



## ISSUES UNDER CONSIDERATION

January 2001

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On July 1, 2000 the Review Panel was established to conduct a “comprehensive review” of the *Canada Transportation Act* and was given one year to accomplish this work. The Panel was in no doubt as to the magnitude of the task. The terms of reference potentially encompass all modes of transport essential to the national economy – air, road, rail and marine – transporting any person, commodity or product, in every region, east and west, rural and urban, north and south.

In order to reach its goals in the time allotted, the Panel started work on several fronts concurrently:

- In seven months, the Panel held **consultations** and conducted **public meetings** in eight cities, from Vancouver to Halifax. Five more will take place before the end of March 2001, completing the Panel’s objective of hearing concerns in all 10 provinces and 3 territories.
- Since issuing a call for **submissions**, the Panel has received about 150 formal papers from all manner of industry groups, producer cooperatives, labour organizations, transport companies and provincial and municipal governments. All have been closely examined and all are available for public review at the CTA Review Web site (unless the authors have requested confidentiality).
- The Panel has its own **research program**, and some 40 studies have been commissioned externally or are being conducted by Panel staff. These run the gamut of transportation issues and together with the submissions and consultations, make up the knowledge base the Panel will use to formulate its recommendations.

At the outset of its mandate, the Panel was given a special task: to consider existing proposals for enhancing competition in the rail freight transport sector and submit an interim report by December 31, 2000. The report, entitled *Interim Report on Competitive Rail Access*, was completed and made public by the Minister of Transport on January 10, 2001. While it did not articulate a resolution to the long-standing and at times, vexing, problems involved, the Panel hopes that the report will clarify the core issues and identify the key questions stakeholders need to address if practical solutions are to be found. The Panel’s final report, which will deal with all transportation modes within the terms of reference, will also contain recommendations on competitive rail access.

This document identifies the main issues that the Panel is considering, reflecting the Panel’s assessment of the consultations and submissions to date, together with initial research. The issues are listed below under titles drawn from the Panel’s terms of reference, with brief introductory comments and summaries of submissions received.

***It will be clear from the text below that the Panel has interpreted its mandate broadly. Most submissions to date have dealt primarily with rail and grain issues. Submissions received on the other issues are also being taken into account, and are reflected in this document. The Panel remains willing to accept further written submissions on these “issues under consideration”.***

## **EMERGING INDUSTRY STRUCTURES**

**“Consider the extent to which the current framework is appropriate for dealing with the public policy issues that may arise from newly emerging industry structures.” - CTA Review Panel Terms of Reference**

### **Domestic Aviation: Ensuring Sufficient Competition**

The recent acquisition of Canadian Airlines by Air Canada prompted a number of concerns to be raised with the Panel. Provinces and municipal government agencies expressed concern about reductions in service to smaller centres, and the difficulties faced by smaller competitors or new entrants compared to the dominant carrier, particularly in arranging connections throughout domestic and international networks, with the necessary reservation systems and carrier partnerships. Few carriers have made representations to the Panel, but some have described difficulties in obtaining landing slots and gates at congested airports, and expressed concern that the dominant carrier has excessive influence over their allocation. Academics and some government agencies (federal, provincial and municipal) have proposed that solutions lie in further liberalization of entry into domestic aviation, directly by foreign carriers or through relaxation of ownership restrictions. Labour unions representing some aviation industry employees have proposed the alternative of re-regulation of routes and fares to control destructive competition.

The Panel will examine the structure of the domestic airline industry, assess the barriers to entry (such as access to computer reservation systems) and the extent of competition among carriers (including those in charter and regional markets), and evaluate the potential impact of new market entrants.

In addition, the Panel is reviewing the experiences of other countries in dealing with their own airline industries.

The Panel will address two questions about the potential role of foreign carriers:

- How would proposals to enhance domestic airline competition by allowing foreign entry – cabotage or the easing of restrictions on foreign ownership of domestic carriers – affect competition and efficiency in the airline sector?
- Are there practical proposals to enhance trans-border and other international competition?

### **Continental Freight Railroads: Competition Amidst Corporate Concentration and Cross-Border Integration**

The past decade has seen a dramatic restructuring of the rail industry in both Canada and the US. As a consequence of recent acquisitions in the US and the integration of rail operations continent-wide, CN and CPR have been transformed into fully "North American" enterprises. Recent corporate mergers have left four large American rail carriers providing the majority of freight rail services within the US.

The potential for additional corporate concentration of the rail sector was highlighted in late 1999 when CN and Burlington Northern Santa Fe (the largest US rail freight carrier) announced merger plans. The announcement prompted the US regulatory authority, the Surface Transportation Board (STB), to impose a moratorium on this and other mergers pending a comprehensive review of the regulations governing such transactions. New rules put forward by the STB for public scrutiny in October 2000 would significantly increase the burden on future merger applicants to demonstrate that a proposed transaction is in the public interest.

The potential impacts on Canada of these and other forces at work within the North American rail sector are not well understood. The Panel heard concerns from shippers, business associations and local governments that further consolidation, including merger of Canadian with US railways, might reduce the quality and frequency of service, and even jeopardize continued service on some important parts of the network.

In the second half of its mandate the Panel will study and report on three key questions:

- Is the existing legislative and regulatory regime adequate to the task in a new and continuously evolving rail sector?
- To what extent should Canada's laws and regulations be harmonized with those of the US?
- How would various competitive access proposals affect rail market structure and performance?

**Emerging Market Structure in the other Modes:  
Removing Barriers to Increased Performance**

In the course of its review of transportation industry structures generally, the Panel is devoting considerable attention to the air and rail modes. Issues affecting market structure might also be important in other modes, however, including freight transportation by ship and truck, and passenger transportation by bus, train, ferry and private cars.

Most representations to the Panel argued for further reliance on market forces to stimulate efficiencies, suggesting that federal deregulation and commercialization was incomplete or in some way compromised by policies favouring one mode, or part of a network, over others. Inequality of tax treatment between road and rail freight was cited as distorting choices against rail, subsidies to intercity rail as distorting modal choice against bus, implicit subsidies to private car use as distorting choices against urban transit, and subsidies to particular ports and waterways as distorting freight routings. Equality of treatment was generally the solution proposed. In addition, there were suggestions, notably from academics, that further commercialization or privatization would be part of the solution for those carrier services delivered by governments, including urban transit, intercity rail and ferry.

The general questions the Panel will examine are the following:

- Do existing legislation, regulations or policy impede or distort market forces in ways that are harmful?
- Are there practical solutions to any such problems?

**SUSTAINABILITY OF CAPITAL INVESTMENT**

***"Consider the overall effectiveness of the current legislative and regulatory framework in sustaining the high levels of capital expenditures required to enhance productivity and promote innovation." - CTA Review Panel Terms of Reference***

All modes of transportation require ongoing investments – mostly in infrastructure, vehicles, and control systems – not merely to sustain existing systems but to meet future needs. Demands for

freight and passenger travel can be expected to continue expanding more rapidly than the general growth in national output and population, and the types of services requested will undoubtedly change, as the nature and locations of activities change, and also as new technologies permit new types of transport services. Much of the required investment will be by the private sector – carriers or private users purchasing vehicles, terminal facilities, and information systems – but most transport infrastructure is still provided by the public sector. The exception is the rail industry, so it is discussed separately.

**Publicly-Provided infrastructure**

Nearly all urban roads, highways and urban transit structures are provided by provincial or municipal governments, with some relatively minor and unsystematic contributions to highways from the federal government. The federal government continues to provide some airports and ports, and marine navigation services. Other forms of quasi-government, quasi-private agencies now provide or share responsibility for providing major airports, ports, air navigation services and the St. Lawrence Seaway, through the recent “commercialization” policies of Transport Canada. The transfer of most major federal airports to independent airport authorities, the creation of a private not-for-profit corporation to manage air navigation (NAV Canada), the establishment of independently managed Canada Port Authorities, and the devolution of Canada’s Seaway responsibilities to the St. Lawrence Seaway Management Corporation are among the most important recent developments in transportation policy.

The Panel has heard numerous concerns about the sustainability of capital spending for government-provided transport infrastructure. Business associations frequently described the increase in international competition, notably with the US, and argued that the quality and price of transport infrastructure and services are crucial to allow Canadian shippers to compete. These business associations and many provincial and local government agencies often compared Canadian facilities unfavourably to those in the US, notably highways, but also ports and airports, and urban transit. They suggested that the key difference lies in US federal policy, both in direct funding of infrastructure and in tax treatment of ports, airports and local governments that provide infrastructure. They advocated similar action and policies by Canada’s federal government, possibly including dedication of transport fuel taxes to infrastructure, and the ability of private facilities or municipalities to raise funds through tax-exempt bonds. On the other hand, in the case of airports in particular, concerns were expressed that the federal government had

allowed too much autonomy, with too little control over investments, and the fees charged to pay for them. It was suggested that the Panel examine that claim, together with the governance and accountability of all the recently commercialized infrastructure providers. Less frequently, but notably from some academics, it was proposed that greater discipline in investment be sought, through application first of efficient user charges, then of investment decisions, particularly for highways, but also for other transport infrastructure.

The Panel will examine the extent to which current legislation and policy encourage or hinder the infrastructure investments needed to maintain the efficiency and effectiveness of Canada's transportation system and to take advantage of technological innovation. The following issues have been identified:

- ❖ **Newly Commercialized Infrastructure Providers: Airports, Air Navigation, Ports, St. Lawrence Seaway**
  - Are these newly commercialized facilities likely to be and remain financially viable?
  - Are they likely to be able to exercise undue market power, so is there a need for new controls over their pricing or investment?
  - Are special financial arrangements needed to sustain smaller airports and ports?
  - Is there a need to strengthen the rules governing the management and accountability of the newly commercialized infrastructure agencies?
- ❖ **Roads and Urban Transit**
  - Is there a need for more extensive federal spending on roads or urban transit?
  - Is there a role for dedication of taxes to roads or urban transit?
  - Do existing road user charges and fuel taxes distort choices among modes, and are practical improvements available?
  - Are there more efficient alternatives to greater subsidization of urban transit?

### **Rail Infrastructure**

In contrast to most other modes of transport in Canada rail carriers create and sustain their own infrastructure. Capital spending must be directed not only to improving operations (purchasing locomotives and rail cars, for instance) but also to ensuring and improving the quality of the rail network itself – maintaining rail lines and rights of way, signaling and other control structures.

Significant new investments have been made during the last few years by the mainline railways, CN and CPR, during the years in which their net revenues have improved, corresponding with the best years of the recent business cycle. The short line rail industry is also now responsible for a significant portion of the track, and will need to play an expanded role in future investment. Whether private rail investment will be sustained through full business cycles is yet to be seen.

Specific policy questions to be considered by the Panel include:

- Do the CTA or federal transportation policies distort or impede capital spending by railways, and are there new measures that should be considered?
- How would proposals to enhance competitive access affect the sustainability of rail capital spending?

### **SUSTAINABLE DEVELOPMENT AND THE ENVIRONMENT**

***"Consider the extent to which the current framework provides the government with the necessary powers to support sustainable development objectives." - CTA Review Panel Terms of Reference***

Submissions to the Panel so far have indicated that sustainability of transportation, notably in its resource use and its environmental impact, is becoming an issue of widespread concern. Provincial and municipal governments, as well as carrier and user representatives, frequently cited the necessity to

consider environmental impacts and energy use in transport policy, particularly given Canada's commitments under the Kyoto Protocol on control of greenhouse gas emissions. Many argued that current policy fails to weigh the impacts appropriately, and that doing so would result in shifts in passenger transport to urban transit, intercity bus or train, and in freight to rail or marine. Representatives of carriers in all modes described successes in reducing emissions of greenhouse gases and air pollutants and proposed measures with further potential.

Sustainable development is part of federal policy generally, the target of programmes in the federal departments of the Environment and Natural Resources, as well as within Transport Canada, where it is articulated in a Sustainable Development Strategy. Federal legislation applies to the operation of federal facilities and (under constitutional authority over trade and commerce) to performance standards for new vehicles or craft, but conspicuously not to the operations of road carriers or private road users, which are provincial or municipal responsibilities.

The issues being examined by the Panel are primarily:

- How can all Canadian governments promote the development of sustainable transportation systems?
- Are there limitations in legislative authority or knowledge gaps that are hampering the federal government's ability to promote sustainable development in transportation?

### **PRESERVATION OF URBAN RAIL CORRIDORS**

***"Consider the advisability of specific measures designed to preserve urban rail corridors for future mass transit use in the rail line abandonment process." - CTA Review Panel Terms of Reference***

Given the difficulty of establishing new urban corridors, existing railway rights of way might be so valuable for future use by mass transit that they should be preserved if they are no longer required. The current CTA provision, specifying the steps railways must follow before they discontinue service on a line, may not provide an appropriate mechanism for the alternatives to be assessed.

The Panel heard arguments by some municipal agencies and transit companies that federal action should be taken to assure preservation of important corridors, though without specific suggestions of how corridors should qualify and what compensation would be appropriate.

The questions the Panel will consider are:

- Is a new mechanism needed to ensure that municipalities and provincial governments have an adequate opportunity to preserve important urban corridors?
- If new arrangements are established, what principles should govern the compensation paid to the railways?

### **TRANSPORT IN AN ERA OF E-BUSINESS AND GLOBAL LOGISTICS**

***"Consider the extent to which the current framework supports the efforts of Canadian transportation players to adapt to the new e-business environment and to meet global logistics requirement." - CTA Review Panel Terms of Reference***

Low-cost, increasingly powerful computer and communications technology is changing the way businesses conduct operations and interact with customers and suppliers. It is estimated that business-to-business e-commerce will account for close to 30 per cent of all transactions by 2004. Innovative forms of supply chain integration in the manufacturing sector and novel business arrangements are creating demands for new and different transport services and capabilities. At the same time, electronic commerce provides opportunities for and imposes requirements on all sectors of the transportation industry to become more efficient and competitive.

In submissions describing the status of transportation and its developments, the Panel has heard much about the adoption of electronic data transfer and its effect on transport industries, users and suppliers. It has not however received any submissions directed primarily at the issues of e-commerce, nor heard any specific concerns about system inadequacies or

government policies that are particularly inhibiting e-commerce. On the other hand, concerns expressed frequently to the Panel about availability of capital for transport infrastructure and services would all apply to the adoption of the new technologies and practices that constitute e-commerce. The business interests and provincial and municipal governments that support further federal spending or special tax treatment for transport infrastructure often proposed that e-commerce technologies be included.

Research conducted by the Panel will attempt to gauge how well Canadian transport firms are adapting to the new business environment, nationally and globally. Questions to be addressed by the Panel in its final report include:

- How will e-commerce affect demands for transport, the productivity of transport carriers, and in turn, the productivity of transport users?
- What will be the effects of e-commerce on future transport infrastructure requirements and the likely burden on governments' fiscal resources?
- Are there government policies that are hindering the adoption of e-commerce by the transportation sector, and if so, what are the practical remedies?

### **TRANSPORT ACCESS FOR PERSONS WITH DISABILITIES**

It has long been accepted practice and has more recently been enshrined in law that governments make specific efforts to meet the transportation needs of persons with disabilities. The Panel has received a number of submissions from representatives of travellers with disabilities, who suggest that new operational practices and technologies are available to improve accessibility of terminals and services. They propose that existing regulations and policies be adopted more consistently, and that opportunities be evaluated continually.

The key question the Panel will attempt to address for its final report is:

- Should new measures or new mechanisms be introduced to address the transportation needs of persons with disabilities?

### **INTERIM REPORT**

***“Consider proposals for enhancing competition in the railway sector, including enhanced running rights, regional railways and other access concepts. These concepts need to be assessed in the broader context of increasing North American integration and ensuring cost effective service for shippers over the long term.  
- CTA Review Panel Terms of Reference***

The *Interim Report on Competitive Rail Access* (released January 10, 2001) considers competitive rail access in a national and North American context. The report examines the economic and regulatory environment of Canada's rail industry, the extent of competition, the role of the market and current regulatory instruments.

The report provides a review of the various proposals for competitive rail access that emerged from the Panel's consultations and sets out **criteria** for the evaluation of rail access proposals. Finally the report presents a number of **key issues** requiring resolution before the Panel can make any final recommendations.

#### ***The Key Criteria for evaluating proposals:***

- competition and efficiency
- compensation
- regulatory burden and related costs

#### ***The Key Issues requiring resolution:***

- access reciprocity
- test for the public interest
- relevance of revenue adequacy for access regimes
- cumulative effect of existing shipper protections
- implications for existing shipper protections
- safety and liability
- constitutional implications
- subsidies and the international trade regime

## **TRANSPORTATION POLICY - A NATIONAL TRANSPORTATION VISION FOR CANADA?**

***“Assess whether the legislation provides Canadians with an efficient, effective, flexible and affordable transportation system, and, where necessary or desirable, recommend amendments to national transportation policy and the legislation.” - CTA Review Panel Terms of Reference***

The Panel's terms of reference call for it to examine the national transportation policy set out in section 5 of the Act. A repeated general theme of submissions received by the Panel has been that transportation policy is hampered by the lack of coordination within the federal government among departments, the ambiguity in the division of policy responsibilities among jurisdictions, and the lack of cooperation among the three levels of government involved. Many submissions have suggested to the Panel that the policy statement in section 5 of the Act should be revised and made more relevant, including some comprehensive “vision” for federal transport policy. A number of business interests and provincial and municipal governments have proposed that this include recognition of the importance of transport infrastructure in facilitating economic and social activities, by implication suggesting a greater federal role in infrastructure investment. A number of business interests also suggest a renewed commitment to competition, to deter spending or policies favouring certain modes or facilities. Another frequent proposal has been that environmental protection be furthered by some explicit commitment to sustainable transportation and to recognition of environmental damage costs in decisions among modes.

Panel members recognize the need to develop a modern vision for the transportation system and to identify principles that can help bring about the realization of that vision.

While guiding principles should reflect society's objectives for transportation, they should also be informed by experience and by an understanding of what government policy can and cannot achieve. The general sections of the Act should clarify the federal role in the transport sector and articulate coherent and consistent principles that can serve as reliable guideposts for federal policy makers. Panel members understand the concerns and are devoting considerable attention to developing an appropriate set of principles for federal transportation policy.

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The Review Panel, constituted under section 53 of the *Canada Transportation Act*, was appointed by the Minister of Transport to examine the operation of the Act and other legislation related to the economic regulation of modes of transportation. The Panel members are:

Brian Flemming, Chair  
Jean Patenaude, Vice-Chair  
Glen M. Findlay  
Hon. Bob Rae, P.C.  
William G. Waters II

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For additional information, please visit our Web site at  
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