

**Submission
to the
House of Commons Standing Committee
on Transportation, Infrastructure and Communities**

on

Bill C-11

**An Act to Amend
the
Canada Transportation Act
and
*Railway Safety Act***

**Submitted by
Honourable Ron Lemieux
Minister of Infrastructure and Transportation
Province of Manitoba**

October 2006

Introduction

Manitoba welcomes the opportunity to present our views on Bill C-11, an *Act to Amend the Canada Transportation Act and Railway Safety Act*, to the members of the Standing Committee on Transportation, Infrastructure and Communities.

The province is well-positioned to comment on an appropriate institutional and policy framework supporting our transportation system. Transportation as a proportion of GDP is of greater importance to Manitoba than any other province or territory. We have a well-diversified economy, with significant and varied manufacturing, industrial and primary sectors. Our relatively small population makes it necessary for our industries to export their goods to other markets for survival and growth. In 2005, Manitoba exported \$10.0 billion worth of goods to the rest of the world. Exports are about 23.8% of our Gross Domestic Product of \$42 billion. Manitoba imported \$11.8 billion worth of goods from the rest of the world. Lastly, with our advantageous northern mid-continental location, we are positioned to further evolve as a transportation gateway province by capitalizing on emerging global supply chain trends, such as heightened Asian-North America container streams and air polar route development. In all, a wide modal array of effective and efficient transportation options is an economic need for Manitoba.

Manitoba's understands that Transport Canada intends to introduce a third Bill amending the *Canada Transportation Act* (CTA), dealing largely with the substantive issues of railway competition, levels of service, shipper protection provisions and the Canadian Transportation Agency (Agency) role. Manitoba intends to comment on the scope of the issues being treated in that Bill when it is introduced, and therefore we will limit our comments on Bill C-11 to the proposed amendments of significant interest to Manitoba, and the specific issues they may raise.

Policy Principles

Manitoba's approach to the national transportation system is predicated on several principles—also largely reflected in the National Policy Statement—and it is against these principles to which we are assessing the efficacy of any proposed amendments to the CTA.

Serve Shippers and Travellers & Economic Growth: The primary objectives of the national transportation system—and therefore its policy and legislative basis—should be to serve the needs of travellers and shippers, and to maintain the economic well-being and growth of Canada and its regions.

Competition as the Mechanism: Manitoba believes the objectives of serving the needs of shippers and travellers and the well-being of our regions is best achieved where the national policy and legislative framework provides for as open and fair competition amongst carriers as reasonably possible. Competition—on an intra and inter modal basis, and domestically and internationally—will produce the best systemic results at any point in time and over time.

Government Role to Foster Competitive Behaviour: Manitoba also considers, however, that where transportation markets are not functioning in a competitive manner to maximize benefits to shippers and travellers, governments have the responsibility—via legislation, policy and regulation—to address any structural issues that limit competition. Measures that reasonably induce vigorous competition and competitive behaviour between transportation companies are valued in this respect.

Any Standing Committee approach to the review of proposed amendments to the CTA, be it for Bill C-11 or future proposed Bills, should be measured against these yardsticks. We now will treat some of the specific proposed amendments and issue areas raised in Bill C-11.

National Transportation Policy Statement

Manitoba generally concurs with the proposed amendments and simplified framework for a revised National Transportation Policy Statement.

Bill C-11 significantly revises and reduces in content the National Policy Statement in the CTA. In Bill C-11, the statement of goals in the policy declaration identifies three goals for the transportation system; serve the needs of users, advance the well-being of Canadians, and enable competitiveness and economic growth in both urban and rural areas throughout Canada.

Manitoba notes the elimination of the explicit reference to transportation as a tool of regional development, and a facilitator of international trade. Consistent with our principles espoused above, Manitoba believes that the National Policy Statement in the CTA should continue to reflect that transportation has a role in facilitating economic development within Canada and its regions, and trade within Canada and between Canada and the rest of the world.

The proposed Bill C-11 goal of the transportation system, “to enable competitiveness and economic growth in both urban and rural areas throughout Canada” appears to be a more concise way of expressing this policy intent. However, Manitoba recommends that the Standing Committee re-affirm that this proposed goal and wording is indeed intended to reflect the importance of transportation as a tool for regional development and international trade.

- 1. Manitoba recommends that the Standing Committee confirm in its report to Parliament that the National Transportation Policy Statement goal of enabling competitiveness and economic growth in both urban and rural areas throughout Canada is intended to reflect the importance of transportation to regional development and international trade.***

Residency Requirement for Members of the Canadian Transportation Agency

Manitoba is concerned that Bill C-11 will amend Section 18(2) of the CTA to require all members of the Agency to reside in the National Capital Region, not just the Chair. The different regions of Canada have differing transportation needs and adequate regional representation is required. We are concerned that a residency requirement will deter candidates from various regions of the country from accepting appointments to the Agency if they must re-locate for the duration of their term. Administrative expediency should not outweigh the imperative that the Agency membership and the processes to determine that membership be devised to reflect the regional composition of Canada.

- 2. Manitoba recommends that the Standing Committee delete Section 6 of Bill C-11 which would amend the residency requirement to require all Agency members to reside in the National Capital Region.***

Sharing Transportation Information with Provincial Ministers

The old *National Transportation Act* (NTA) recognized the strong role of the provinces in national transportation deliberations, insofar that it permitted data collected by federal carriers to be provided to the provinces through the federal Transport Minister. For reasons not well articulated at the time, this provision was not carried over to the CTA when it was introduced in 1996.

With the recent federal withdrawal from the ownership and operation of transport sector enterprises in the public and regional interest, it is the provinces and territories who are now playing a bigger role with

respect to transportation and regional economic development needs. In order to fulfil this role in Manitoba, there is a requirement for our jurisdiction to have access to national transportation data, to better plan the strategic economic development of our systems on a multi-modal and efficient basis. In the context of a now largely deregulated transport sector, however, and that much of the data is within the realm of federally regulated transport undertakings, Manitoba's—and other provinces and territories—current ability to tap into crucial data for such use is restricted.

The old *NTA* allowed provincial Ministers to access the same confidential information used in transportation policy development at the national stage and enabled meaningful consultations and federal-provincial collaboration for transportation policy development. Manitoba recommends that such provisions be reinserted into national transportation legislation, as a critical foundation for better and more collaborative national transportation policy and planning development.

- 3. Manitoba recommends that the Standing Committee, through Bill C-11, amend Section 51 of the Canada Transportation Act to permit the Minister of Transport to request that carriers under federal jurisdiction provide confidential information provided to the Minister of Transport to provincial Transportation Ministers upon request.***

Future CTA Reviews

Bill C-11 proposes to extend from 4 to 8 years the time period by which a review of transportation policy and all legislation for which the Minister of Transport is responsible must occur after proclamation of the amended CTA. Manitoba opposes this extension. Eight years is too long between the proclamation of an amended Act and the opportunity to review transportation policy and legislation in Canada. We note that the proposed amendments in Bill C-11 will be proclaimed more than 10 years after proclamation of the CTA despite the existing requirement for a 4-year review. Parliament should be able to act sooner to amend ineffective legislation and respond to new circumstances in a changing environment.

- 4. Manitoba recommends that the Standing Committee, through Bill C-11, amend Section 53 of the Canada Transportation Act to require a comprehensive review five years after proclamation of an amended Canada Transportation Act.***

Review of Mergers and Acquisitions

Bill C-11 proposes to extend the CTA provisions to review mergers and acquisitions, which currently apply only to the airline industry, to all federally regulated transportation undertakings of significant size.

The proposed review of merger amendments take place in the context of a recent trend in many industry sectors, including transportation, toward a reduction in the number of competitors by firms merging through acquisition and consolidation. This is a matter of public concern. We in Manitoba are concerned about transportation company mergers that may create a dominant carrier or carriers having market power to charge unreasonable prices, disregard the service needs of shippers and travellers, and to erect barriers to new market entrants. Our concerns are especially applicable to the air and rail sectors—whose industry structures demand a strong government merger and acquisitions oversight role in the public interest—but they apply in principle to other transport markets contemplated by the proposed amendments, be they marine carriers, ports and so on.¹

The Canadian rail industry, for example, differs crucially from an ideal competitive structure in that it is characterized by two dominant carriers who control their own infrastructure and can prevent direct customer access to rail industry competitors—hence the term “captive” shipper. In the recent past, proposed mergers between Canadian National Railway (CN) and Canadian Pacific Railway (CPR), CN

and Burlington Northern Santa Fe Railway (BNSF), and CPR and Union Pacific Railway have been seriously entertained. As a parallel step to introducing competitive behaviour into the industry—hopefully the subject of the forthcoming Third Bill to amend the CTA—Manitoba believes that the federal government must ensure adequate means are in place to review and prevent anti-competitive domestic and international rail industry mergers, and co-ordinate any efforts to examine continental rail merger plans with American regulatory agencies.

In the air industry, compared to a few years ago when Air Canada held a dominant market share, new and growing entrants have now seized more market-share, creating a more competitive situation and balance in the current air services market. That being said, the domestic industry is still characterized by two major and dominant players. Manitoba, in a submission to the Standing Committee in 2005, supports means to encourage even further the objectives of a viable and competitive air industry structure.² Again, a strong merger and acquisitions oversight function, as proposed by Bill C-11, is a necessary tool for the federal government to have in assuring competition-inducing structures are in place within these two sectors, in addition to other legislative or policy means to encourage competitive behaviour.

Mergers and acquisitions in the transportation sector may significantly affect the public interest in some regions of the country, but not all. In those cases, the provincial and territorial governments of the affected regions should be consulted on matters of regional public interest. The Standing Committee should take the opportunity in its report to re-affirm and consider amendments that formally acknowledge this legitimate role for the provinces and territories in review of mergers and acquisitions.

5. *Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to review of mergers and acquisitions with the recommended enhancement noted in Recommendation 6 following.*
6. *Manitoba recommends that the Standing Committee amend the provisions of Bill C-11 pertaining to reviews of merger and acquisitions to require that the “Agency or person, as the case may be, consult with provinces and territories in whose jurisdictions the operations of any of the federal transportation undertakings under proposed merger or acquisition review take place.”*

Airline Industry

Manitoba agrees that the Agency should have the authority to handle air passenger complaints among its regular duties. Bill C-11 also includes an amendment empowering the Agency to regulate advertising of air service prices, including an ability to require the carrier to include all of its costs in its advertised fare, and to advertise all other charges collected for other parties.

7. *Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to airline industry advertising regulations.*

Competition, while generally positive, can create instability and unpredictability in the market-place, resulting in ever-changing city-pairs, rates, frequencies, aircraft gauge, and even carriers themselves. For example, while consumers benefited from JetsGo’s existence as a discount carrier through lower fares, its bankruptcy caused much hardship to many Manitobans and Canadians, who had booked and pre-paid for flights beyond the date JetsGo ceased operations. As a protection to travellers and shippers in a new competitive era in the domestic air services market, the federal government should consider the creation with the airline industry of a framework to recompense travellers in the event of carriers ceasing operations. Manitoba recommends that the federal government, in concert with the airline industry, should take steps to implement a national passenger protection program to deal with cases when an airline goes out of business.

8. *Manitoba recommends that the Standing Committee amend Bill C-11 to include provision for an appropriate legislative framework as may be required for the development of a national airline passenger protection program.*

Rail Line Abandonment

Bill C-11 amends the rail line abandonment provisions to require a railway wanting to abandon a rail line in a metropolitan centre to offer the line to a transit authority as well as governments. The Bill also requires the railways to publicize the spur lines or sidings in a metropolitan centre it wants to abandon, and offer them to a transit authority and governments before abandonment except those on right-of-ways which will continue to be used for railway operations after their dismantlement. These exclude sidings or spur lines where the railway intends to use the property for its own use.

9. *Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to the inclusion of transit authorities as parties to receive offers with respect to metropolitan rail lines and spur/sidings intended for abandonment.*

Maximum Revenue Entitlement (Revenue Caps)

Manitoba supports the one-time adjustment of the revenue caps in Section 57 of Bill C-11 to ensure that the allowance for maintenance for all railcars in grain service reflects the actual amount spent. Manitoba is concerned about reports that the amount actually spent is less than what shippers are expected to pay for maintenance and that the condition of many of the railcars in grain service is poor. We would like to see the Minister of Transport direct the Agency to make this adjustment immediately after Bill C-11 is proclaimed.

Manitoba also supports Section 43 of Bill C-11 which clarifies how the Agency should adjust the revenue cap after the federal government hopper car fleet is leased or sold, and enables the Agency to do this at any time during the year. The existing clause only allows for an increase in the revenue cap to cover the new leasing costs paid by the railways, but not for any adjustment in the costs of maintaining those railcars.

10. *Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to Section 151 of the Canada Transportation Act dealing with the grain revenue caps.*

Agreements with Provincial Ministers Regarding Provincial Railways

Manitoba Infrastructure and Transportation now has an agreement with Transport Canada on railway safety inspections and accident investigations with respect to our shortlines. As contemplated by Bill C-11, permitting the Minister of Transport to make formal agreements with provincial ministers regarding provincial railways on a whole host of matters would provide for consistent treatment of railways in Manitoba, and streamline regulatory mechanisms. Manitoba's provincial railway legislation also offers similar scope for joint action.

11. *Manitoba recommends that the Standing Committee accept the amendment in Bill C-11 permitting the Minister of Transport to make formal agreements with provincial ministers regarding provincial railways on safety, accident investigation, crossings, noise or rates or conditions of service.*

Conclusion

The task you have before you as Parliamentarians is important, as transportation is a vital sector that connects the regions of the nation together, and our nation to the world. The establishment of a sound domestic and international transportation legislative framework is critical, and we are pleased that the Standing Committee, through its deliberations on Bill C-11 and future CTA amending Bills, will help shape the system for the 21st century. Manitoba is pleased to respond to any questions that the Standing Committee may have on our position regarding Bill C-11.

¹ The Competition Bureau in its Merger Enforcement Guideline notes that in a market where a few firms operate, the firms can engage in interdependent behaviour to implicitly coordinate their conduct and limit competition. The guidelines cite an observation of the Competition Tribunal: *“It is generally accepted that where there are only two major competitors in a market there is increased opportunity to engage in collusive behaviour”*.

² Honourable Ron Lemieux Minister of Transportation & Government Services, Province of Manitoba, June 2005 Submission to the House of Commons Standing Committee on Transportation, on Air Liberalization and Canadian Airports System.

Summary of Manitoba's Recommendations

National Transportation Policy Statement

1. Manitoba recommends that the Standing Committee confirm in its report to Parliament that the National Transportation Policy Statement goal of enabling competitiveness and economic growth in both urban and rural areas throughout Canada is intended to reflect the importance of transportation to regional development and international trade.

Residency Requirement for Members of the Canadian Transportation Agency

2. Manitoba recommends that the Standing Committee delete Section 6 of Bill C-11 which would amend the residency requirement to require all Agency members to reside in the National Capital Region.

Sharing Transportation Information with Provincial Ministers

3. Manitoba recommends that the Standing Committee, through Bill C-11, amend Section 51 of the *Canada Transportation Act* to permit the Minister of Transport to request that carriers under federal jurisdiction provide confidential information provided to the Minister of Transport to provincial Transportation Ministers upon request.

Future CTA Reviews

4. Manitoba recommends that the Standing Committee, through Bill C-11, amend Section 53 of the *Canada Transportation Act* to require a comprehensive review five years after proclamation of an amended Canada Transportation Act.

Review of Mergers and Acquisitions

5. Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to review of mergers and acquisitions with the recommended enhancement noted in Recommendation 6 following.
6. Manitoba recommends that the Standing Committee amend the provisions of Bill C-11 pertaining to reviews of merger and acquisitions to require that the "Agency or person, as the case may be, consult with provinces and territories in whose jurisdictions the operations of any of the federal transportation undertakings under proposed merger or acquisition review take place."

Airline Industry

7. Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to airline industry advertising regulations.
8. Manitoba recommends that the Standing Committee amend Bill C-11 to include provision for an appropriate legislative framework as may be required for the development of a national airline passenger protection program.

Rail Line Abandonment

9. Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to the inclusion of transit authorities as parties to receive offers with respect to metropolitan rail lines and spur/sidings intended for abandonment.

Maximum Revenue Entitlement (Revenue Caps)

10. Manitoba recommends that the Standing Committee accept the amendments in Bill C-11 pertaining to Section 151 of the *Canada Transportation Act* dealing with the grain revenue caps.

Agreements with Provincial Ministers Regarding Provincial Railways

11. Manitoba recommends that the Standing Committee accept the amendment in Bill C-11 permitting the Minister of Transport to make formal agreements with provincial ministers regarding provincial railways on safety, accident investigation, crossings, noise or rates or conditions of service.