

Understanding Competitive Rail Access & Position Profiles

March 13, 2001

The Need

Canada's economic well being is built on the ability of Canadian shippers to compete successfully in global markets and the continued existence of an excellent transportation system supporting shipper performance.

There is widespread agreement that a market driven transportation system is the number one choice, and that rail is a critical component.

There is fairly strong consensus that at least some freight traffic which has been lost to the trucking industry should return to rail.

There is also growing agreement that there may be some inequity in the tax and infrastructure treatment between the rail and the road modes.

Railways understand their role in enhancing the prospects for Canada's economy by being first-rate service providers to their full range of customers.

"Policy makers now have the opportunity to recognize the imperative of having a world class, integrated transportation system, where each mode contributes optimally to provide Canadian manufacturers and producers with flexible, innovative, reliable world-competitive service at the lowest overall cost".

Canadian Pacific Railway

Shippers want competitive rail transportation choices. At issue is whether users have those choices and what, if anything, needs to be changed in the Canada Transportation Act (CTA) to ensure that it promotes competition.

While we generally agree that we have an excellent transportation system, and that it must be constantly improved if it is not to be overtaken by other nations and systems, we disagree on the next steps. There is a need to resolve these disagreements and move on.

The Debate

The Canadian Shippers' Summit representing "more than three-quarters of CN's and CPR's rail freight revenues" – says that the existing provisions of the CTA are ineffective. A prime focus is therefore how to increase competition "to obtain relief from monopolistic behaviour" (*Western Canadian Shippers Coalition*).

One segment of shippers, the prairie grain farmer, is concerned not only about the balance of power between the shipper and the railway, but also about whether the benefits of increased competition are passed on to the producer.

The national railways have a polar opposite position to the shippers' proposed remedies. They say healthy competition already exists. Moreover, they believe that the shipper proposals, if implemented, would not yield a more efficient rail transportation system and would jeopardize the future of Canada's rail industry.

Other parties such as the western provinces, home to many rail dependent shippers in the resource sector, have joined the debate with their own calls for change. Provincial and municipal governments are concerned about losing rail service and the resulting cost impacts on an already overburdened highway system. Above all, they want Canadian exports to remain competitive.

Background . . .

A comprehensive review of Canada's legislation governing transportation began in mid-2000. The review, required under the Canada Transportation Act, 1996 (CTA) was to cover the CTA and any other act for which the Minister of Transport is responsible. The five-person panel carrying out this review must submit its final report by July, 2001.

The terms of reference require an examination of issues requiring special attention, i.e. options to enhance competition in rail. An Interim Report on this subject was prepared and released by the Minister on January 10.

This paper . . .

This paper has been prepared for the Review Panel to outline the issues and options for change in Canada's rail sector. Competitive rail access, and the related topics of emerging market structures and the sustainability of capital spending are included.

An analysis of 150 submissions posted on the Review Panel's website as of February 15 was made. The Panel's Interim Report and paper on Issues Under Consideration (released January 19) were also reviewed.

The paper contains:

- descriptions of the **options** to enhance rail competition, compared with current CTA provisions (*Pages 3-5*);
 - **critical questions** concerning **access rules** (*Page 6*) and **rates** (*Page 7*);
 - profiles on **sustainability of capital spending** and **emerging market structures** (*Pages 8-9*);
 - **stakeholder profiles** for shippers, railways, governments, labour and others (*Pages 10-12*).
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The Vision

The goal of Canada's transportation policy is to maintain a safe, economic, efficient and adequate network of viable and effective transportation services, achieved whenever possible through competition and market forces (*Section 5, CTA*).

While this statement is re-affirmed in submissions across the spectrum of stakeholders, many take the position that more is needed. Several mention the need to explicitly link transportation to trade competitiveness and economic growth.

"Canada's future competitiveness is at stake here, in relation to what other trading countries are doing to improve their transportation and logistics infrastructure".

Government of Alberta

The need for a comprehensive *vision* for a national transportation policy and principles to help realize the vision are raised in many submissions. It is viewed that a set of guiding principles would clarify what government policy can and cannot achieve, and would serve as the basis for testing policy options.

The development of this vision is seen as critical to achieving excellence in all aspects of transportation in Canada.

The Challenge

There is a compelling need to determine the principles on which any change will be based. Efficiency, competitiveness, fairness, the role of government, regional development, modal equity, and sustainability need to be recognized and addressed. These principles will help establish a framework for evaluating the impacts and tradeoffs associated with different choices.

It won't be easy: apparent broad support for solutions can quickly splinter as different variations of proposed changes advance.

The challenge that must be met is to move from the entrenched positions that leave no room for advancement, to constructive dialogue that will incorporate: clear understanding; compromise where required; and a willingness to make changes that will result in a transportation system fully capable of meeting Canada's needs for the foreseeable future.

"The challenge facing Review Panel members is to balance the legitimate concerns of shippers with the fundamental requirement for an internationally competitive rail system."

Canadian National

Notes . . .

Every effort has been made to present the key issues in a neutral and balanced fashion with the objective of focussing all interested parties on identifying workable solutions.

Terminology used in the paper . . .

Agency – the Canadian Transportation Agency

CAR – Competitive access rate

CLR – Competitive line rate

Connecting carrier – a carrier serving shippers located on the lines of a local carrier by means of interchanging traffic

CTA – Canada Transportation Act, 1996

CWB – Canadian Wheat Board

Federal railway – federally regulated railway, also called national railways, i.e., CN and CPR

FOA – Final offer arbitration

Local carrier – a carrier serving shippers located exclusively on its lines

Provincial railway – any railway regulated under provincial jurisdiction

About WESTAC . . .

WESTAC is a non-profit association dedicated to the advancement of the Western Canadian economy through the continued improvement of the region's transportation system. The Council, formed in 1973, has an active and diverse membership of business, labour and government leaders in all facets of transportation. Guided by the principles of integrity, accuracy, relevance, responsiveness, and objectivity, WESTAC is founded on the view that issues are best resolved through a non-confrontational, non-adversarial approach.

Options for Enhancing Rail Competition

Considerations

Shippers emphasize that, with the exception of interswitching and final offer arbitration, the competitive access provisions in the CTA are not being used. Some such as the Canadian Fertilizer Institute, recognize FOA as the “single most important provision in the CTA” because it acts as a safeguard to assist shippers secure competitive rates and services without regulatory intervention.

The Shippers’ Summit suggests there are two fundamental principles:

- competitive access provisions are an **integrated package** in order to give individual shippers the flexibility to use the remedy best suited to its own circumstances;
- **common carrier obligations** (*Sections 113-116*) are essential to give reasonable assurances of adequate rail services and rate levels.

The subject of this paper concerns options for enhancing rail competition; it thus focuses on options being advanced by shippers. CN and CPR say that vigorous competition exists today and they reject any proposals to give others access to their rail lines. For these railways, the review is as much about “issues that will *not* be taken into account, as because of those that *will* be” (CN submission, referring to imbalance of regulations among the modes and with the US regulatory regime).

The Choices

Since it is uneconomical to build duplicate rail lines to every location, there remain only two practical ways of

increasing rail transportation choices for the rail dependent shipper:

- **Access:** “Guest” operators have a legislated right to operate trains over the lines owned/operated by another “host” railway. The degree of access may vary depending on: the extent of *running rights* (i.e., only to the nearest interchange, or unrestricted access to the lines of the host railway); and whether the guest operator is permitted to compete directly for the business of the host carrier (*traffic solicitation rights*).
- **Rates:** The local railway is required to carry the traffic of shippers located on its lines to an interchange point with another railway at a regulated rate (i.e., per existing CTA provisions).

The options being advanced involve, in general, one form or another of these basic approaches. It is important to note that the options are not mutually exclusive.

Pages 4 and 5 highlight the basic options and contrast them against the existing CTA provisions. Pages 6 and 7 illustrate some of the questions which must be addressed to advance the debate.

The questions are organized by criteria and stakeholder. Concerns about the possible impacts of the various options span several key areas: financial (freight rate levels paid by the shipper, railway compensation); system efficiency and reliability of service; social and economic development; and the environment.

“Measures that encourage competitive behaviour by carriers will be more effective than measures that provide shippers redress in the event of non-competitive behaviour.”

Government of Manitoba

“With Canada’s small population and great distances, it is not possible to have model competition.”

Luscar Ltd.

Access Options

Running Rights

(Section 138)

Any **federally regulated railway** (including US railways) may apply to the Canadian Transportation Agency (Agency) for running rights where a commercial agreement cannot be negotiated. Running rights will be granted if the applicant can prove it is in the public interest to do so (**public interest test**). There have been no running rights requests filed under the CTA.

Open Access

(Expanded Running Rights)

Any operator would be able to provide rail services over any part of the rail network. Operators would have the right to solicit business from and compete directly with the “host” railway.

- Running rights would be available to “**any person**” (such as a provincial railway or a shipper), not only federally regulated railways, on a case-by-case basis.
- A federally regulated railway would have to establish that a running rights application is not in the public interest (**reverse onus test**) to prevent it. A more extreme version—full open access—would eliminate the public interest test. The Agency would determine access fees and resolve any service disputes.
- Compensation for access would be paid to the federal railway and where agreement is not reached, access fees would be established by the Agency.
- Competence and safety considerations would have to be met by the operator.

Managed Access

(OmniTRAX Proposal)

Managed access would allow a provincially regulated rail operator to be designated to serve customers on CN and CPR-owned lines with the same rights and obligations as the owning carrier.

- All railway lines other than CN/CPR main lines would be defined as “Designated Lines”.
- A limited number of carriers would operate on the Designated Lines at a fee determined either by commercial negotiation or by regulatory authority.
- Managed access carriers would have traffic rights to serve customers on all secondary main lines and branch lines of CN and CPR (i.e. solicit traffic). They would also be permitted running rights over main lines to interchange points or to final rail destination in Canada.

Shipper-Performed Switching

Large volume shippers who wish to do their own switching would be permitted to do so within existing inter-switching limits. This would be possible through expanded running rights to allow some shippers to operate their own switcher services. The aim would be to gain flexibility and reduce costs.

- The existing running rights provision would have to be amended to allow “any person” to access the lines of a federally-regulated railway.

Haulage Rights

Haulage rights would allow a regional railway to obtain running rights over the federal railway for the interchange of traffic. Traffic solicitation would not be permitted.

- Compensation for access would be paid to the federal railway and where it cannot be agreed, the regional railway would have access to the Agency's final offer arbitration to resolve the dispute.
- In order not to jeopardize the railway's provincial status, the movement of traffic would be recognized in legislation as haulage rights rather than running rights.

Rate Options

Interswitching

(Sections 111, 127, 128)

Regulated interswitching gives shippers located up to 30 km from an interchange, and with access to only one railway at the origin or destination, the right to secure services from different railways. No formal application is required to the Agency to use the provision. The Agency prescribes maximum interswitching rates for these services up to a distance limit of 30 km. This limit may be extended under certain conditions. Interswitching avoids the need to construct duplicate rail lines to access the competing railway. Some 150,000 railcars are transferred annually between the lines of CN and CPR at regulated interswitching rates.



Expanded Interswitching

The 30 km interswitching limit could be increased so that more traffic would qualify for regulated interswitching.

Regulated interswitching only applies to traffic switched between the lines of track owned by two different railway companies. Interswitching could also allow traffic to be transferred between railways, regardless of track ownership.

Competitive Line Rate

(Sections 129-136)

A competitive line rate (CLR) is for shippers beyond the 30 km interswitching limit. Where a rate cannot be agreed upon by the shipper and railway, the shipper can apply to the Agency to determine a CLR for the local railway to carry traffic from the shipper's location on its lines to an interchange with a connecting carrier. A pre-condition for a CLR is that the shipper must have an agreement with the connecting carrier for the balance of the movement. The shipper must establish that it would suffer "substantial commercial harm" if a CLR is not granted (Section 27). A CLR must be "commercially fair and reasonable" to all parties (Section 112). There have been no requests for CLRs under the CTA.

Competitive Line Rate (CLR)

Rather than a CAR, the current CLR provision could be amended to address the perceived weakness that the existing provision limits competition.

- Removes the pre-condition for the shipper to have an agreement with the connecting carrier.
- If the shipper is unable to get acceptable rate and terms from the connecting carrier the shipper could apply to the Agency to establish.
- Could be expanded to apply to provincially regulated railways.

Competitive Access Rate (CAR)

This option designed by shippers would replace CLRs and stimulate greater competition between local and connecting carriers. Shippers would determine what portion, if any, of the business would go to each carrier.

- CARs would remove the pre-condition for the shipper to have an agreement with the connecting carrier.
- The local railway could compete for the long haul movement from interchange (unlike CLRs where traffic is "lost" to connecting carrier).
- Like interswitching, CAR would be a "rate on demand" and determinations would be based on system average revenue per tonne-km, eliminating the need for hearings before the Agency.
- CARs would eliminate the need for expanded interswitching, since they apply beyond current limits.

Dispute Resolution

Final Offer Arbitration (Section 161)

FOA is designed to assist in resolving rate or service disputes. An independent arbitrator reviews the final offers made by a shipper and a railway and the arbitrator chooses one of the two offers. There have been 22 FOAs since the process was first introduced under the NTA, 1987. The availability of FOA may be an incentive to reaching a negotiated settlement. Simplified FOA rules were implemented in July, 2000 as part of the grain handling and transportation system reform. These changes also apply to commodities other than grain.

Commercial Arbitration

FOA could be replaced with a commercial arbitration process, rather than selecting one of the two final offers.

- Replace FOA with a two-tier process for large and small (e.g., under \$750,000) disputes.
- Manage the process with professional arbitrators.

When evaluating options, one needs to consider:

Access



Criteria

- **Granting of access:**
 - Blanket application, or only in cases where: shipper has no rail options or rail rates are deemed to be “excessive”?
 - Need for public interest test? Burden of proof? Negotiated or regulated?
 - What competence and safety tests would be needed?
- **Eligible operators/obligations** (“guest railways”):
 - “Any person”, other main line railways, provincial railways, the shipper?
 - Number of operators permitted?
 - Should the guest railway have level of service obligations?
- **Traffic solicitation:**
 - Available only to the “guest railway”? Reciprocal for the “host” railway?
- **Operating conditions/restrictions:**
 - Access available only to some locations? On specified lines?
- **Dispute resolution:**
 - How would disputes be resolved? Existing FOA, commercial arbitrator?
 - Is the process different depending on the size of the dispute?

Stakeholders

- **Customers:**
 - Will domestic and international customers benefit?
 - Is competition enhanced? Would more efficient operations result?
- **Shippers/Producers:**
 - Will shippers relying on enhanced access get better service/rates? Will it serve the majority of shippers? Will some shippers be worse off?
- **Railways:**
 - What is the desired balance between efficiency and regulation?
 - How much should the host railway be compensated? Will compensation be based on full cost recovery? Will the host railway shareholders be adequately compensated? Factors to consider:
 - *Operating costs* (including any added costs such as maintenance, traffic coordination and scheduling, staff, Agency costs)?
 - *Opportunity costs* (limiting the host railway’s ability to seek other traffic while busy handling traffic arising from the new operator)?
 - *Return on capital, risk and safety.* Cost of any new investments to accommodate guest railway?
 - Will the host railway absorb new costs or transfer them to another shipper? If rail revenues are reduced, will some shippers then receive poorer service?
 - Will open access cause a loss of traffic to US carriers which ultimately raises the costs for captive shippers?
- **Governments:**
 - What is the cost of regulating access? Is it greater than the benefits? Would it lead to subsidies to pay for any shortfall in railway revenues?
 - Is there a role for government to fund rail infrastructure? Will government policies ensure that the best use of each mode is made?
 - How can policies ensure the sustainability of infrastructure?
 - How will changes to policies affect compliance with trade rules?
 - If increased access is implemented, would this put Canadian railways at a disadvantage vis-à-vis US railways
- **Labour:**
 - Will there be downward pressure on the wage rates of unionized labour because of non-unionized workers operating trains on the same lines?
 - What changes will there be to working conditions?
- **Public/Community Interests:**
 - What are the long term social and environmental costs of not preserving the existing rail infrastructure from further abandonments?

Defining access:

Open access

... others permitted to operate trains and provide rail services on the lines of the federally regulated railways.

Managed access

... provided to selected rail operators, who would be designated to serve customers on the federally regulated railways’ secondary main lines and branch lines.

Shipper-performed switching

... a large volume shipper performs its own switching within the existing inter-switching limits.

Haulage rights

... would give a regional railway running rights over the federal railways lines for the interchange of traffic.

When evaluating options, one needs to consider:

Rates



Criteria

- **Competitive Rates (CLRs, CARs):**

To establish:

- Must the shipper have a rate quote from the connecting railway in advance?
- Does the shipper need to prove it would suffer substantial commercial harm if rate relief were not granted?
- Will the procedure involve a formal application to the Agency?
- Does the shipper determine what portion of the business that should go to the local and connecting carriers?

Eligible operators:

- Should provincially regulated carriers be eligible?
- Could the local railway compete for the traffic at the interchange point?

Determining the access rate:

- Is the rate relief readily available and predictable?
- How is the rate determined (e.g., based on system average rail revenues)?
- Is there any distance limit to which the access rate would apply?

- **Interswitching:**

- Can the carrier be “any person” (including shippers), or only other main line railways, provincial railways?
- Is regulated interswitching dependent on who owns the railway lines, or does it apply to transferring traffic between any two rail service providers?

- **Final offer arbitration:**

- Would existing FOA provisions apply, or would there be a commercial arbitration process?
- Is the process different depending on the size of the dispute?

Stakeholders

- **Customers:**

- Will domestic and international customers benefit?
- Is competition enhanced? Would more efficient operations result?

- **Shippers/Producers:**

- Will some shippers get lower rates? Will some face higher rates?
- How will rail service be affected?
- Will the proposed rate provision serve the majority of shippers?
- Where the producer and the shipper are not the same party, how will any cost savings be shared?

- **Railways:**

- How would total railway costs be affected?
- Who would pay for any increased costs?
- Do the new provisions provide an incentive for the railways to be more efficient?

- **Governments:**

- Will there be additional regulatory costs? If so, who pays the cost?
- How can policies ensure the sustainability of infrastructure and comply with trade rules?

- **Labour:**

- Will there be downward pressure on the wage rates of unionized labour because of non-unionized workers operating trains on the same lines?
- What changes will there be to working conditions?

- **Public/Community Interests:**

- What are the long term social and environmental costs of not preserving the existing rail infrastructure from further abandonments?

Defining the rules:

Competitive Line Rates

... a captive shipper does not need to already have a rate quote from the connecting railway or, prove it would suffer substantial commercial harm if CLR is not granted.

Competitive Access Rates

... new provision where both local and connecting carrier can compete for the traffic for the long haul portion, once rate to interchange has been determined.

Expanded interswitching

... distances expanded so interswitching rates available to shippers beyond 30 km limit.

Final Offer Arbitration

... simplify FOA process or replace with commercial arbitration.

Sustainability of Capital Spending

The sustainability of capital spending is an important topic in the railway sector. Railways must routinely spend huge amounts of capital to maintain their infrastructure, and to upgrade equipment and systems to improve productivity. The rail industry pays its own infrastructure costs and is highly capital intensive (see Note A). Availability of capital depends on the railway financial performance.

A major issue for the Review Panel is whether the existing regulatory framework and any proposed changes will “provide the opportunity for the railways to earn sufficient revenues to attract and retain capital funds for investments in infrastructure” (CPR). The railways say that if they fail to earn sufficient revenues, deterioration of the infrastructure will result and shippers will be without the future productive capacity to serve growing trade and to ensure a safe, reliable rail system.

“Competition is not the big issue for the next generation of railroads in the US. It’s capacity and infrastructure . . . where will the financing come from to build the physical plant that we need to service the tripling of traffic?”

TrafficWORLD, Jan. 2001

A second issue relates to productivity. Several stakeholders including rail labour groups cite a Conference Board of Canada report which states future improvements in railway productivity will not be found in further labour downsizing and infrastructure cutbacks.

Rather, the gains will come from investments in new equipment and technology to provide a fully modern and responsive rail transportation system.

There is some strong opposition to the railway views, suggesting that the capital structure of the railway is not as unique as the railways claim. Other network industries with similar capital requirements have responded to increased competition with productivity improvements and innovation. Why should the railways have “pricing and service freedom without being obligated to face countervailing competitive pressures provided by the entry of new firms into various markets?” (CWB and University of Saskatchewan).

The national railways are concerned that competitive access measures and rate relief provisions will undermine their ability to use demand-based, or **differential pricing** to achieve their revenue requirements.

What principles should govern the sharing of railway fixed costs? Should captive shippers have a right to some relief when rail rates reach a certain level? The Review Panel has stated that it wishes to avoid solutions that simply involve a transfer of costs between parties.

The CWB says that captive customers, “of whom the vast majority of Western Canadian grain farmers are included, are forced into paying higher transportation costs.” They claim that through price discrimination, the “railways do not neces-

sarily overcharge the customer that *can* pay more, based on the value of their goods, but rather they may overcharge the captive customer who has no alternative *but* to pay more”.

Others say differential pricing is justified as long as it is accompanied by some form of regulatory oversight. This is viewed as necessary to prevent railroads from extracting high monopoly transportation rates from captive shippers. The Winnipeg Chamber of Commerce says it is possible to have effective market forces even when there is only a single provider of infrastructure or services. This is assured wherever there is a real *threat* of new entry.

The Competition Bureau adds that the viability of railways in the face of more effective competitive access provisions is less of a concern because the CTA has made it easier for railways to exit unprofitable markets (line rationalization) and they are earning record profits.

Note A

CN says rail is three times more capital intensive than trucking. Unlike the trucking industry, the rail industry pays its own infrastructure costs, and this is a large barrier to new operators. Truckers use publicly funded highways, and partially contribute to the infrastructure through fuel taxes and other fees.

Differential Pricing

Railways must recover all their costs, including a reasonable return on capital, to remain in business. A large part of railway costs is fixed because of the very extensive infrastructure required in this industry. Railways use “differential pricing”, that is they charge different rates to different shippers based on their demand for rail services. Shippers with a higher demand contribute a relatively greater share of fixed costs compared to shippers with a lower demand. This method of pricing is common in many businesses and it is seen as the only way to attract the most traffic to the rail network and still generate sufficient revenues from users to recover their total costs.

Sharing of Fixed Rail Costs

Resource shippers/producers; captive shippers

Intermodal and other traffic; main line shippers



Under open access, the pricing of infrastructure usage could result in resource shippers paying a smaller proportion of fixed costs. However, these costs would have to be picked up by other shippers to enable the railways to recover all of their fixed costs (shifts dotted line to the left).

Emerging Market Structures

The North American railway industry has changed significantly over the past decade. Today, the emerging industry structure features: six major carriers with extensive networks; and many smaller carriers operating regional and short line systems.

Continental alliances and service improvements are viewed by CN and CPR as critical in serving rapidly growing north-south trade while maintaining east-west flows. There has also been an increase in transborder mergers of the railway customers, requiring integrated and efficient Canada-US rail service.

The proposed CN-BNSF merger fueled much debate about whether the existing regulatory framework can deal with the changing industry structure. Which body, if any, should oversee industry restructuring? Should the Agency have the authority to prevent rail mergers or influence the conditions of a merger? If so, what criteria and tests ought to apply?

Another restructuring issue is the regulation of rail line closures and transfers to other operators. What role, if any, should the Agency have in determining which lines (or line segments) should be transferred? What degree of oversight is needed for the terms and conditions of line transfers from a federal railway to another operator?

Bill C-34 introduced some new rules in July, 2000 by amending the provisions respecting the sale and discontinuance of railway lines. A number of the changes only apply to grain, facilitating the transfer of grain dependent lines to community-based short lines and compensating municipalities when a grain line is closed. Some shippers are urging further changes.

Stakeholders have expressed concerns about: increasing industry concentration and the impact on rates/services; the role of the Agency; foreign ownership rules; relative powers of short line and main

line carriers; and the consequences of line dispositions on communities, prairie roads and the environment.

Factors driving rail restructuring:

- Trade liberalization and globalization
 - Privatization (CN)
 - Creating more shareholder wealth
 - Elimination of rail freight subsidies
 - Competition and relentless cost cutting to improve efficiencies
 - Loss of market share to trucks
 - Railway focus shifting away from rationalization to expanding traffic by improving services
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Stakeholder views about emerging market structures as expressed in written submissions:

MERGERS & ACQUISITIONS

- Rail mergers create more captive customers with negative rate/service consequences for the shipper (*shippers and others*).
- Further merger activity will resume once the US STB revises its rules (*shippers*).
- The Agency should be given jurisdiction and authority to review and support/disallow, or impose conditions on mergers (restore powers present under the NTA using a public interest test criteria, per CWB) (*shippers and others*).
- The Competition Bureau should evaluate the impacts of proposed mergers on a market-by-market basis. The 15% limit of ownership on CN's shares by single investors should be removed (*Government of Alberta*).
- A Joint Commission between the US STB and the Agency and/or Competition Bureau should be created to discuss procedures for future mergers in Canada and the US (*Government of Saskatchewan*).
- CN/CPR need the freedom to pursue alliances and improve their operations (expand range of services, extend market reach, reduce costs and invest in innovative technologies). There is concern about the different regulatory regimes in US and Canada that could favour US carriers (*CN/CPR*).
- Rail mergers should continue to be subject to approval by the Competition Bureau; the Competition Act should allow the Minister of Transport to intervene where public interest concerns have been expressed (*CN*).

RAILWAY LINES

- The existing provisions of the CTA need strengthening to prevent abandonment in a manner that frustrates development of short line and regional railways (i.e., offering uneconomic line segments for sale) (*shippers, short lines, Western provinces/municipalities*).
- The Agency needs greater powers to establish a sale price or division of revenues between federal and short line carriers (*many shippers*).
- The Agency needs the power to order lines listed as candidates for discontinuance where it is found that a railway company is providing inadequate service (*shippers*).
- Farmers want the right to purchase sidings for salvage value to avoid the closure of sidings.
- There is concern about market dominance of the federal railways and lack of recourse available in the CTA (*short line and regional operators*).
- There is concern that VIA Rail's rights of way could be transferred to short line railways under provincial jurisdiction, leaving VIA without recourse to the Agency (*VIA Rail*).
- The industry structure should be governed by market forces. No other industry has terms and conditions of asset sales subject to regulatory intrusion and implicit subsidization; there is no valid application of these practices to rail (*CPR*).

Profiles

The following profiles outline the main concerns of the stakeholders as expressed in their written submissions.

SHIPPER PROFILE

- There is broad support for competition and market forces to govern transportation. However, many thought the railways had monopoly power and that competition should be added where none exists.
 - The majority agree that the competitive access provisions of the CTA are complex, time consuming, costly, and do not provide for a competitive rail system. Some said that CLRAs do not work because the federal railways refuse to compete with each other.
 - Many shippers think that, at the Agency's discretion, "any person" should have the ability to apply for running rights on the lines of federal carriers, with the onus on the railways to prove that it is not in the public interest.
 - Most shippers support the continuation of the regulated and extended interswitching provisions.
 - Many agree that the Agency should have more authority (e.g. re-instate public interest remedy; interim ex-parte orders; oversight on North American rail consolidations). There is concern about the costs of added regulation.
 - Several shippers say that there is no uniformity between federal and provincial railway legislation.
- Many shippers are unhappy with the railway's use of differential pricing - charging higher rates from those shippers who are more dependent on rail transportation. 'Captive' shippers feel that they are paying much higher rail rates than those shippers with competitive options.
 - There is broad support for FOA to continue in its present form, but one shipper believes that FOA is at best a serious compromise and does not cause competition or the effects of competition. One large volume shipper thinks that FOA is confrontational and that disputes should be resolved through mediation.
 - One major shipper is concerned that open access will create significant problems.
 - One shipper wants to perform its own interswitching or would like a clear set of services included in the definition of interswitching.
 - Grain producers are generally concerned about branch line and elevator closures and that the resulting efficiencies are not being passed on. They would like to see an Authority to oversee the grain transportation infrastructure, and would like the right to purchase sidings at salvage value.
- Broad support:**
- *Use regulation to promote competition where none exists*
 - *Allow "any person" to operate on federal railway lines*
 - *Existing interswitching provisions work well*
- Divergent views:**
- *Strengthen existing access provisions vs. partial/full open access*
 - *Impact of added regulation*

RAILWAY PROFILE

- Railways want market forces and competition to guide the transportation system and want further deregulation.
 - Most railways say that rail business is subject to intense competitive pressures. They say that any measures to increase regulation must be closely examined to determine their impact: the railways' requirement for full cost recovery; safety; and meeting international trade rules. CN says that research to determine the actual levels of competition facing the railways is needed.
 - There is consensus that differential pricing is essential for attracting the most business and providing the lowest rates possible while maintaining full cost recovery.
 - Railways say that there is a modal imbalance because railway infrastructure is privately funded while other modes are publicly funded.
 - Federal railways say government policies favour road over rail and that Canadian railways are also disadvantaged compared to their US counterparts. They would like harmonized regulations and policies across modes and jurisdictions.
- There are concerns that re-regulation will discourage investment in Canada's rail system; if regulation does occur, any measures provided to users should be based on need and not for use in negotiations.
 - Railways oppose full open access, however, given fair compensation to the host railway, OmniTrax and BC Rail would like limited access to add competitive options.
 - Regional railways and short line operators are concerned about access, the trend towards larger railways and market dominance, capital sustainability, and long-term viability. They are also concerned about demarketing of branch lines by federal railways. They would like the rail line transferring process to be simpler and have access to FOA.
 - Federal railways and several short lines want a commercial arbitration process rather than FOA.
 - Some railways want the Agency to have the power to disallow a proposed merger, or to impose pro-competitive conditions.
- Broad support:**
- *Competition and market forces to guide transportation*
 - *Full open access is bad*
 - *Differential pricing is essential*
 - *Balance the trucking and rail playing field*
- Some support:**
- *Limited access to main lines*
- Divergent views:**
- *FOA vs. commercial arbitration*
 - *The Agency vs. the Competition Bureau to review proposed mergers*

GOVERNMENT PROFILE

- Many comment on the lack of a clear transportation policy statement or vision statement or articulation of the goals of transportation, to guide the industry and policy makers. It is viewed that such a policy/vision statement would stimulate capital investment in new transportation infrastructure.
- A few submissions want a policy statement which specifically mentions the link between transportation and economic growth and international trade competitiveness.
- There is broad support for competition and market forces to provide viable and effective transportation services.
- Western governments say that where there are no competitive options, regulation must provide competition, i.e. rail service from at least two competing carriers. Several governments oppose or are very reluctant to re-regulating transportation.
- There is widespread support among western governments for strengthening existing competitive rail access provisions particularly in markets considered captive to rail. Captive shippers are viewed to be paying much higher rail rates than those where there were competitive options. Governments east of Manitoba tend to support retaining existing shipper

Broad support:

- *Competition and market forces to guide transportation*
- *More than one option for rail service*

Some support:

- *A clear transportation policy or vision statement and link to growth and trade*

Divergent views:

- *Whether to re-regulate when market fails*
 - *Keep existing CTA provisions OR strengthen provisions*
 - *Merits of open access*
-

protection mechanisms. The Quebec government wants any changes in rules to apply equally across Canada.

- Local governments are concerned about the serious impacts of the loss of branch lines, and these groups want stronger provisions for the development of short line railways.
- There are widely divergent views on full open access (as opposed to expanded running rights), ranging from support for full open access to strong opposition to open access. Proponents see it as a means of injecting competition to increase rail efficiency and shift freight back from road to rail. Others view it as a serious departure from current practice, with concerns that US carriers could access Canadian rail traffic without reciprocal rights, or that it would constrain the railways' ability to reinvest in their networks, facilities and equipment.
- A number of governments express concern about the ability of the railways to invest in their networks, facilities and equipment, and about the level of taxation of railways. The shift of freight traffic from rail, with its privately funded infrastructure, to publicly funded roads is a concern.

LABOUR PROFILE

- Some labour unions say that open access will lead to an increase in public costs, negative impacts on labour and a loss of system efficiency, as seen with the open access environment in the airline and trucking industries. They say that open access will allow US railroads access to Canadian infrastructure. Without reciprocal access, Canada's major railroads will be at a disadvantage as US railroads divert traffic and rail investment to the US system.
- Some say that open access at regulated fees would expose Canadian grain exports to trade challenges.
- Labour unions are generally concerned over rail restructuring. As short line operators take over lines, the lines can transfer to provincial jurisdiction, and provinces have the freedom to downgrade safety and labour standards. Some provinces have adopted the federal railway regime but others

Broad support:

- *Open access will lead to a devaluation of labour and a shift in traffic and investment to the US*
 - *Changes must enhance Canadian rail investment*
-

- have not. This would lead to fragmented regulations, much like the trucking industry, and railway labour do not want what the truckers have, i.e. low pay, high turnover, safety issues, and destructive competition. They would like operators of railways in more than one province to be federally regulated.
- Some unions want regulations and policies to be harmonized with the US inter-modal framework.
 - Unions say that changes to regulations must enhance, not discourage, investment in railways and ensure that safety and labour standards and infrastructure requirements are met.
 - Some say that with growing opposition to rail mergers, the railways may use technology to unify without merging the physical or financial assets. They are concerned about the negative impacts this may have on labour.

OTHER STAKEHOLDER PROFILES

- Some marine carriers and ports are concerned that there is a modal imbalance and that the current regulatory environment favours rail to the detriment of marine. They give government-owned hopper cars as an example of a benefit which favours the rail industry. They say that a transportation policy with a coherent set of principles applicable to all modes is needed.
- Some ports oppose the regional rail concept because it favours one port over others.
- To promote railway competition, one submission suggests: the Class 1 rail infrastructure be merged; a confidential fee structure for access to that track system be established; and train operating subsidiaries be set-up to compete on that track system. For equity purposes, the national railways only should be allowed running rights.
- One submission states that Canada's transportation system cannot be left to a purely commercial model of a fully compensatory and user-pay system because it would not work for rural Canada. The role of a national transportation policy should be to achieve efficiency throughout the entire system.
- A few submissions raise concern that there are jurisdictional overlaps among different levels of government, and between government agencies. They would like the federal government to adopt a national transportation policy that links transportation to trade competitiveness and economic growth, and to encourage other levels of government to adopt similar policies.
- Many submissions view high taxation on the Canadian transportation system as a barrier to competing with the US. They would like a shift in view, from transportation seen as a source of tax revenues, to the transportation system seen as essential to the nation's economic prosperity and trade competitiveness.
- Several are concerned about investment in transportation infrastructure. They say that new ways to finance infrastructure and facilities are needed.
- The Northwest Corridor Development Corporation stresses the importance of having multiple transportation corridors for western Canada.