounted for 51.4% of total rail freight revenue.

Having recently polled our membership, I can report that the response on rail service is mixed. While some members have seen improvements, others have said it's gotten worse. For example, one member stated that they have only been getting 50% to 80% of their weekly empty-car orders since last spring, and typically at the lower end of that range. This challenge spreads through their business, as the timely movement of concentrate is critical to managing rising inventory levels at mine sites. It's also problematic for keeping the flow of raw materials to smelters going at levels that support their feed stream requirements.

Another example is CP's refusal to ship a member's products under contract unless that member contractually conceded their recourse to the shipper remedies in the act in the event of poor rail service. Perhaps the worst example is both class I railways persisting in their refusal to transport uranium, a decision that defies the common carrier obligation and could adversely affect investment in Canada's world-class uranium resources.

There's a cost to the Canadian economy resulting from poor rail service. Railways do not produce the goods for export that allow trade to grow, our economy to expand, and employment to increase. Rather, they are an essential conduit for Canadian industry to receive crucial inputs and get its goods to market. In this light, the railways are a significant and essential domestic component of market access for Canada's exports as well as its domestic deliveries. Trade begins at home, and without a healthy and reliable railway network, Canada's reputation and success as a trading nation and as a destination for investment, generally speaking, are seriously hampered.

Building on this, and with respect to the extension of Bill C-30, MAC has three areas of concern.

The first is grain volume commitments. Maintaining grain sector-specific volume commitments will exacerbate existing rail capacity constraints to the detriment of all other shipping sectors, including ours. As testified to this committee by the former president and CEO of CN Rail during the first study of Bill C-30, strongarming railways to redirect rail capacity to grain shippers will present a cost to other customer groups on the network. Further, the volume commitment provision operates in conjunction with the rail rate cap that farmers already enjoy. Grain is the only commodity that has a rail rate cap. By paying higher rail rates than those set by the grain cap, miners and all other shipping industries effectively subsidize rail service for the movement of grain. As a result, grain farmers now have the potential for preferential service, with volume commitments at a preferential rate with the grain cap, meaning all other shipping sectors pay more for less.

Mining companies are also concerned that enacting grain sector volume commitments will undermine the legal remedies available to shippers in the act. If mandatory minimums are put in place, how can mining companies forced to operate outside the provisions of Bill C-30 make a service case against a railway that is legally obligated, through pain of penalty, to serve grain companies? A railway's unwillingness to break the law requiring it to move grain presents a viable defence against the legal remedies available to other rail customers seeking to address their service challenges.

The second issue that we'd like to discuss is regulating improvements to the service level agreement mechanism. Bill C-30 enabled the Canadian Transportation Agency to regulate prescribed elements in arbitrated service level agreements, the details of which were determined through a consultation process soon after the legislation was enacted. While this consultation provided some increased clarity in defining operational terms, the service level agreement provisions persist in requiring that an arbitrator take a rail company's service obligations to other shippers into account before rendering a decision. In the context of Bill C-30, an arbitrator in a service level agreement process will be bound to consider the railway's legal obligation to transport grain against the elements of service that a non-grain shipper is seeking. A railway's volume commitment obligations under the law will supersede regulations designed to enhance a non-grain shipper's position in an arbitrated service level agreement.

● (0905)

In MAC's view, these provisions are instructive in understanding why so few companies have pursued service level agreements.

With respect to interswitching, many MAC members are concerned that the interswitching provisions have resulted in railways being forced to do more short hauls, which are operationally more expensive than longer ones. A consequence of this reduction in rail freight revenue due to the interswitching rate being federally regulated will lead the railways to make up for lost revenue by reducing service to other sectors to better optimize their assets and regain those profits.

MAC is not opposed to interswitching regulations in principle. However, many miners are captive shippers, and there is concern this measure has adversely affected them. We also have members who have benefited from the extension. In this sense, MAC doesn't take a

position one way or the other, but would strongly support data disclosure to enable a thorough assessment of the implications of this policy on all shippers reliant on rail freight services.

Finally, the largest obstacle for shippers and public policy-makers in addressing rail freight challenges is the inability to adequately assess the nature of rail service capacity challenges due to a lack of transparency and disclosure of railway data. Because a railway company has control over its data, the shipper is at a significant disadvantage when considering whether to initiate one of the remedies under the act. This is because railways are able to fashion submissions for the adjudicator to which a shipper either cannot respond adequately or respond at all.

The same challenge is faced by decision-makers when attempting to assess the merit of the claims that railways and shippers make in respect of their service, either the service that they're delivering or the service that they're receiving. Needless to say, it's challenging to develop balanced public policy with a data deficit, and recent legislative attempts to do this are a testament to that challenge.

With the goal of enabling balanced commercial relationships in the rail freight market that render better service delivery and avoid costly quasi-judicial hearings, while simultaneously enabling the railways to remain profitable, MAC recommends government take a phased approach.

The first phase would require railway companies to publicly share sector performance and capacity data on a monthly basis, or periodically, and confidentially share company-specific data at a shipper's request.

The second phase would be for decision-makers such as yourselves to collect and analyze this performance and capacity data with the aim of identifying where the specific issues are in the network.

The third phase would be to undertake an agenda of legislative and regulatory changes as needed, only after the causes of rail freight service challenges have been isolated and fit-for-purpose solutions have been identified and informed by data.

MAC supports this approach because collecting and publishing railway data would not only enhance transparency in the transportation system but would also improve railway-shipper relations by minimizing the need for disputes and provide government with the tools necessary to identify, assess, and resolve challenges. It is also consistent with the government's commitment to data transparency and evidence-based policy.

● (0910)

The Chair: Thank you very much, Mr. Marshall. I appreciate very much your recommendations and so on, but from a time element here, we need to move on.

We have Mr. Northey from Pulse Canada. Please try to keep your comments to five or six minutes, if you can, especially if you have some solutions and recommendations to offer.

Mr. Greg Northey (Director, Industry Relations, Pulse Canada): Thank you, Madam Chair and members of the committee, for the opportunity to be here this morning.

Pulse Canada is a national industry association that represents over 35,000 growers and 132 processors or exporters of peas, lentils, beans, and chickpeas, as well as specialty crops such as canary, sunflower, and mustard seeds.

Since 1996, Canadian pulse and special crop production has quadrupled, and Canada is now the world's largest producer and exporter of peas and lentils, accounting for over one third of all global pulse trade.

The market for pulses and special crops is highly competitive, and maintaining and growing Canada's market share is, of course, a top priority for the industry. Competitiveness in global markets depends on a range of factors, and without question one of the most critical factors is the ability to supply in a consistent fashion.

The World Bank, in its "Connecting to Compete" report, noted that "Predictability is central to the overall costs that companies incur in logistics and thus to their competitiveness in global supply chains."

We were pleased to see that the recent report of the Canada Transportation Act review also acknowledged that "Today's transportation decisions underpin tomorrow's economic structure... and, ultimately, the competitiveness of the Canadian economy."

Pulse and special crops utilize integrated supply chains and are the most multi-modal grain crop in western Canada, with product moving in boxcars, hopper cars, intermodal vans, and marine containers. Even with the product moving in multiple modes through multiple corridors, rail is central to every move.

Rail is central, and Canada's railways hold a great deal of market power, particularly in the grain industry. Of the primary elevators and process facilities in western Canada that serve the grain industry, only four are dual-served by CN and CP. The grain industry is highly captive to one or the other railway, and this market power has given the railways the ability to optimize their networks for their economic benefit, to the detriment of the needs of the users of the rail system.

Canada has always recognized this market power imbalance and prescribed and adjusted the legislative and regulatory framework to address it, the latest example being the act we are speaking about today.

The forces that created the need for the Fair Rail for Grain Farmers Act are the same forces that will fuel the development of a broader strategy to improve the legislative and regulatory environment to offset railway market power, and to create the conditions that result in behaviour, capacity, and service that would be available to shippers in a normal competitive environment.

We view this strategy as needing to focus on two priority areas.

The first is to improve the service level agreement provisions so that shippers can negotiate an effective contractual arrangement for service with the railways.

Second, because not all shippers nor all traffic will be covered by an SLA, we must enhance the provisions of the act that encourage adequate and suitable service and enhance the role of the regulator, the Canadian Transportation Agency.

I will speak first, briefly, on the need for enhancing the service level agreement provisions of the act.

The Fair Rail for Grain Farmers Act gave power to the agency through the new subsection 169.31(1.1) to develop regulations specifying what constitutes "operational terms" in service level agreements. This provision and the subsequent regulation should be made permanent.

SLA should also be strengthened by including financial consequences for railway non-performance as a matter that may be submitted for arbitration. This right should be enshrined in legislation under section 169.31 of the Canada Transportation Act. Financial consequences are critical to the effort of establishing balanced accountability between railways and their customers.

Again, because not every interaction between railways and their customers will be governed by the terms of a confidential contract, it is critical that we also create the broader conditions that will ensure adequate and suitable service for all shippers and all movements.

As a critical first step, Pulse Canada recommends that government restore the Canadian Transportation Agency's power to act on its own to investigate service issues, including systemic issues; to issue general orders; and to issue *ex parte* orders.

To ensure the agency can fulfill this enhanced regulatory oversight mandate and to aid commercial activities and public policy evaluation and development, a comprehensive integrated data platform, administered by the agency, that supports and delivers information regarding the capacity, demand, and performance of the rail logistics system should be created.

I'll move on to interswitching, because it is a popular topic.

The power given to the agency through the Fair Rail for Grain Farmers Act to extend rail interswitching limits has strengthened an important pro-competitive measure and shipper protection feature of the act. The extended interswitching provisions introduced in the Fair Rail for Grain Farmers Act have given shippers access to another carrier that is willing to compete for business.

● (0915)

Seventy-six per cent of the extended interswitching movement to date has been to the U.S.A., with the largest interswitching move being 125 kilometres and the average being 76 kilometres.

Our members who have used the provision report freight rate savings of between \$500 and \$1,500 per car, which are significant cost savings over current rate offerings and significant savings for the small and medium-sized shippers we represent. However, we must keep in mind that the purpose of interswitching provisions is to encourage competitive behaviour—namely, to ensure railways are offering competitive rates and service.

When interswitching provisions are working, customers won't have to activate the provision. Therefore, we cannot rely solely on the number of times interswitching has been used to assess its value. The extended interswitching provision should remain in place, as it is now achieving what a pro-competitive measure is meant to achieve.

I'll conclude there, and we can move to questions. Thanks.

The Chair: Thank you all very much for your information. We will start six-minute questions, beginning with Mrs. Block.

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

Thank you to our witnesses. It is great to have such a diverse panel before us. We've heard from some other producers and also from the railways, and I think it's really great to hear from the mining association, the chemistry association, and some other producer groups.

I think what we have heard from our producer groups is that interswitching has been an effective tool for them in leveraging competition. As Mr. de Kemp pointed out, it has taken a monopoly and turned it into a duopoly.

Over time, as I have met with different stakeholders, I've asked whether the 160-kilometre link implemented in Bill C-30 has been beneficial to commodities of all types. The act itself is called the Fair Rail for Grain Farmers Act. I'd like you to comment on not only the interswitching measure that was due to sunset but also the other measures that were due to sunset. Also, are there elements in Bill C-30 that you would want to see applied across the board to commodities other than just grain?

• (0920)

Ms. Lauren van den Berg (Manager, Business and Stakeholder Engagement, Chemistry Industry Association of Canada): Thanks so much. I'll jump in there. My name is Lauren van den Berg and I'm with the Chemistry Industry Association of Canada. Dave and I are sort of tag-teaming here.

I think you raised an excellent point. In fact, the wording of Bill C-30 was designed by its very nature to include all commodities and not just grain. Technically it does that, but the catch—because there's always a catch—is that you have to be within the right distance. You have to be within that 160-kilometre zone, zone 5. The problem that a lot of our members have—and I'm sure it's a problem shared around this table and it's a problem you've heard echoed in other witness testimonies—is that it's not enough. It helps only those who are lucky enough to have facilities or plants or mines within that zone. The extension of the interswitching provision last year without a doubt resulted in material cost savings, as we heard from several of our members, but again, only for those lucky few with facilities in the right zone.

The Chemistry Industry Association and several of the other associations we work with are advocating, as shippers, to expand interswitching beyond the 160-kilometre zone. We want it expanded throughout Canada, across all the provinces, and frankly, we want it made permanent.

I will pick up on a theme you've heard before, the idea of captive shippers and the power imbalance those represent. Seventy-eight per cent of our members alone are captive to a single class 1 railway, which represents a significant power imbalance that, if you'll pardon the pun, rails against the very principle of a competitive market economy. When we talk about economic security interests—which, I think, is a very valuable phrase that we could do well to echo every so often—and we're looking to encourage investments over the long term in Canada, we have to be able to make the case that transportation is not just safe and reliable but also competitive, and that's going to benefit the country from economic and security perspectives.

Mrs. Kelly Block: Okay.

Mr. Brendan Marshall: I'm building off Lauren's point. Just for context, many mine sites operate in remote regions, and I'm aware of just two of 37 members at MAC who were able to take advantage of that measure.

Our concern isn't so much about the principle of the policy; it's clearly understanding what the implications are should there be some broad overarching extension across the entire network. Our suspicion, given the rapidity with which the original Bill C-30 was drafted, tabled, and turned into law, is that insufficient assessment was undertaken of what those implications were for the whole network.

I would caution the committee to carefully assess what those implications are and to take a fact-based approach about whether or not that's in the overarching best interests of the network. Principally, MAC doesn't take a view about the merits or the demerits of interswitching as such. We support a fact-based, evidence-based approach to any public policy measure designed to effect change in the rail freight network.

Mrs. Kelly Block: I will quickly follow up on the concern you raised in regard to data sharing. One of the measures in Bill C-30 was the second measure, which reads, "Subject to volume demand and corridor capacity, [CP and CN] must each move at least 500,000 tonnes of grain during each week" following harvest. One can well imagine that this would have increased the requirement for data sharing by the railways to ensure that was happening.

I guess what I'm hearing from you is that there is a need for increased data sharing by the railways to the shippers and producers. Would you see taking on some of the measures that were put in this bill and were specifically for the movement of grain? Would you see some of those being beneficial if they were to be applied across the board to other shippers and other commodities?

• (0925)

The Chair: Can you give a very short answer?

Mr. Brendan Marshall: A very short answer with respect to volume commitments? No.

No, you cannot pick and choose winners and losers in the rail freight market. To link volume commitments with respect to broader overarching impact on the networks and data.... Currently, there is next to no capacity data available, so shippers don't know. Quite frankly, I don't believe that policy-makers are aware of the implications of streamlining traffic to one sector and the implications that has for all others, because there's insufficient data available to assess what those implications are.

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

Maybe anyone else can slide in on someone else's question, but I have to move on.

Go ahead, Mr. Iacono.

[*Translation*]

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Thank you, Madam Chair.

Thank you to the witnesses for being here this morning.

Madam Chair, please note that I will share my allotted time with Mr. Sikand.

My question is for all the witnesses.

Do you think the compensation mechanism integrated into dispute settlements is effective and sufficient? Do you think a greater role in investigations and dispute settlements at the Canadian Transportation Agency would be enough to balance the rail transportation market forces?

[*English*]

Mr. David Podruzny: If I may offer a comment, I'll speak in English, because it's better than my French.

Is it sufficient? I have to say no. We need to have some discipline in the process. Right now, we are, number one, captive to all the information supplied by the railways and all the data that comes from the railways. No, in our sector we are looking for some rebalancing.

As for going before the agency, a number of our members said that the cost involved is prohibitive. If they only have a few cars a week, they can't afford to take a million-dollar case to the agency, a case that may take months to get resolved. There needs to be a way.... I think the offer to have a group go forward has been a very significant one, but we need a way to streamline the process.

Bear in mind that the two class I railways have standing legal departments. It's almost like a cost centre or a profit centre for them. That's what a smaller company is up against.

The agency is crucial and important in rebalancing, but it is very daunting to take a case before the agency. You've got to have a lot of problems before you'll do that. It can't be frivolous. It's expensive. It's time-consuming.

Ms. Lauren van den Berg: I'll add one quick one and cede the floor to Brendan, which is fair because I'm actually picking on something that he spoke about in his opening statement.

Building off what Dave said, part of the challenge that our members face is the fact that when they're negotiating with the

shippers, there's a difference between the contract and the actual service level agreements. They're between a rock and a hard place because of this power imbalance that governs the economy they're operating in. What that means is that they're almost pushed out of the realm of being able to go to the agency for a dispute settlement resolution, because it doesn't fall within the CTA's purview. Confidentiality is another concern, so what they're left with at the end of the day in their negotiations with the class I railways is a piece of paper that the CTA can't look at because it doesn't fall within their purview. When we're talking about accessibility and cost prohibitiveness, it's yes and yes, but at the end of the day it's not the shippers who hold the cards for their own service deliveries.

Mr. Brendan Marshall: I will add very briefly to that.

Part of the length of preparation and of the cost associated with preparing to take a case to the agency is developing the argument and narrative and producing the data that you're trying to use to affirm your position in the case. One very real thing that could be done to facilitate an equal footing or a closer balance in relationship to that bargaining process would be data disclosure.

Ultimately, the final point I would add is that the goal would be to have that negotiation outside an agency context. We believe that data disclosure would be a huge step toward avoiding the need to have recourse to agencies affecting contracts and settlements between shippers and railways.

● (0930)

The Chair: Mr. Sikand, you have a minute and a half.

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): I've spent years living in Sarnia, which, as you know, is colloquially called the chemical valley, so I do have an interest there. I have also had a spill in my home riding, where I grew up. It wasn't a chemical spill, so I guess I'd be remiss if I didn't ask what measures are in place to keep the public safe and what the respective roles are for rail and the companies when transporting chemicals?

Mr. David Podruzny: This is something we take very seriously.

What we have started to do for the last 40 years, under a responsible care ethic, is engage in training exercises for first respondents. We do what we can to have a safe vessel that goes to the railways, but in addition, we regularly, and across Canada, host first respondents training programs. They are held in communities right across the country.

A month ago we were in Lac-Mégantic for a training session, where first respondents—police and fire respondents—could be trained in how to handle the products and the right and wrong things to do. This is part and parcel of our ethic in managing our goods from the beginning to the end. There are courses that we are giving—we have one coming up in Hinton shortly—right across the country.

We believe that safety is paramount. That's why we move by rail in the first place. We know that trucking has many more incidents, because you need four trucks per railcar. There are many more instances of risk on the highways than there are on the railway. Training and preparing the emergency responders is important in the event of an emergency.

I always say every spill ends up being a chemical spill, because that's how it gets interpreted in the media. We take it beyond our own products to any hazardous products being moved.

The Chair: Thank you very much.

I'm sorry, your time is up.

Mr. Aubin is next.

[*Translation*]

Mr. Robert Aubin (Trois-Rivières, NDP): Thank you, Madam Chair.

I will first make a brief comment that's meant to be constructive rather than critical. I think it's practically a sin to be in the presence of such experts but to have so little time to give them. For future committee work, perhaps we could limit the number of witnesses per session.

I'll ask my questions in quick succession. My first question is for Pulse Canada's representative.

There has been a great deal of talk about interswitching, and much less talk about the maximum revenue entitlement program. Mr. Emerson's report proposes that the program be eliminated.

If you want to keep the program, what would be the benefits? What would be the impact of its elimination?

[*English*]

Mr. Greg Northey: The grain industry is fundamentally different from most other shippers in that the people who produce the product and ship the product are different. The MRE recognizes that and ensures that the producers of grain, the farmers, actually pay the freight. The MRE was put in place because it's a fundamentally different type of supply chain. In any consideration of the MRE, it's important for us to look at it from an evidence-based position in terms of how that would affect the supply chain, purely for protection reasons, as far as freight rates go, because the railways do have incredible market power. It's an important way to keep rates reasonable.

• (0935)

[*Translation*]

Mr. Robert Aubin: Thank you.

My next question is for Mr. Marshall.

In your presentation, I believe you said the 500,000 tonnes imposed on rail companies likely caused harm to other types of natural resources that require rail transportation. However, you didn't refer to an unfair situation. That said, the representatives of the main rail lines told us that with or without Bill C-30, they would have transported the same quantities of grain.

Can you give me clear examples of harm caused by Bill C-30?

[*English*]

Mr. Brendan Marshall: Sure. I can make a couple of points.

Part of the reason our members feel so strongly about data disclosure for performance and capacity is that we don't know whether the claims the railways make are true. The railways can say that with this measure in place, we would have shipped the same

amount of grain, but if you had asked the grain industry five years ago whether they were getting that level of service or not, the answer may have been very different. Coming back to ask for a very specific example, a quantitative example, of the harm that's done is a very difficult thing to do when there's so little data disclosure available on the network.

We do have members who internally quantify their costs related to business lost because of rail service failure. I believe one of our members has accumulated, in the most recent years, over \$80 million in lost business opportunities due to rail-related service, but we would need some pretty significant data to relate that number specifically to the policy measure that drives grain capacity.

[*Translation*]

Mr. Robert Aubin: Thank you.

Mr. Northey, do you have anything to add?

[*English*]

Mr. Greg Northey: The order in council had a specific impact in that it essentially set a requirement for the railways. What the railways ended up doing was cycling things to Vancouver. We actually have numbers on the impact it had for our shippers. Our shippers will utilize the U.S. corridor, which will go east, or go to small transloaders in Vancouver. The OIC had incredible detrimental effects for our shippers as well.

If there's going to be a tool like that, it needs to be very specific. It need to establish clear expectations for the railways, under which they would have to move specific products through specific corridors for specific commodities, as opposed to an overarching goal. Otherwise it has detrimental effects on all kinds of movement throughout Canada.

[*Translation*]

Mr. Robert Aubin: Thank you.

[*English*]

The Chair: You have one minute left, Monsieur Aubin.

[*Translation*]

Mr. Robert Aubin: Out of generosity, I will turn the floor over to another committee member.

[*English*]

The Chair: Thank you for your kindness. See, that's the committee working well together.

Go ahead, Mr. Hardie.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you, Madam Chair.

To triangulate on what we've been hearing over the last few days, particularly on the issue of interswitching—Mr. Northey, you lit the light—it seems that the competitive pressure you can put on the class I railways here in Canada is all tied up in access to the American railroads. What we heard from CN and CP is that whereas the American railroads can come and basically poach business from Canadian railways, they're not allowed to do the same. I'm just putting that out there because there may be some kind of balancing act needed.

I also wanted to touch on something else. Somebody from the grain industry was saying that they would like to move towards a demand-based framework for the supply of railcars and service and away from the supply-based framework. Supply at a fixed price equals rationing, which is everybody's problem, it seems. Has anybody done the math to figure out what the costs would look like, especially the increased costs, if we said to the railroads that we'll pay as much as it takes to get the capacity that we need?

Mr. Greg Northey: On your first point regarding U.S. competition, it's important to note that interswitching or competitive line rates or any pro-competitive measure only works if you have the two railways willing to compete for each other's business. CN and CP haven't always shown a willingness to compete for each other's captive shippers. The only time it's effective is when a third party come in. That point is very important.

In the U.S., the shippers look at our interswitching, and they want it as well. They call it "competitive switching". In July, the Surface Transportation Board announced that they were going to do a regulatory study on improving their current provisions on that. Through the fall, they're having hearings with shippers and others in the rail community there to establish the same thing.

● (0940)

Mr. Ken Hardie: Please keep your responses short.

Mr. Greg Northey: Yes.

On the second piece...?

Mr. Ken Hardie: It was about the demand.

Mr. Greg Northey: We have a performance measurement program. Every week we publish data on over 90% of the grain movements in Canada. It is built on the concept of shipper demand. Shippers right now sell, or we market, based on what we think the railways are going to give us for capacity. Sometimes it's 20% below what we could actually be selling on the world market.

We market our crops and we—

Mr. Ken Hardie: I understand all of that. The question is whether you are willing to pay a higher shipping price in order to get more capacity.

Mr. Greg Northey: We already pay a lot. We have invested incredible amounts of money since 2013-14 to increase the capacity on-farm and in elevators, so—

Mr. Ken Hardie: It's the rail capacity that is the issue here. Are you willing to pay to get it?

Mr. Greg Northey: Well, the railways can pay for their own capacity, just as we do in the system. We actually pay for our own capacity to store grain in order to handle variability and make sure it's predictable.

Mr. Ken Hardie: I don't think that's a very satisfactory answer, to be honest with you.

Mr. Brendan Marshall: Go ahead. I've taken up some time.

Mr. Philip de Kemp: As far as the grain industry is concerned, as mentioned in a lot of the comments here today, the hallmark of any modern commercial relationship is that parties are held accountable to each other for their respective performance. If the railways are saying they'll give you the service, but they need more money....

Twenty years ago, the issue was to close some of the elevators, get the efficiencies in the system, and get 100-car spots. The grain industry, whether it's the shippers or the producers, walked the talk and did that. Now it's like a bait and switch; they're saying they'll give the service, but at a higher price.

We wouldn't have this issue if.... The mining and the chemical and the grain industry, and what have you. They don't have an MRE, but they can get a car, supposedly, if they want a car. The issue is service. All of a sudden they're saying, "We'll get you the service, but it's going to cost you a lot more." That's what the railway is saying.

We're constraining our P and Ls right now to match what we think we need to get for shareholders. We have a huge system to move everything for all of us, east and west, to the ports. As far as a balancing act is concerned, and interswitching with the U.S., we wouldn't have these discussions on interswitching or what have you if the service were there, if the power were there, if the cars were there. We wouldn't have to go through this time and time again.

Mr. Brendan Marshall: The only thing I would add is that what we mean by the words that we say is important. A huge part of service is capacity, meaning how many crews, how many locomotives, how many places are needed for that service to be most optimally balanced to meet network needs.

That's the biggest question mark right now. We just don't know what the railways' actual capacity is. When we ask them questions about this, they tend to say they're making record investments back into the network, that \$1.5 billion, 20% of their revenue, is going back in. It seems like a lot, but in reality we don't know whether that's sufficient. We have no idea whether it needs to be \$2 billion or whether it's more than enough.

Mr. Ken Hardie: Okay. I take that point.

Do I have any time left, Madam Chair?

The Chair: You have about six seconds.

Go ahead, Mr. Fraser.

Mr. Sean Fraser (Central Nova, Lib.): Thank you very much. I very much appreciate it. I'll get to the questions, just to be efficient.

Competition is at the heart of what we're talking about. It seems to me there's insufficient competition in the rail industry right now. Aside from interswitching, is there another tool that's available or could be made available to enhance competition in the rail industry in Canada?

Mr. David Podruzny: One has already been raised, which is that transparency in information is very important. Another one is deliberately having your system mesh well with what happens south of the border. We move virtually 80% of production into the U.S, so a seamless move because of similar standards is very important.

One thing I want to say is that we would like to see expansion and growth in investment. We are told by the investors that it is going to be constrained because we don't know if we can count on moving the finished incremental product, so knowing what the service level is today and whether there's any space for incrementality....

When you talk about buying cars and getting more cars, we've gone from paying \$6,000 a car to \$26,000 a car in the last decade, and that has not resulted in getting a whole bunch more cars. Shareholder value during the great recession stayed up at the two major railways. If you look at their performance, you can ask yourself whether we are setting regulations and legislation to deal with market power, which is very real. This is a private sector monopoly.

● (0945)

Mr. Sean Fraser: On the point of greater transparency as a segue into a conversation about data, I think, Mr. Northey, you were the one who flagged the fact that you can't just look at how many times interswitching has been used, because the shippers at the negotiating table are using anecdotal experiences to say what the benefit from interswitching is. Is there a way that we can get the kind of data Mr. Marshall was talking about when we're dealing with this sort of anecdotal negotiating table experience that shippers are having?

Mr. Greg Northey: Do you mean for shippers who are going to the railway and requesting interswitching and using that a negotiating power?

Mr. Sean Fraser: Whether they're using it or not, but yes.

Mr. Greg Northey: At the moment, in the grain industry the data is collected from a certain group of shippers in terms of how many people have actually used interswitching, how many cars they've moved, and to some extent the money savings they've achieved from just the behaviour change of the railways willing to supply them the business and not do the interswitch. Generally that kind of information is going to be with the shipper. It's not necessarily publicly available information unless an industry like ours is willing to start to correlate that kind of information.

Mr. Sean Fraser: Mr. Marshall, do you have something to add?

Mr. Brendan Marshall: I just want to say two things very briefly. I think the initiative that the grain industry has put together to assemble and produce performance metrics is commendable. The piece that I would underscore is missing, just for the committee's benefit, is capacity data. It's an equation, right? Performance metrics are the numerator; capacity data is the denominator. You need to measure one against the other to get a clear picture of what's happening, and right now we only have limited examples of what that numerator is. We have no idea what the denominator is, so how do you measure the sufficiency of that equation?

Mr. Sean Fraser: Madam Chair, do I have a few moments left?

The Chair: You have a minute.

Mr. Sean Fraser: On the issue of harmonizing our standards in the rail industry, what could be done in the short term to bring it in line with the U.S. that would help make sure that we're competing in getting our products to global markets?

Mr. Brendan Marshall: I think some of the other commodity groups ship perhaps a little bit more extensively in the U.S. than we do, so maybe they'd be a better fit to answer that question.

Ms. Lauren van den Berg: We work very closely with our sister association down south, the American Chemistry Council, and with the STB, the transportation board in the States, to ensure that if we're not on the same page yet, at least we're all in the same book.

When we're talking about the thickness of tank car standards, or which screws go where, and what the shell might look like, if they're not harmonized, it means the tank car will get to the border and then just be turned away, so what we're looking at doing, and what we thoroughly recommend, is keeping pace with the U.S., quite frankly. I know it's not a very exciting recommendation, but ultimately it's how things are most going to move quickly from producers through to shippers through to customers at the end of the market.

Mr. Sean Fraser: Mr. de Kemp, did you have something to add?

Mr. Philip de Kemp: The only comment is with respect to value added in the grains industry. I know I can't speak for the Canadian Oilseed Processors, which are the manufacturer for canola oil, but they have highlighted it in a number of speeches before, and certainly the malting industry as well in terms of value-added malt. For all sales that go to the United States, virtually all of the cars in the Canadian oilseed crushing industry are leased cars. They own those cars for a period of time, obviously. It's the same thing in the malting industry. The issue then isn't the supply of cars; it's going to be the supply, the performance, and the service of getting a locomotive in front of it to get it to their customer. The turnaround times are 27 to 30 days, but they own the cars. The supply of cars is not an issue; it's the supply of the service and the locomotive.

● (0950)

Mr. Sean Fraser: And you all want to arbitrate non-performance when it comes to that service level.

Mr. Philip de Kemp: That's going to settle 95% of the issues here around the table, and for the last 25 years.

Mr. Sean Fraser: Okay. Thank you.

The Chair: Thank you very much.

Go ahead, Ms. Watts.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): Thank you very much, and thank you for a great deal of information in your comments and answers to questions.

I want to drill down a little bit because, as you know, over the past number of sessions a number of witnesses have come forward, and their recommendations cover a broad spectrum.

I want to go back to the rail line. It struck me as very interesting, because I heard you say that the interswitching zone should be expanded. The rail lines have said that putting the 160-kilometre capacity in was totally unnecessary, that it should be removed permanently, that it should only be 30 kilometres, and that basically we didn't know what we were doing when we put that in. That's one piece.

The second piece, when I asked about competition, was with BNSF. They were saying that our requirements are not parallel to the U.S. requirements, so if we did away with the legislation, that basically would take BNSF out of the game.

I have one more thing to say, then I'd like your comments on it.

The last piece is that 785 additional railcars are basically simply sitting there, by leaving the 160-kilometre interswitching limit in place.

Can you guys comment on any of that?

Mr. Brendan Marshall: Pardon me, but the question is very specific, and I can't offer specific comment on a situation when I'm not familiar with its full scope and details.

Again I would come back to the fact that we've been over these issues for years, decades, and for some associations a century, and we have competing claims. Railways say we don't need interswitching. Some shippers say we do. Why don't we just disclose the information and find out what the truth of the matter is?

Ms. Dianne L. Watts: You figure that can be done through the CTA.

Mr. Brendan Marshall: MAC is open to different options. We have developed a legal recommendation for the type of data that we would like to see disclosed, the frequency that we would like that data to be disclosed, how that data would be made publicly available, and what portions of that data are confidential and how that would go to shippers. We're happy to share that with the committee if that would be of interest.

Ms. Dianne L. Watts: Sure.

Mr. Brendan Marshall: Fundamentally, what we perceive is a point of tension, and that point of tension is on a fault line of whether we veer toward network efficiency or whether we veer toward the common carrier obligation and the rights of the shipper.

Our experience—in the last five years, anyway—has been an inability to reconcile those things. The approach we're taking now is that we're not looking necessarily for specific policy measures to reconcile what, in some instances, is a very difficult situation. What we'd like to see is better measures to allow the parties themselves to avoid those situations, avoid the deadlock.

Ms. Dianne L. Watts: Right. Okay.

Mr. David Podruzny: I'm always stunned when I hear that someone says railcars are sitting somewhere. Our members, as I said at the outset in my opening comments, look after 100% of their own railcars. I can say that we have had to increase the ownership and leasing of cars by a third because the turnaround time to get the cars back has gone up by a third. That means we've had to invest more and more in infrastructure ourselves.

The level of service is not getting better, but the facts are entirely controlled by two railways. How can you be given accurate information when that information is controlled by one of the parties in the dispute? We need to have some independence for the way in which the information is available. We also have to respect some of the products that some of our members move. Even the volume is confidential, because it represents market share in a business where there may only be two players. The way in which we disclose that information may be fine to you, but maybe not to our direct competitor.

Information is power in this game. We are seeing increases in turnaround and reduction in service. We're having cars delivered to the wrong place, and then we're having to pay a penalty because we didn't turn the car around in time to have it picked up because it was delivered to the wrong gate. If cars are delivered back with damage and without reports, we can't reuse them in the system. We have to take them back and have repair work done.

This is about reciprocity and balancing market power. The profit motivation to invest in improvements has proven to be very strong for CN and CP. They have done great things to improve service. I'm simply saying it's not nearly enough. Shareholder value has gone up a lot more than the level of service.

• (0955)

Mr. Greg Northey: With regard to data, the grain industry has recognized for years that the transparency of data is essential. For years we spoke anecdotally about poor service. Now we've invested in a program that measures railway performance every week, and shippers are seeing the performance they're getting at every location. We measure it by demand. A shipper needs a car for a certain week, and we measure the railways on their performance for that week. It's changed the way we've been able to talk about performance. It's changed the way shippers have been able to deal with railways. It's changed the way railways have talked about their own data and how they publish their own data. It's tremendously powerful.

As for the competition aspect, we welcome competition. Everybody in a business gets better through competition. We think it's an opportunity for the railways to improve the way they service their customers. If they have competition from a third railway, they should embrace it.

The Chair: Thank you very much.

Mr. Badawey is next.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Madam Chair. I have a few questions with respect to some of the comments that were made.

First off, the comment was made earlier about interswitching being made permanent as well as being expanded throughout the entire country. Currently, are any one of your industries using any multimodal methods with rail, but also with shipping by rail and road, and at what capacity?

Mr. Brendan Marshall: The mining industry uses all modes of transportation, ranging from millions of tonnes of coal or iron ore—which is a relatively low-value, high-volume product—to gold and diamonds, which people will fly out on a plane in a briefcase. The whole spectrum of transportation usage is in effect for mining.

Mr. Vance Badawey: Thank you.

What about the rest of the folks?

Mr. David Podruzny: I would add that intermodal shipping is important to us because of our international shipments. We have to get containers to ports and then load them on, so port service is just as important and can become a constraint from time to time. Then we move them by marine to get to international markets around the world.

Mr. Vance Badawey: Right.

Mr. Philip de Kemp: I'll give you an example. As far as the malting industry goes, the largest maltster in Canada couldn't get railcars to ship malt and barley to Montreal, but could get containers on time and all the time. Mind you, you have to ship it in 20-tonne containers because they need to get the containers back to port for the haul back overseas. They can't get the cars, but they can get the containers, so that's what they're doing.

Mr. Greg Northey: Sixteen per cent of all our movement is through container. Virtually all the movement of what we send east is through container. Twenty-five per cent of special crops move in container. We've developed specialized supply chains whereby we'll move product in bulk to Port Metro Vancouver and transload it into an ocean container.

• (1000)

Mr. Vance Badawey: Of course that capacity with respect to each method of transportation would change based on an overall national strategy, and, quite frankly, that can be international with respect to working with other countries that may be integrated within our transportation network.

All of that being said, with respect to how you're operating, as you may know, the Canada Transportation Act review has been tabled by the minister, and this committee is moving toward establishing a transportation and logistics strategy for all modes of transport as well as all of the commodities that are utilizing those modes of transport.

Do you think, given a lot of the comments and opinions that have been expressed today and a lot of the recommendations that may come out of this exercise with Bill C-30, that this strategy should take the recommendations out of a process of strategizing? Having a recommendation come forward may in fact suffice for the interim, but ultimately the overall recommendations that would come forward would come out of that strategy. What are your thoughts on that?

Mr. David Podruzny: I'd be very concerned that we not wait for the perfect.

At this point, there is a service issue. There is a service imbalance. There's an information issue. I believe that intermodal is very important and getting to international markets is very important. Most of our product is still moving north-south or east-west within North America, so the harmonization with the U.S. systems and rail system is, in my opinion, job one.

The intermodal aspect is very important. I would be concerned that we not delay. We've already been in discussions around service imbalances for over a decade, and the problems aren't getting better. I appreciate that we do need a national strategy that covers intermodal movement, but in the meantime we also need improved rail service.

Mr. Vance Badawey: When you're looking at improved rail service, are you looking at something that's more interim in nature or more permanent in nature, taking into consideration that in fact we are moving forward with establishing a strategy?

Mr. David Podruzny: I think it's an all-of-the-above approach, because an investor looking at whether to come here versus whether to go somewhere else is going to want to have a robust system in place to move the finished products. As I said at the outset, 80% of our production has to move by rail. If the system isn't continuously

improving, then the investor is going to say, "You can barely move what you're already producing; why add new capacity? We'll invest down in Texas and Louisiana. Thank you very much."

Mr. Vance Badawey: My last question is with respect to the barley industry. It was mentioned earlier that the CTA should be given more power. Do the chemical and mining associations agree? If so, will this help move your commodity?

Mr. Brendan Marshall: We're still reviewing some of the recommendations in the Canada Transportation Act, but with respect to creating a super-agency, there is some uncertainty over how effective that would be in addressing some of the challenges that shippers face.

I've been working on this file through the last four pieces of legislation that have affected the rail freight market in one respect or another. I can't reiterate strongly enough that the need to clearly right-size any policy changes or regulatory changes to the market is crucial to actually having the desired effect. If we look back on those pieces of legislation, specifically from a rail freight service standpoint, we can see that the outcome has not matched the desired effect. We're urging, respectfully, a database-informed approach, regardless of whether that is with respect to empowering the agency or otherwise. For us, the most important first step needs to be to clearly identify the problems so that a refined—

• (1005)

Mr. Vance Badawey: This is part of the strategy, with respect to a transportation and logistics strategy. It is also a management—

Mr. Brendan Marshall: Yes.

The Chair: Thank you very much.

Mrs. Block is next.

Mrs. Kelly Block: Thanks very much, Madam Chair.

I would like to continue where my colleagues have left off. I think good is not the enemy of best, and any improvements that can be made as we move toward a transportation strategy should be made in an effort to address concerns that are being raised from our shippers and producers. I think that is why we took on the study of Bill C-30, recognizing that some of the issues will be embedded in a national strategy as we determine what sort of recommendations we might want to make after having a conversation with all of our stakeholders.

I know we focused a fair bit on interswitching with every panel, and what I heard today was that it was a tool in the tool box that somehow helped to rebalance the market powers that exist.

I want to follow up on some of the comments that have been made about the agency.

You talked about interswitching as a tool and about increased data sharing as another tool that would help. Are there any other measures or tools that you could share with us that need to be put in that tool box, that would help make this system a more efficient and effective system for our producers and shippers, while recognizing that we need the railways in order to keep our economy going?

Ms. Lauren van den Berg: I think all of those are exceptionally useful tools, and at the risk of beating a dead horse, I think probably the most important one, coming back to Brendan's point, is the data. It is the fact that operating as captive shippers, which I think all of us around this table would admit to, we find that the railways tell us that their data is fine and that we shouldn't worry about it, but we do, because that is our business. That is our livelihood. Those day-to-day operations are how we get by.

Going to the flip side, built into the contracts and the service level agreements that our shippers sign with the railways, there is a confidentiality clause stipulating that they can't even share data with associations such as us half the time, when we are trying to undertake a study that compares the rates to transport dangerous goods to the rates to transport safer products. Even telling us that it's confidential breaks the confidentiality clause.

It is a little bit tough to ask at this point, so before we talk about what other tools we can implement or what other tools we can line the tool box with, I think we should be finding out what the playing field actually looks like, looking at the data, assessing where the gaps are, and then addressing any regulatory measures we can or should implement.

Mr. David Podruzny: There is one, though, that maybe we should consider, and that is that the offer of the agency to actually instigate a study or to see something and react to it by undertaking its own work. There is an area of increased responsibility that could be granted that could have a very good result.

Mr. Greg Northey: I would like to build on that, especially that last point.

Right now the measures and remedies in the act, such as those related to level-of-service complaints, happen after the problem has occurred. This is why the ability of the agency to investigate and act on its own motion, *ex parte*...they have the data and they can assess what is happening.

For small and medium-sized shippers who may be reluctant to use very expensive remedies in a confrontational, adversarial relationship with railways, it is very expensive and it happens after the fact. To have an agency that has the power to address issues so that a shipper doesn't have to go and address those systematic issues in the system after a two-month service failure is very important. It would address a lot of the problems as far as service goes. It wasn't happening.

Mrs. Kelly Block: Following up, what would the mechanism be for the agency to know there is an issue? How would they know what to investigate, if it wasn't as a result of something that has gone wrong?

Mr. Greg Northey: It's data, real-time granular data, and expertise to assess it.

Mrs. Kelly Block: Thank you.

The Chair: Mr. Aubin, we can get you in for a short round of questions, if you like.

[Translation]

Mr. Robert Aubin: Thank you, Madam Chair.

I will give Mr. Marshall time to finish answering the question asked earlier.

Mr. Marshall, what would you like to add?

• (1010)

[English]

Mr. Brendan Marshall: I want to add to that with respect to data, it's important that it's disclosed publicly. It cannot be only disclosed to the agency, because what we're trying to effect is a behavioural change between the parties at the negotiating table, and if that data goes behind closed doors, we're not going to see that behavioural change in the marketplace.

[Translation]

Mr. Robert Aubin: My next question is for all of you and the producers you represent.

Has Bill C-30 actually resulted in a notable improvement to service level agreements? Has it provided added value, or, on the contrary, has it not worked very well?

[English]

Ms. Lauren van den Berg: As I said in the beginning, the interswitching extension did have material cost savings for several of our members, but it's a minority of our members. If you're in that golden sweet spot, then you're golden. You have a more competitive environment to operate in. It provides companies with options. Instead of being accessible by only one carrier, you now have the grand option of two. It's not great, but it's still a much-needed improvement for a competitive market operator in getting goods to a competitive market, whether it's across Canada or internationally.

Part of the problem is the data. I can't give you a specific number of improvements. Partly that is because our members don't have it and partly it is because our members can't tell us. They can't tell us what their cost savings have been because it's confidential; the class 1 railway contracts don't allow them to share that. It's like trying to solve a Rubik's Cube with one hand tied behind your back. It's a little frustrating for all of us around the table, because we know the answers are out there, but they are tantalizingly out of reach.

I would be interested in what MAC's legal proposal would be to construct and analyze the data, because it would bear a great deal of fruit.

[Translation]

Mr. Robert Aubin: Mr. Northey, do you have anything to add?

[English]

Mr. Greg Northey: We see the provisions in Bill C-30 as building blocks that go into the overall strategy. No one of them is the solution, but they certainly represent key directional ideas for how things should go. A provision that hasn't been discussed a lot is this idea that the agency was given powers in Bill C-30 to award expenses for non-performance, and the general concept of financial consequences when a railway fails to perform is an important one. It goes to this idea that we talk about financial consequences. The idea's there and it's been established, and now we can build on it.

Mr. Brendan Marshall: I would like to add briefly to that. With respect to mandatory volume commitments, we think that's the wrong way to go. It's piecemeal, picking winners and losers in the rail freight market approach. In the long run, further policy steps in that direction are going to be detrimental, so we're wary of that.

I've already spoken about interswitching and the other components, so I'll leave it at that.

Mr. David Podruzny: Just to offer a point of perspective, I'll use the power of two here.

There are two mainline railways in Canada. In our business, what competitiveness means is that globally no company has 2% of global production or trade. That's competition. That's what we compete with daily as members in our sector, yet we're often up against a monopoly.

It is foreign territory for many of our companies to have to deal with someone who has the option of saying, "Common carrier provision or not, we're only going to bring you cars after midnight and we're in North Van." You can imagine what the municipality has to say about that.

There is no reciprocity when you're dealing with a monopoly. That's why we count on the agency and that's why we count on the Transportation Act to provide the rebalancing. The information sharing will go a long way in that too.

The Chair: Thank you.

The information you're giving us today has been invaluable to all of us, and I'd like to see if we could squeeze in one question from Ms. Block and one question from Mr. Iacono.

Ask brief questions, please, and don't take not too long with answers. Give us the most critical points for a few minutes, if that's all right with the committee.

Go ahead.

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

My original question will be for Mr. Northey, and then others can take an opportunity to quickly answer it.

I think what I heard you share with us was a best practice. As an association, you are collecting the data weekly, so that you are basing some of your complaints or observations on real data and not anecdotal information.

My question is for all of you. Is there a table that you come together around as different industries to discuss issues and common themes that you might have when it comes to the level of service

you're receiving from the railways? Do you have an opportunity to share that and then provide recommendations back to a group like ours?

• (1015)

Mr. Brendan Marshall: Yes. There is a commodity supply chain table that was established by the previous administration. MAC is represented by a member company, and I know that other industry associations and industries are also represented, as well as the railways.

I would also caution you that the discussion around that table to date has been limited through a reluctance to engage in substantive data sharing and analysis.

The only other piece that I would add to the context is with respect to the current data that the grain industry shares. I've said it is fantastic, and they should be commended, but it's not capacity data. I think it's really important to draw that distinction. I follow that data.

The grain industry recently has been getting better support from a cars-ordered versus cars-delivered standpoint. We still have no idea of what's happening in the rest of the network as a result. That could be CN and CP knowing that they're under the microscope, wanting to appear to be delivering good service everywhere, and being able to point to it through grain statistics. It's a challenging situation, despite good steps forward.

Ms. Lauren van den Berg: I'll add to that. There are several ad hoc working groups and consultation round tables that we participate in. Our members participate with us in representing the association. We work with government and Transport Canada, along with other shippers, to share this message about the power imbalance and what's it like to operate within those constraints. What they do with those recommendations, I couldn't tell you.

Mr. Ken Hardie: In deference to my colleague, who wants to make a short statement, I'll make a short statement. You don't need to answer and use up time.

I need to hear from you. I'd like something on paper that says what the barriers today are to sharing right now—your data, as well as the railways' data—and what kind of data you are looking for. Something back to us in a written form would be perfect.

Mr. Vance Badawey: We're obviously talking about an interim solution here to some extent, because we are moving forward with a strategy. As Ms. Block said, it's equally important that we do come up with that resolve.

However, the statement I want to make is that as we move forward with the strategy, there's going to be a lot more attached to it, including the interswitching issue. I really encourage you folks and I want to empower you to be a part of that process.

It's going to be some time before we can ultimately come up with that strategy, but there are going to be a lot of people involved and it's going to have a lot attached to it. We need folks like you to be part-authors of that strategy. I encourage your involvement.

The Chair: Mr. Aubin, by any chance do you have one more question you'd like to get in? You're all right? Okay.

To all of you, thank you so very much for coming and for sharing not only the problems but the solutions, because we are at the point

of looking for solutions and recommendations to go forward. If you have any additional information you want to share with the committee that is specifically solution-focused, we would very much appreciate receiving that quickly, as quickly as you can.

Thank you very much. I would ask you all to leave, as we have to do some committee business.

[Proceedings continue in camera]

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