



COMPETITION IN GRAIN TRANSPORTATION
A Submission to
The Canada Transportation Act Review Panel
By
Agricore Cooperative Ltd.
October, 2000

Introduction

Agricore Cooperative Ltd. welcomes the opportunity to make input to the panel reviewing the Canada Transportation Act. Agricore is one of Canada's largest farmer owned grain handling cooperatives and is a major investor in the economy of western Canada. We operate country elevators and inland terminals in the provinces of British Columbia, Alberta, Saskatchewan and Manitoba. Alone or in partnerships, we own and operate terminal facilities in the ports of Vancouver, Prince Rupert and Thunder Bay. Our operations also extend to the United States with a part ownership of a grain elevator in Montana, and special crop handling facilities throughout the great plains. Agricore is also a major supplier of farm inputs to producers throughout western Canada.

Access to efficient, accountable and affordable transportation systems is critical for our farmer owner/members and our business. Agricore has played an active role throughout the process to reform the grain transportation system in Canada. Our objectives for a reformed grain transportation system as set by our farmer delegates and directors are:

1. Improved system efficiencies and accountability
2. Reduced costs for farmers
3. Strengthened our marketing systems
4. equitable access for farmers
5. improved customer service

It is Agricore's opinion that adequate competition for the transportation of grains and oilseeds is a critical component of the effort to achieve these objectives.

Competition in Grain Transportation

In general, the market place will determine efficient solutions to economic problems if there is sufficient competition to ensure that no one holds excessive market power. In the grain industry, there is adequate competition in all levels (production, grain handling and marketing) except for transportation.

Little inter-modal competition

Geography prevents competition from road or water for grain transportation. There is no waterway from the prairies to export ports. Economics, the large volume of grain moved, and physical road and port facilities preclude competition from trucking.

The Canadian prairie region is a landlocked production base. Geography prevents competition from road or water. A waterway from the prairies to export ports does not exist, and long distance trucking is not a viable alternative for both economic and physical reasons. Current trucking rates from Alberta to the port of Vancouver are more than \$10.00 per tonne higher than rail, and increase with increasing distance. Given the volume of grain that is moved, the highway system and port facilities are not conducive for trucking. Rail is the only viable means of transportation for virtually all export movement and more than two-thirds of the total transportation needs of the prairie grain and oilseed industry.

At best a duopoly in rail transportation – often a monopoly

In large parts of the northern prairies, there is no alternative to CN Rail. In significant portions of the southern prairies, CP Rail is the only carrier.

There are only two national rail carriers in Canada, and in large areas of the prairies, grain and oilseed producers have access to only one of the two railways. In large parts of the northern prairies, there is no alternative to CN Rail. In significant portions of the southern prairies, CP Rail is the only carrier. A dramatic example of captivity can be found High Level, Alberta where shippers are more than 500 km from the nearest alternate railway. While less extreme, there are numerous other examples of captivity to one rail carrier. This captivity prevents shippers from using the possibility of service from the competitor railway to lever service or reasonable rates from the other.

Reasonable regulation simulates competition

Agricore submits, that in the case of grain transportation, where effective inter-modal and rail competition do not exist, government intervention in the form of reasonable regulation is required to mimic the effects of competition. This is acknowledged in Section 5 of the Canada Transportation Act

The absence of effective competition gives rail carriers a great deal of market power and disadvantages the producer and shipper of grain. The lack of competition is recognized in Section 5 of the Canada Transportation Act, which lays out the National Transportation Policy. This section recognizes the need to use economic regulation where shippers do not benefit from market competition. Agricore submits that in the case of grain transportation, where effective inter-modal and rail competition do not exist, government intervention in the form of reasonable regulation is required to mimic the effects of competition.

Regulation in Grain Transportation

Agricore does not support a return to the very highly regulated and restricted grain transportation environment of the past, however we acknowledge and recognize the need for some regulation to prevent an abuse of market power by the railways.

Agricore supports the objective of the government as established in Section 5 of the Canada Transportation Act. We agree that “competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services”. Agricore and other grain handling companies have worked to increase competition between rail carriers by constructing high through-put elevators at those points where the lines of both rail companies are accessible, and using trucking programs and incentives to attract the grain to those facilities. However competition and market forces still do not fully operate in grain transportation. While Agricore does not support a return to the very highly regulated and restricted grain transportation environment of the past, we acknowledge and recognize the need for some regulation to prevent an abuse of market power by the railways.

Improving the Current Provisions

Public Rail Bed

While in theory, a public rail bed would provide the environment for full competition, it is unlikely that the resources or the political will to take the necessary action, including expropriation of property, to create a public rail bed exists.

Some stakeholders advocate the separation of rail infrastructure from the provision of transportation service as is the case with Canada's highway systems. While in theory, a public rail bed would provide the environment for full competition, it is unlikely that the resources or the political will to take the necessary action, including expropriation of property, to create a public rail bed exists.

Improved Running Rights

Agricore sees merit in improving the running rights provisions of the current act, to improve the environment for competition.

Concerns include the significant barriers to entry to the business of rail service, and potential that allowing particularly foreign participation on Canada's rail lines could result in poorer or no service for shippers. However, despite the concerns, The existence of expanded running rights could help to force competitive behaviour.

The Canadian Transportation Agency should be charged with granting running rights, and with conducting regular reviews of cases where running rights are being used, to ensure that rail companies maintain the incentive to invest and shippers continue to receive service and benefit from competition.

Agricore does see merit, however, in proposals to improve the current running rights provisions in the CTA to facilitate the use of shortlines, regional and provincial railways as competition to Canada's two main railway companies.

One of the purposes of the Canada Transportation Act was to increase competition through the facilitation of short line railways and regional and provincial rail ways. However the current Act falls short of ensuring that these lines can be competitive options for shippers. Running rights provisions in the Act only apply to federal railways. Because they cannot obtain the right to run over the lines of other railway companies, regional and provincial railways are essentially captive to the federal line to which they are attached.

This was recognized in the report of Honourable Justice Willard Estey, who recommended that any person who is determined to be a fit carrier by the Canadian Transportation Agency, should have the right to operate trains on any rail line, upon providing suitable compensation for the use of the line.

We recognize the many significant barriers to entry to the business of providing rail transportation service. Among the most serious are the large investment in locomotives and labour, the existence of many different labour contracts and agreements, safety concerns, and environmental rules and standards. We are also concerned that large railway companies, including those from the United States, could obtain running rights on line and only provide service until more lucrative demand occurs elsewhere. Their presence could have had a serious financial impact on the original service provider, perhaps forcing that provider out of the area. There is the risk that shippers could ultimately be left with no service at all.

Despite the concerns, even the existence of improved running rights provisions may force better or more competitive service from the main railway companies. Agricore suggests that the Canadian Transportation Agency should be given the responsibility to review and grant applications for running rights. While running rights would be more automatically granted than they are currently, we that the CTA should conduct a regular review (annual?) of cases where running rights are being used, to ensure that rail companies are maintaining the incentive to invest, and that shippers continue to receive service and benefit from competition.

Improved running rights must not be considered the only pro-competitive measure required.

We must also point out that improved running rights is not the only pro-competitive measure that is required, and should not be considered the “silver bullet” for shipper concerns.

Final Offer Arbitration

The new FOA provision created by Bill C-34 is the single most important competitive access provision in the CTA. It must be given time to work before any assessment of its effectiveness is made.

The current final offer arbitration provision implemented by amendments to the CTA by Bill C-34 in July, 2000 is the single most important competitive access provision of the CTA. It is a quick, unencumbered provision by which shippers can secure competitive rates and service without regulatory intervention.

It is important to give the newly developed provision time to work before any assessment of its effectiveness is made.

Interswitching

Interswitching is one of the most important and widely used competitive access provisions in the CTA. The provision should be improved by extending the radius from 30 km to 200 km, and by re-defining “interchange” and “interswitch”.

“Interswitching”, which allows some shippers served by a single railway at origin or destination to switch cars from one carrier to another at prescribed rates is one of the most important and widely used competitive access provisions in the CTA. It effectively increases competition between railways within the prescribed 30 km. radius.

Agricore submits that interswitching provisions could be even more effective for increasing competition between railways if the following amendments are made to Sections 127 and 128 of the CTA:

1. **Extend the radius** – given the geography in western Canada and the vast distances that over which grain is moved, interchange points are often outside the 30 km. limit. While the Act does provide for the Agency to grant interswitching rates outside of the 30 km radius, we believe it would be more efficient and conducive to competition if the prescribed radius was extended. Agricore suggests that the limit be increased to 200 km., by adding additional interswitching distance zones in 10 km. increments.
2. **Re-define “Interswitch” and “Interchange”** – The current definitions of these terms are dependent on track ownership. As such, the use of interswitching provisions are not available to railway companies who do not own the lines on which they operate. For example the companies may operate on the lines by lease or running rights. Agricore submits that the definitions should be amended to remove the concept of ownership.

Competitive Line Rates

The CLR provision has proved ineffective in increasing rail competition, due to the reluctance of the rail companies to compete through CLRs and to the financial and human resources costs of applying for the provision.

The Competitive Line Rate provision of the CTA was intended to simulate competition for shippers beyond the 30 km interswitching radius. However to date, it has proved ineffective for a number of reasons, the most important being the need to reach prior agreement with a connecting carrier. Neither of Canada’s main rail companies have demonstrated interest in competing through CLRs. In addition, the provision is very complex, requiring an application to the Canadian Transportation Agency, which is both time consuming and costly.

Agricore supports the development of a replacement for CLRs to effectively expand interswitching provisions and ensure easy access to the provision and effectiveness in generating competition.

It may be possible to correct the shortcomings of the CLR provisions in the CTA, but given the magnitude of the changes that would be required, it may be desirable to start over and develop a replacement for CLRs which would effectively expand the interswitching provisions while maintaining the principles of easy access to the provision and effectiveness in generating competition.

Competitive Access Rates

Agricore sees merit in the Competitive Access Rate concept as a replacement for CLRs as long as the calculation is not commodity specific.

The concept of a competitive access rate (CAR) to replace CLR provisions has some merit. The CAR concept proposed by some shippers attempts to expand access to interswitching provisions by establishing a regulated rate for movement outside the interswitching radius.

Agricore can support the CAR concept as a replacement for CLRs only if the calculation is based on the system average revenue-per-tonne-kilometre of traffic that is the same as or substantially similar to the traffic moved. We cannot support the calculation of the rate on a commodity specific basis. In grain commodity specific rates only encourage discriminatory pricing of rail service according to product value, even if rail costs for the movement of each grain commodity on a per car basis are similar.

Access to the Agency

Agricore submits that subsections 27(2) and (3), and section 112 constitute unwarranted barriers to relief from the Agency and should be deleted.

Currently, when the Canadian Transportation Agency receives a complaint from a shipper with respect to a transportation rate or service, the Agency must determine that the applicant will suffer “substantial commercial harm” if the relief requested by the shipper is not granted (subsection 27(2) and (3)). In addition any rate or condition of service that is established by the Agency in response to a complaint, must be “commercially fair and reasonable” to all parties (section 112) .

These subjective determinations, which are not defined in the Act, can and do result in contested proceedings before the Agency which are time consuming and costly. These provisions serve as a barrier to shippers seeking relief from unreasonable rates or services.

Agricore submits that subsections 27(2) and (3), and section 112 constitute unwarranted barriers to relief from the Agency and should be deleted.

Interim Ex-Parte Orders

The Agency should be given the power to order interim ex-parte orders.

The predecessor to the CTA, the National Transportation Act of 1987 contained a provision which gave the Agency the power to make interim ex-parte orders. This provision ensured that shippers who were receiving or who were about to receive inadequate service could obtain an quick order from the Agency to ensure that adequate service is provided.

This provision was not carried through to the CTA. Agricore submits that it should be re-enacted by amendment to the CTA.

Level of Service

Level of service provisions could be improved by ensuring that the carrier is required to provide estimate times of arrival which are clearly understood between the railway and the user of the service.

The level of service burden must be imposed on all carrier companies operating on a line, whether as the owner of the line, or through running rights.

Level of Service provisions contained in section 113 of CTA are very important to captive grain shippers. These provisions require that the railways “without delay, and with due care and diligence, receive, carry and deliver traffic”.

We submit that the provision could be improved by further ensuring accountability for the timely delivery of traffic with the injection of wording to require the railways to provide service users with estimated times of arrival which are clearly understood between the railway and the user of the service.

Agricore also recognizes the concerns expressed by carriers when level of service requirements are considered along with improved running rights. The level of service burden must be imposed on all carrier companies operating on a line, whether as the owner of the line, or through running rights.

Tariffs

Section 118 of the CTA should be amended to require rail service providers to include detailed service obligations and rate reductions should the obligations not be met.

The current tariff setting process contained in Sections 118 to 120 of the CTA should be amended to include service or performance criteria along with the rate.

In establishing a tariff, the rail service provider often does not include commitments on the service to which the rate applies. Grain shippers can and do incur substantial costs when time parameters set by the railway for car spotting, pick up and delivery are not adhered to. For example grain companies at time incur significant labour costs for overtime to ensure that rail cars are loaded and ready for pick up by the rail company, only to have the cars picked up late. In this case, had the service parameters been contained in the tariff, overtime charges could have been avoided, or penalties could have been imposed on the rail service provider.

Due to the lack of competition, rail companies do not feel the need to negotiate these detailed service obligations. Therefore Agricore submits that section 118 of the CTA should be amended to require that the railways itemize and clarify the detailed railway service obligations associated with the tariff, and include rate reductions should the obligations in the tariff not be met.

Conclusion

Depending on the commodity, between 50 and 80% of the grains and oilseeds produced in western Canada are destined for export markets. Given the dependence on exports, efficient, affordable and accountable transportation services are vital.

The large volume of product which must be moved from many shipping points over difficult terrain and large distances makes the grain and oilseed almost totally dependent on rail for transportation.

Grain shippers are captive to at best two, and often only one railway company for that important transportation service. Given the lack of inter-modal, and intra-modal competition, government intervention through reasonable regulation is required to “simulate” a competitive environment.

Agricore submits that the competitive environment created by the Canada Transportation Act could be improved by:

- Improving running rights provisions to facilitate the better use of short lines, and regional and provincial railway companies
- Making the Canadian Transportation Agency responsible for granting running rights to ensure that the railways maintain the incentives to invest, and shippers benefit from improved competition
- Maintaining the new Final Offer Arbitration provisions created in Bill C-34 which was implemented August 1, 2000.
- Expanding the interswitching radius in 10 km intervals from the present 30 km to 200 km.
- Redefining “interchange” and “interswitch” to improve the competition provided by the interswitching provision
- Replacing the Competitive Line Rate provision with something that is easily accessible and is effective in stimulating competition
- Removing the “substantial commercial harm” and “commercially fair and reasonable” barriers to access to the Agency, from the CTA
- Restoring to the Agency the power to issue interim ex-parte orders
- Injecting performance requirements in the establishment of tariffs by the railways

Agricore is confident that in the absence of real competition, these measures will ensure that the excessive market power currently held by the railways is diluted, and that the interests of grain and oilseed shippers will be protected.