

BILL C-49: IS THE LONG-HAUL INTERSWITCHING REMEDY REALLY NEW?

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As we recently [reported](#), the Government of Canada has introduced the “*Transportation Modernization Act*” (Bill C-49) into the House, which would amend the *Canada Transportation Act* (the “**CTA**”). Among other things, Bill C-49 proposes a new rail shipper remedy to be known as “long-haul interswitching” (“**LHI**”).

The LHI remedy would allow a shipper that has access to only one class 1 rail carrier (the local carrier) at a point of origin or destination to apply to the Canadian Transportation Agency for a “long haul interswitching order”. The order would require the local carrier to transport the shipper’s traffic from that point to the nearest interchange at a rate determined by the Agency, for furtherance beyond by a connecting federal railway company. We have compared the LHI remedy to the existing competitive line rate (“**CLR**”) remedy, which Bill C-49 seeks to repeal.

The National Transportation Act Review Commission as far back as 1993 found the CLR remedy had been rendered “largely inoperative” in Canada because CN and CP had simply declined to compete with each other through CLRs. Some shippers expressed a concern about a prerequisite to its use (namely, agreement with the connecting carrier). The LHI remedy removes that prerequisite. However, a bigger obstacle to the use of the CLR remedy is whether the terms imposed by the connecting carrier, including the rate, are acceptable. The LHI remedy does not overcome this obstacle in any way.

The LHI remedy is also considerably more restrictive than the CLR remedy has ever been. In part, this is because it significantly limits the range of potential applicants. We have prepared a summary, available upon request from the authors, that identifies many of these limitations and contrasts the LHI and CLR remedies in various key respects.

Despite these restrictions, some shippers may find the LHI remedy useful. For example, shippers with facilities in Alberta, Saskatchewan or Manitoba that benefit from the current Zone 5 interswitching distance of 160 kilometres may seek to rely upon the LHI remedy when this Zone is eliminated on August 1. Also, some eligible shippers with facilities located outside those three provinces may be able to use the LHI remedy to reach an interchange with a carrier that is willing to compete for the traffic. Other means may exist that are more

helpful to those and other shippers, however.

Please do not hesitate to contact us if you wish to set up a private briefing to discuss the LHI remedy, Bill C-49 or any of the other shipper remedies under the CTA.

Strategy, Negotiations, Resolution



(from left to right: Louis Zivot, [Lucia Stuhldreier](#), [Ryan](#)

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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