

Submission

to the

Canada Transportation Act Review Panel

Manitoba

Transportation & Government Services

Steve Ashton, Minister

March 2001



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RECOMMENDATIONS

The following is a list of recommendations found in this Submission. Manitoba has also incorporated its November 17 Submission on Railway Competition into this submission. In addition, we have also included our responses to the questions that the Panel raised in its *Interim Report on Railway Competition* into this document so it will be a complete record of our position on the issue of railway competition.

The National Transportation Policy Statement

Recommendation 1: Manitoba recommends that the National Transportation Policy Statement be amended to include sustainability as an objective of the transportation system, and to clarify that carriers be allowed to compete wherever possible.

Railway Competition

Recommendation 2: Manitoba recommends that the Panel conduct a thorough comprehensive analysis of the feasibility of open access that objectively addresses the issues raised, enabling stakeholders to objectively assess the need for any further debate on this issue.

Recommendation 3: Manitoba recommends that the current running rights provisions should be amended to allow any interested party to apply for running rights (including the right to solicit traffic), subject to a “reverse onus” public

interest test that permits the Agency to deny an application only if the host railway or another party with running rights can demonstrate that granting the application would likely be detrimental to the public interest.

Recommendation 4: Manitoba recommends that any regional or short line railway be granted, by legislation, running rights over the main line of the connecting carrier (without the right to solicit traffic), to the nearest competitive interchange with another carrier. Running rights beyond the nearest competitive interchange should be granted by the Agency on a case-by-case, subject to the reverse onus public interest test.

Recommendation 5: Manitoba recommends that the disposition of the federal grain car fleet be done in a manner that contributes to increased railway competition.

Recommendation 6: Manitoba recommends that the sections on interswitching in the CTA be improved by deleting the requirement to have storage facilities for railcars at an interswitching point, and removing any legal impediments to the use of shipper-owned facilities as interchanges. The Agency should continue to set actual interswitching rates.

Recommendation 7: Manitoba recommends that the CTA Section 131 (1) requirement for a shipper to have an agreement with the connecting carrier before requesting a competitive line rate and service to the interchange be repealed.

Recommendation 8: Manitoba recommends that the Agency should be permitted to determine the Competitive Line Rate (CLR) as the lower of its calculated rate or the rate offered by the local carrier.

Recommendation 9: Manitoba recommends that the CLR provisions of the CTA be amended to permit a shipper to simultaneously request a through rate and a CLR from its local carrier, and the beyond rate from the connecting carrier with the carriers providing the rates independently.

Recommendation 10: Manitoba recommends that "substantial commercial harm" to shippers as a criterion for Agency intervention be eliminated.

Recommendation 11: Manitoba recommends that rates or conditions of service established by the Agency for the railway industry meet the test of being reasonable, as is now the case for the airline industry.

Recommendation 12: Manitoba recommends that the CTA be amended to require CN and CP to produce a long-term plan identifying their core network of lines that each intends to operate and not offer for abandonment in that time period. All other lines should be available for sale to any buyers interested in a package of lines that could be more efficiently operated as a regional collection system.

Recommendation 13: Manitoba recommends that the CTA be amended to permit

the Agency, either upon application by shippers or on its own initiative, to designate certain rail lines where service has deteriorated and then direct the railways to offer the designated rail lines in a package to potential regional or short line railways, or grant running rights to the regional operator with the best service proposal.

Recommendation 14: Manitoba recommends that the CTA be amended to permit interested parties to have an opportunity to appeal a railway's decision to offer only a segment of a rail line or a single line for abandonment, and that the Agency be able to order the railway to offer an entire line or nearby lines to the applicant if the applicant can demonstrate a viable short line or regional railway would be feasible.

Recommendation 15: Manitoba recommends that national transportation policy recognize and accept that competition in the transportation sector enhances productivity and promotes innovation, and these encourage economic growth in other sectors, which benefits the railways through increased business that attracts financial capital.

Recommendation 16: Manitoba recommends that the CTA be amended to permit the Agency to issue interim orders to remedy a complaint from a shipper until the matter of the complaint is resolved.

Airline Competition

Recommendation 17: Manitoba recommends that the effects of reciprocal cabotage rights for non-Canadian carriers, and of reciprocal provision of the “right of establishment” of a domestic service using Canadian employees and equipment, be investigated.

Recommendation 18: Manitoba recommends that the federal government, in concert with other national governments and relevant international institutions, remove current impediments to increased international air carrier competition.

Recommendation 19: Manitoba recommends that the federal government strive, through bilateral agreements or other means, to liberalize the provision of international air services on a reciprocal basis.

Competition In The Trucking Industry

Recommendation 20: Manitoba recommends that the Government of Canada: renew efforts to persuade provincial governments, the Governments of the United States and Mexico and their state governments, to harmonize their commercial vehicle weights and dimension regulations; and commence negotiations with the United States to liberalize cabotage restrictions on a reciprocal basis.

Competition In The Domestic Marine Industry

Recommendation 21: Manitoba recommends that the federal government rescind the 25% duty imposed on foreign built ships for domestic use and investigate the feasibility of allowing cabotage in the domestic Canadian market.

The Relevance Of Mergers To Transportation Competition

Recommendation 22: Manitoba recommends that, in the air and rail modes, the responsible federal government agencies be afforded the legislative and other tools necessary: to protect travellers and shippers from market power abuse of dominant carriers, until effective competition in these industries is achieved; and to review and prohibit anti-competitive mergers.

Recommendation 23: Manitoba recommends that current legislative and regulatory share ownership limits in the air and rail modes be retained until measures to enhance competition are shown to be effective.

Removing Regulatory Impediments To Competition

Recommendation 24: Manitoba recommends that Transport Canada should always include full stakeholder consultations, risk assessment and cost-benefit analysis in the developmental process for regulations applicable to transportation industries.

Air Safety Regulations

Recommendation 25: Manitoba recommends that Transport Canada re-examine existing air safety regulations about which stakeholders have concerns, particularly their introduction without adequate consultation and benefit-cost analysis. Transport Canada should work with stakeholders to develop more acceptable regulations that reasonably balance safety requirements with the costs imposed on airports and air carriers to meet such regulations.

Marine Pilotage

Recommendation 26: Manitoba recommends that the federal government examine competitive alternatives to providing marine pilotage service and the value of having Transport Canada responsible for setting the regulations pertaining to marine safety.

The Infrastructure Challenge And Current Infrastructure Deficit

Recommendation 27: Manitoba recommends that the federal government's revenues from user fees (including road motive fuel taxes), rents and other charges be dedicated to mode-specific expenditures on transportation infrastructure.

Airports

Recommendation 28: Manitoba recommends that the CTA be amended to establish the responsibilities of the various levels of government in providing airports, and to identify the means of funding (whether user fees or input taxes) these responsibilities.

Recommendation 29: Manitoba recommends that the Government of Canada—in conjunction with stakeholders including the provinces, carriers, passengers and shippers—evaluate the long-term financial condition of the system of airports and all its components to ensure the long-term viability of all existing airports and the system as a whole.

Highways

Recommendation 30: Manitoba recommends that the federal government—in consultation with all provinces—institute a legislated process so that moneys extracted by it through various road-related user charges and taxes are fully dedicated to Canada’s strategic trade and transportation routes, under the auspices of a National Highways Policy.

Road Safety

Recommendation 31: Transport Canada should take a leadership role in developing and funding a National Highway Safety Research Program for Canadians.

Toward A National Transportation Vision Statement

Recommendation 32: Manitoba recommends that the Panel develop a comprehensive National Transportation Vision Statement, suitable for incorporation into the CTA. The Panel should consider sponsoring and facilitating a National Transportation Visioning Conference.

Rail Passenger Service

Recommendation 33: Manitoba recommends that the federal government should establish a legitimate and viable legislative and policy environment for VIA Rail, within the greater scope of national transportation system objectives.

INTRODUCTION

The Province of Manitoba welcomes the opportunity to provide the Canada Transportation Act Review Panel with our comprehensive submission. **Manitoba has incorporated its November 17 Submission on Railway Competition into this submission. We have also included our responses to the questions that the Panel raised in its *Interim Report on Railway Competition* into this document so it will be a complete record of our position on the issue of railway competition.**

The federal government has given the Panel a remarkably difficult task. The Panel must examine those federal laws for which the Minister of Transport is responsible and assess their effectiveness in providing Canadians with an efficient, effective, flexible, and affordable transportation system. It must then recommend changes to national transportation policy and/or specific legislation so that the transportation system can flexibly meet the economic and social challenges, from both a Canadian and global context, of the 21st century.

The importance of the Panel's mandate cannot be over-stated. The Panel has an opportunity to devise an institutional framework for the transportation system that will meet the needs of all Canadians with respect to the provision of transportation infrastructure, services and rates. The Minister of Transportation, to whom the Panel's report is submitted, must place the report before the Parliament of Canada with the federal government's response. The Review Panel has before it the ideal opportunity to address the situation with flexibility, imagination, fairness and vision.

Manitoba is well positioned to comment on what constitutes an appropriate institutional and policy framework supporting our transportation system. We have a well-diversified economy, with significant and varied manufacturing, industrial and primary sectors. Our relatively small population necessitates that our industries must export their goods to other markets for survival and growth. In 1999, Manitoba exported \$13.2 billion worth of goods to the rest of the world and imported \$14.3 billion worth of goods from the rest of the world. The value of traded and transported goods is about 44% of our total Gross Domestic Product of \$31.0 billion. These factors, combined with our distance from major markets, has heightened—more so than many other jurisdictions—our economic need for a wide modal array of effective and efficient transportation options.

Our dependence on transportation has had the corollary effect of making the province a key transportation centre. Transportation contributes more to Manitoba's GDP than any other economic sector. Manitoba is a key net exporter of warehouse, transportation and logistics services. Two of the five largest interprovincial trucking organizations are headquartered in Manitoba, and, in percentage terms, trucking contributes twice as much to the provincial GDP than does trucking to the Canadian GDP. Manitoba is a key railway centre, with railway employment as a proportion of Canadian rail employment exceeding by three times the province's proportion of the nation's population. A multi-modal Manitoba based supply-chain supports an annual 28 million litre bulk fuel and 12,000 tonne dry cargo resupply option to seven communities in Nunavut through Churchill, Canada's only international arctic seaport. The port, as well, enjoyed its highest traffic amounts in two decades in the 2000 season, exporting over 700,000 tonnes of agricultural product from Manitoba and

Saskatchewan. The air mode is also a major employer and contributor to the Manitoba economy. In all, our economy and society are dependent upon the transportation sector, both as a facilitator of our export industries and as an economic generator in its own right.

The Panel should also know that Manitoba has sought and received the views of its stakeholders on many transportation issues, which are reflected in our submission. This we did through both surveys and the holding of a one-day conference on transportation issues under consideration by the Panel and relevant to the Canada Transportation Act 1996 (CTA).

THE TRANSPORTATION SYSTEM POLICY FRAMEWORK

The National Transportation Policy Statement

The National Transportation Policy Statement (Section 5 of the CTA) establishes the policy framework for the transportation system. The statement says that the Canadian transportation system has two purposes:

1. to serve the transportation needs of shippers and travellers, including persons with disabilities; and
2. to maintain the economic well-being and growth of Canada and its regions.

The statement establishes two distinct objectives for the current Canadian

transportation system:

1. a safe, economic, efficient, and adequate network of viable and effective transportation services accessible to persons with disabilities; and
2. a network of transportation services that makes the best use of all available modes of transportation at the lowest total cost.

It declares the principle that these two objectives are most likely to be achieved if **all carriers are able to compete** subject to the following conditions or constraints:

1. The national transportation system meets the highest practical safety standards.
2. Competition and market forces are, wherever possible, the prime agents of providing viable and effective services.
3. Economic regulation occurs only in respect of those services and regions where it is necessary to serve the needs of shippers and travelers, but without unfairly limiting a carrier or mode to compete freely with other carriers or modes.
4. Transportation is recognized as a key to economic development and the commercial viability of transportation links are balanced with regional economic development objectives.
5. Each carrier or mode of transportation bears a fair proportion of the real costs of the

resources provided to it at public expense.

6. Each carrier or mode of transportation, as far as practicable, receives fair and reasonable compensation for the resources, facilities, and services that it is required to provide as an imposed public duty.
7. Each carrier or mode of transportation, as far as practicable, carries traffic to, or from any point in Canada under fares, rates, and conditions that are not an unfair disadvantage beyond that inherent in the location or volume of traffic, the associated scale of operation, and the type of traffic or service involved.
8. Each carrier or mode of transportation, as far as practicable, carries traffic to, or from any point in Canada under fares, rates, and conditions that do not constitute an unreasonable discouragement to the development of primary or secondary industries, to export trade in, or from any region of Canada, or to movement of commodities through Canadian ports.
9. Each mode is economically viable.

Recommendation 1: Manitoba recommends that the National Transportation Policy Statement be amended to include sustainability as an objective of the transportation system, and to clarify that carriers be allowed to compete wherever possible.

Manitoba generally concurs with the framework established in the National

Transportation Policy Statement with two exceptions. First, an environmentally conscious society must also address the sustainability of the transportation system. This consciousness should be introduced into the statement by amending the phrase 'viable and effective' in the first objective and second condition with the phrase 'sustainable and effective'. Secondly, the principle 'all carriers are able to compete' might be interpreted as obligating government to financially support a carrier unable to compete. Amending the principle to one in which all carriers are *allowed* to compete will clarify that carriers should have the freedom to enter the market and compete, but not the right to do so.

Principle For Action – Competition As The Mechanism

The fundamental principle driving the national transportation policy framework is that the objectives of the system can be most likely achieved where carriers can **fairly** compete. Competition among carriers and modes is the force that can produce the best system results at any point in time and over time, and competition will most likely move the system along the path of optimum solutions.

The policy framework provides the guidelines for us to determine the effectiveness of the CTA and all other transportation-related legislation and regulations. The legislation and regulations must encourage or promote competition, not discourage or impede it. In general, they must not be obstacles to the achieving of specific objectives.

The only exceptions that should be permitted are those whose need can be demonstrated by one or more of the nine conditions qualifying the overriding principle.

The specific mandate of the Panel from Section 53 of the CTA asks for an assessment

of whether or not the legislation provides Canadians with an efficient, effective, flexible and affordable transportation system and recommend amendments where necessary or desirable. A transportation system that encourages competition among carriers and modes can best achieve the efficiency, effectiveness, flexibility and affordability desired.

STRUCTURING OUR TRANSPORT INDUSTRIES FOR COMPETITION

In Manitoba's view, the Panel's key objective is to assess the functioning of the CTA and its supporting legislation against the principle of competition, and to establish policies that will foster in all cases, genuine competition within modes and amongst modes. In its approach, the Panel should be cognizant that competition is created when the number of actual competitors in an industry is sufficient to prevent any competitor(s) from dictating prices and terms of sale to buyers. Entry of new firms into the market should be easy and customers should have a wide choice of firms with which to do business. In some transport industries, such as trucking, these conditions are easily satisfied—customers, for example, have ease of access to many trucking services, there are many industry participants, and the relative ease of market entry and exit ensures that individual companies cannot control prices.

Some industries, such as rail and air, exhibit different characteristics than that of the ideal competitive industry structure, and these are the focus of our next sections. The Canadian rail industry, for example, differs crucially in that it is characterized by two dominant carriers who control their own infrastructure and can prevent direct customer

access to rail industry competitors. The air industry is characterized by one dominant carrier, and the ability of new competitors to provide effective and sustainable competition is now being tested. The Panel must forcefully address any structural issues that limit competition, and its subsequent benefits to shippers and passengers. Manitoba advocates that a legislative environment for these industries needs to be created where shippers and travellers are able to seek service from at least two actively competing carriers. Competitive pressure should ideally be the factor in determining the behaviour of firms within these industries.

Our recommendations for proposed changes to the CTA constitute a menu of proposed requirements and actions that, if implemented would result in carriers in our transportation system operating in a competitive environment. Neither unfettered markets nor government regulation for the whole transportation network are the choices before the Panel. The National Transportation Policy Statement does permit a role for government in circumstances where a free market for transport services cannot meet public policy needs. In such circumstances, Manitoba supports the use of regulations to simulate a functioning competitive market. Minimal regulations of the type that induce a competitive reaction in carriers are preferred to administrative decisions that could substitute for market solutions.

Competition In The Railway Industry

Manitoba believes that the direction to the Panel to examine means of increasing railway competition is of vital importance to the Provincial interest. Manitoba shippers require cost-effective transportation systems to maintain current markets and have the

potential to expand into new markets. Competitive pressure is the best method to ensure that railways will maintain and improve their cost effectiveness. Therefore, it is essential that the current competitive access provisions be maintained and strengthened wherever possible.

After a year of consultation and consideration, Justice Estey made an express recommendation for expanded running rights provisions as a critical component of his reform package. The federal government expressly accepted the policy direction of his recommendations. After six more months of extensive consultation and intensive stakeholder debate, Arthur Kroeger advised that: “the Government accept at the outset that measures to increase competition are required. This is fundamental.”

A central feature of our national transportation policy is that competition within modes and between modes will be the prime mechanism in achieving the stated goal of a safe, efficient, and adequate network of viable and affordable transportation services for all citizens. Manitoba believes that the lack of competition between Canada’s railways is an obstacle to the achievement of this goal.

Manitoba spoke briefly in the preceding pages to the unique structure of the rail industry. Manitoba believes that the Panel must design recommendations that will encourage new entrants into the industry and will also ensure that each shipper captive to rail service has reasonable physical access to more than one service provider.

Shippers in Manitoba and the other Prairie Provinces do not have the same competitive alternatives to rail as does Central and Eastern Canada. Manitoba businesses must ship

their freight at least 700 kilometres overland to reach low-cost water transport. Truck transport provides Central and Eastern Canada, with its larger population located in less dispersed urban centres and its proximity to major U.S. markets, a more competitive alternative to rail transport. These regions are also well served by marine transport. National transportation policy and legislation should recognize this diversity in the Canadian landscape and economy.

National transportation legislation and policy should proactively create an environment in which effective competition exists for all traffic movements. In this submission, Manitoba's recommendations include specific legislative and regulatory instruments that will ease entry into the railway industry, and will strengthen the ability of shippers to obtain quality service at reasonable and satisfactory rates. Federal government policy and legislation should recognize the principle, that all shippers regardless of location should be able to obtain rail service from at least two competing rail carriers.

The CTA now has sections intended to encourage intramodal railway competition, but these assume that railways will choose to compete actively with each other. However, Canadian railways were exempt from the prohibition against collusion in the Competition Act until 1988. Their ability to cooperate rather than compete in rate setting ended relatively recently.

The Competition Bureau in its Merger Enforcement Guidelines describes interdependent behaviour as one means of lessening competition. "Interdependent behaviour includes an explicit agreement or arrangement with respect to one or more dimensions of competition, as well as other forms of behaviour that permit firms to

implicitly coordinate their conduct, e.g., through facilitating practices, the interplay of market signals or conscious parallelism."¹ The guidelines cite an observation from the Competition Tribunal: *"It is generally accepted that where there are only two major competitors in a market there is increased opportunity to engage in collusive behaviour"*.² Duopolists recognize that both can gain more (excess) revenues by not competing for each other's business where each has a local monopoly. Nevertheless, the federal government has chosen to remain passive and let the transportation sector operate with minimum government direction until it sees that competition and market forces are ineffective or competition does not exist.

Canadian National Railway and Canadian Pacific Railway required very large amounts of capital investment to build and maintain their infrastructure and equipment. This favours an industry structure where market power results in rates that yield high profits to finance the infrastructure. From a public policy perspective, how can shippers requiring rail service obtain reliable, effective, and efficient service at fair and reasonable rates if served by a rail carrier that:

- can use its greater market power to charge rates above what is required to meet its capital needs,
- does not face the deterrent of loss of business if it provides unsatisfactory service, and
- is under no pressure to innovate in order to reduce costs?

1. Competition Bureau, Merger Enforcement Guidelines, Part 2, January 23, 1997 page 2.

2. Ibid. page 3.

Shippers say that they do not have the choice of carriers providing rail service that would make competition effective. Shippers are often reluctant to seek redress from the Agency under shipper protection provisions because they want to avoid a conflict with a carrier with whom they must continue to do business. Measures that encourage competitive behaviour by carriers will be more effective than measures that provide shippers redress in the event of non-competitive behaviour.

In 1998, Manitoba and the other Western Provinces recognized the need for government to create a legislative framework for a competitive environment as prescriptive regulatory controls are withdrawn.³ The Western Provinces recognized that effective competition does not exist in the railway sector and needs to be fostered. The Western Provinces also agreed that if competition or the threat of competition could not be achieved, then government intervention should be measures to achieve market outcomes that would occur in a competitive environment.

The railways have argued that they are competitive and have suggested to the Panel that real revenues per tonne-kilometre is a relevant measure of their average freight rates. Declining real revenues per tonne-kilometre is supposed to indicate that they are sharing productivity gains with shippers and therefore are competitive. The Panel's Interim Report defends this measure because it is widely used, but Manitoba does not accept it as a measure of average freight rates. Declining revenues per tonne-kilometre do not reflect a sharing of productivity gains.

The statistic can be reduced by a change in the proportion of short-haul and long-haul traffic (more long-haul traffic) and a change in the proportion of heavy and light

3 . Manitoba, Alberta and Saskatchewan, Submission to the Federal Grain Review, March 1988, p.4

weight traffic (more heavier bulk traffic). A loss of traffic to truck transport because the railways are unwilling to compete on rates could produce a declining revenue per tonne-kilometre.

Public competition policy should focus on the prices at which goods or services are sold to buyers. The price or rate for rail service that is relevant to shippers in the railway sector is rates measured in dollars per tonne or dollars per car in real terms, between a specified origin and destination. A declining average revenue per tonne or carload in real terms would be more relevant to the issue of the existence of competitiveness and productivity sharing.

The Panel's Interim Report asks a question about the current financial strength of the railways under current economic conditions and asks if it will continue in the event of an economic recession. The demand for freight transportation services is derived from the demand for the goods transported. The prosperity of the railways is related to the prosperity of shippers and the economy in general. Shippers have suggested that the federal government was timid in its efforts to promote railway competition in the CTA because the railways were financially weak in the late 1980s and early 1990s. Their weakness was related to the economic recession of the period. Manitoba is concerned that the Panel is unduly worried about the impact of the next recession.

The long-term prosperity and global competitiveness of Canada, its shippers and carriers depends to a large extent on our ability to effectively export to the world. Export sales require an efficient and effective transportation network of services, which is best achieved through competition. Protecting non-competitive transportation

firms from competition will result in higher costs and poorer service to access international markets, and that will lower export sales, penalizing shippers, carriers, and all citizens of Canada.

The Canadian railways have achieved significant cost reductions and efficiency improvements in recent years. Manitoba believes that the scope for further cost reductions and efficiency improvements will come through the interaction of competing firms that will remove the inefficiencies and costs related to the industries' non-competitive structure.

With respect to another question asked in the Interim Report, railway investment is a consequence of the demand by shippers to ship more freight at reasonable rates in a more effective manner. That investment can be sustained in a growing economy that demands more railway services to transport more goods to domestic and foreign markets.

The Interim Report notes the railways' argument with respect to a shipper's ability to have its products trucked to another railway's line is competition in play. The Competition Bureau uses the ability of a seller to sustain a unilateral price increase of 5% for a year as a test for excessive market power. If the additional trucking cost to the rail head of an alternative railway is greater than or equal to 5% of the rail rate for the shipper, then the railway would be able to sustain a unilateral price increase of 5% for a year. Competition would not exist.

Manitoba is concerned with the general approach taken in the Panel's interim report.

The Panel appears to have placed on proponents of greater competition the burden to prove that enhanced competition would not undermine rail industry viability.

The focus of the Panel's inquiry clearly should be on the design of specific measures to achieve effective railway competition, not whether such measures are necessary or that they may undermine railway viability. In assessing a specific pro-competitive measure, the primary consideration should be the extent to which the measure would likely enhance efficiency and productivity, to the benefit of shippers and the economy.

The focus should not be on railway viability. Railway viability is primarily a function of good management and the efficiency and cost-effectiveness of operations.

In a deregulated environment, where railway rates are no longer prescribed in tariffs, competitive pressure is all the more essential in order to achieve the best economic performance. Competitive pressure forces firms to reduce cost and improve productivity, while at the same time it promotes efficiency by stimulating the development of new products and technological innovation.

Indeed, lack of competitive pressure as a result of market dominance in a railway's "franchise" territory is likely to *increase* the railway's cost structure over time. In the long run, a higher rail industry cost structure than that which would prevail in competitive circumstances will be a greater threat to railway viability than competitive access measures, as the total volume of traffic tendered to the railways will be reduced by the necessity of higher rates.

Therefore, before a pro-competitive measure is rejected, the railways should be called upon to satisfy the Panel that the measure is likely to lead to inadequate, inefficient or ineffective rail service, or a chronically unstable “sick” rail industry.

The railways should be called upon to do more than make theoretical arguments in meeting this onus. They should supply sound empirical evidence of their assertions. The railways have the operational, technical and cost information to do so, as opposed to shippers, government and other parties external to the inner workings of the rail system.

In a perfectly competitive industry, market forces compel firms to price at marginal cost, and differential pricing cannot occur. Marginal cost pricing, wherever achievable, results in optimal economic efficiency. However, Manitoba accepts that a perfectly competitive rail industry is not likely achievable. We also agree that, where pricing above long run marginal cost is necessary to achieve economic viability, some level of “Ramsey pricing” (pricing in relation to “value of service”) will lead to a more efficient allocation of resources. However, this does not necessitate that railways be completely free to price discriminate or charge “what the market will bear”. The level of price discrimination necessary for railway viability depends upon the extent to which long run average costs exceed long run marginal costs, and only the railways have the ability to ascertain this fact. In circumstances of market dominance, we can not simply trust the dominant carrier to engage in differential pricing only to the extent necessary to close the alleged gap between their long run average costs and long run marginal costs. The essential question is thus not whether railways should be allowed to engage in differential pricing, but rather whether existing legislation contains

provisions adequate to prevent an excessive, undue or unreasonable degree of price discrimination in cases of market dominance.

We agree that the legislative provisions should create sufficient safeguards for rail-dependent shippers and provide incentives to the railways to be as efficient and innovative as possible and to pass on an appropriate portion of the efficiency gains to shippers. Manitoba believes that the pro-competitive measures we recommend below will achieve these goals, while permitting a market structure that enables an adequate degree of differential pricing flexibility. We would also assert that those who champion greater protection from competition and market forces for the rail industry should carry the burden of proof to demonstrate that any particular package of pro-competitive measures would clearly result in an industry structure that does not permit the level of price discrimination necessary to achieve industry viability.

WAYS OF ENHANCING RAILWAY COMPETITION

Open Access

Recommendation 2: Manitoba recommends that the Panel conduct a thorough comprehensive analysis of the feasibility of open access that objectively addresses the issues raised, enabling stakeholders to objectively assess the need for any further debate on this issue.

Governments have recognized that competition can replace state regulation of monopolistic industries as the means to ensure that the private sector provides

adequate, viable and affordable services for all citizens safely and efficiently. They have introduced competition by enabling new firms to access the infrastructure of incumbent firms. This has occurred in the telecommunications, natural gas, and electrical generation industries.

Open access describes a railway industry where independent companies can operate trains on the rail infrastructure owned and controlled by a separate company. Any number of companies would be allowed to operate trains on the rail infrastructure. It has been introduced partially into Australia and some European countries where governments have sold their rail infrastructure to one company whose function is to control and maintain that infrastructure. The right to operate trains is made available to independent companies.

The introduction of open access into Canada where private railroad companies operate integrated track and train networks needs detailed analysis to determine its feasibility and mechanics. The 1992 National Transportation Act Review Commission recommended a comprehensive study of the feasibility of separating railway operations from the ownership and maintenance of rail plant.

Amendments to Current Legislation on Running Rights

Recommendation 3: Manitoba recommends that the current running rights provisions should be amended to allow any interested party to apply for running rights (including the right to solicit traffic), subject to a “reverse onus” public interest test that permits the Agency to deny an application only if the host railway or another party with running rights can demonstrate that granting the application would likely be detrimental to the public interest.

Under Section 138 of the CTA, a federal railway may apply to the Agency for running rights over another federal railway's track and for the right to use the other railway's rail yards and stations. The Agency may grant the requested right having regard to the public interest. While the existing provision for running rights has the potential to increase competition, CN and CP refrain from using it to compete for each other's traffic. They use the provision to shorten routes, but agree that the guest railway will neither solicit nor accept traffic from shippers located along the host railway's track. By not using this section to compete for each other's traffic, both major federal railways dominate local markets and charge higher rates than would be possible if they competed. Furthermore, only a federal carrier can apply for running rights to provide shippers with access to a second carrier. A provincial short line railway or other parties cannot access the lines of a federal carrier under this provision, thereby restricting shipper access to a competing rail service.

Mr. Justice Estey recommended that the words "any person" be substituted for the words "railway company" in the current statutory provision in order to broaden the

application of the running rights provision. He believed that this amendment would offer open access to the existing CN and CP lines. Any person would include shippers, and current and potential short line and provincial railways. The applicant would have to pay the infrastructure's owner a fair amount for the running rights and meet certain conditions. A fair payment for running rights should cover the avoidable costs of the railway lines incurred by their owner, but concomitantly ensure that the owner cannot block access by charging unreasonably high fees. Conditions imposed may include a requirement that would-be operators must carry adequate insurance and meet licence, safety and other statutory requirements.

For clarity, Manitoba regards the term "running rights" to mean either running rights with or without "traffic solicitation" rights. The applicant would decide what to request. If the ability to solicit traffic requires "traffic solicitation" rights to be specified in legislation, then that should be done.

Amending the current running rights provisions to allow any interested party to apply for running rights with a reverse onus public interest test would fulfil the recommendation of Mr. Justice Estey. The test would permit the Agency to deny an application if the host railway or another party with running rights can show that granting the application would likely be detrimental to the public interest.

Extending the ability to apply for running rights to "any person" with the Agency able to reject applications if the owning railway or another party with running rights proves harm to the public interest, would be a workable compromise of the full open access proposal. It is a potentially viable solution to the problem of lack of rail competition.

Manitoba does not believe that enhancing the running rights provisions will adversely affect overall railway system efficiency. CN and CP currently provide running rights to each other, to VIA Rail for rail passenger service, to Burlington Northern-Santa Fe and other railways over their lines in Canada and the United States. In cities served by more than one railway, terminal railways provide service to all interchanging railcars. Of course, these running rights exclude any opportunity to compete for traffic. The operational handling of competitive trains over a rail infrastructure should not be any different from the handling of non-competitive trains or a railway's own train traffic. Once a running rights agreement is approved by the Agency, the corporate ownership of a train should not be a factor in traffic control or scheduling trains in specific time slots over infrastructure. While corporate ownership might be necessary for billing purposes, it could even be hidden in some aspects of operations by the use of alphanumeric or numeric coding.

While some have suggested guest trains might be smaller in size and create traffic congestion problems, this is not necessarily going to be the case. A host railway may be now collecting traffic from a shipper in small blocks of cars and hauling them over its main line to a marshalling yard to build a train. A competing guest railway may move the traffic to a yard where it can build trains of a similar size.

Manitoba believes that access fees must be established by the Agency. While negotiations between a host railway and guest railway might be the ideal commercial means of determining the access fee, the host railway is the single seller of the right. In a market with only a single seller of a good or service, it is safe to assume that no price

that can satisfy both the seller and the buyer. The Agency must establish the appropriate access fees on a case by case basis. The reluctance of existing railways to provide access to competitors supports the need for Agency involvement in setting the access fee.

Manitoba concurs with the Panel's belief that the access fee must:

- compensate for the costs of using the facilities including physical wear and tear of the infrastructure and some fraction of costs of traffic control;
- provide an appropriate return to the host railway on its investment in the rail right-of-way, plant and equipment;
- provide for any new investment required to accommodate the guest railway's presence and/or compensate for interference with other traffic, **but only if the traffic is demonstrably net additional traffic or new traffic**; and,
- compensate the host railway for expenses it incurs ensuring that a guest railway will operate safely on its lines, including any additional risks that the presence of the guest railway imposes on the host railway.

The latter could include insurance risks, but again should be for net additional traffic or new traffic. Transport Canada can be responsible for ensuring that the guest railway meets established safety standards. However, if the guest railway assumes the risks through additional insurance and acceptance of liability to the host railway, there should not be a double charging for these risks.

The Agency should have access to existing running rights agreements between

railways where the host or guest railway is a non-competitive participant. The terms of those agreements may provide guidelines to the Agency in determining the appropriate access fees. An alternative to a simple cost-based approach to determine access fees to main line infrastructure would be to also determine the incremental value to the host railway of its own train operations on that infrastructure.

The purpose of enhanced running rights is to transform the railway industry structure from one with limited competition to one with effective competition. In setting access fees, the Agency must exclude compensation to a host railway for the loss of its status as the sole provider of service to shippers along the rail line. Such a reward represents the monetary value of the barrier to entry enjoyed by the host railway in the past as the sole service provider. It is that benefit that should accrue to shippers because competition exists. This unacceptable compensation would include any net revenue loss arising from the traffic diverting to the guest railway and the purported "increased cost of the host railway's operations to the loss of traffic, e.g., smaller train sizes". The host railway will have to adjust its operations to meet the challenge of effective competition. For example, the expectation of smaller train sizes as result of lost traffic assumes the number of trains will remain constant.

Manitoba proposes that the Governor in Council should issue a public policy statement to the Agency under Section 43 of the CTA. That policy statement should declare that increasing competition among carriers and modes is in the public interest unless it can be demonstrated otherwise.

The Interim Report suggests the possibility of a competitor 'cherry picking' traffic that

is paying a higher overhead margin (contribution to constant costs) to an existing carrier. The Interim Report's concern is that the carrier would not be able to recover that revenue from other traffic and its financial position would be threatened. The Panel should note that a competitor of significant size would have its own overhead costs to recover and there would be a limit on how low a rate it could charge to obtain that traffic. The Panel should also note that meeting the service requirements of large or many small shippers would increase the complexity of operations for a smaller competitor. The smaller competitors would have to assume additional overhead expenses that would need to be charged to their shippers. Manitoba expects that a competitive railway industry would result in a different distribution of margins among shippers and products that would be less extreme, but compensatory to all participating carriers. Increased traffic including that captured from the trucking sector would also keep revenues compensatory.

The Interim Report states that the Agency should have guidelines defining the public interest when deciding upon an application for running rights. The National Transportation Policy Statement can provide five guidelines to the Agency. The first is the existence of competition among carriers. Safety of operations is second. The third is that existing rates and conditions of service to affected shippers are not an unfair disadvantage beyond that inherent in the location or volume of traffic, the associated scale of operation and the type of traffic or service involved. The fourth is that existing rates and conditions do not constitute an unreasonable discouragement to the development of primary or secondary industries, to trade in, or from any region of Canada, or to movement of commodities through Canadian ports. Finally, the viability of the affected carrier should be a consideration.

The Interim Report raises a number of questions on the implications of enhanced running rights for existing shipper protections. They are good questions and we will answer them in this section.

With respect to level of service obligations or common carrier rights, a guest railway should also assume these obligations. The railways now negotiate running rights agreements among themselves where traffic solicitation rights are specifically excluded. They could continue to do so without application to the Agency. It would not be appropriate to relieve both carriers of these obligations. If a circumstance arises where a shipper is refused service from host and guest railways and cannot find any other carrier for his business under other provisions like competitive line rates, it is likely that his traffic is best suited for truck transport. If the shipper applies to the Agency for an order enforcing the requirement of “reasonable accommodation”, the Agency could determine against which carrier it would be most reasonable to make an order, if any. If a host railway is not prepared to continue to accept common carrier obligations after a guest railway has been granted running rights, the host railway is free under the legislation to discontinue service and offer the line for sale.

Host and guest railways should be obligated to provide a tariff at the request of a shipper. The principle underlying the existence of competition among carriers is that the shipper should have a choice of two or more carriers. If any carrier can refuse to provide service or a tariff, then that choice is not possible.

Manitoba does not see any reason to not subject a guest railway to the same rules with

respect to tariffs, confidential contracts, and the obligation to issue a joint rate where applicable.

The Interim Report asks if the current obligation to interswitch traffic at regulated rates should apply to a guest railway. The case would involve the guest railway being asked to take the traffic to an interchange with a third carrier, which did not want or could not obtain running rights to the shipper's site. The Interim Report also asks about the obligation of a guest carrier to provide a competitive line rate. It is quite possible that the enhanced access provisions will create the opportunity for the establishment of short haul railways who would perform interswitching services for shippers within metropolitan centres. Short haul railways could also collect and deliver traffic for shippers located beyond the interswitching limits and bring them to competitive interchanges within those metropolitan centres. Such railways might create a competitive dynamic that might eliminate the need for regulated interswitching rates. To not discourage the development of short haul carriers, guest railways should not be obligated to interswitch traffic at the regulated rate or establish competitive line rates.

Recommendation 4: Manitoba recommends that any regional or short line railway be granted, by legislation, running rights over the main line of the connecting carrier (without the right to solicit traffic), to the nearest competitive interchange with another carrier. Running rights beyond the nearest competitive interchange should be granted by the Agency on a case-by-case, subject to the reverse onus public interest test.

A short line railway should have the choice of main line carrier to which it feeds

traffic. The connecting main line carrier should have the possibility of losing the traffic as a discipline when negotiating its contract with a short line railway. The short line railway would contract to deliver traffic to either the connecting carrier or the alternative carrier at the interchange. If the short line railway and the connecting main line carrier were unable to negotiate the fee for running rights to the interchange with the alternative carrier, the Agency would establish the fee.

In 1995, CN and CP said that they would not sell any branch line to a short line railway if it could feed traffic to a rival railway. Each one's existing traffic obtained from any particular branch line could be lost if a short line railway had a choice of main line carrier with which to interline. However, amending the sections on competitive line rates as discussed below could give a shipper or shippers the opportunity to obtain competitive service whether or not a branch line were sold.

Reforms to the various access and remedy measures for shippers must be a package. No single measure such as enhanced running rights can be regarded as sufficient to achieve a competitive railway industry. Enhanced running rights do not mean that they could or would be utilized in every case. The other measures are required as alternatives available to shippers.

From an operational perspective, the Class I railways ran their own trains to service the branch lines that once belonged to them and now are operated by a regional or short line railway. They now run trains over a main line with empty or loaded railcars to an interchange with the smaller railway and after collecting the returned blocks of cars, back over the main line to a marshalling yard. Issues around train scheduling and co-

ordination should be minimal if the identity of the train owner only becomes relevant when sending a bill to a third party.

The Federal Government Grain Hopper Car Fleet

Recommendation 5: Manitoba recommends that the disposition of the federal grain car fleet be done in a manner that contributes to increased railway competition.

The federal government intends to sell its grain hopper car fleet. The current division of these railcars between CN and CP is fixed limiting railway competition for market share. A shipper with its own railcars can offer that capacity to either railway as part of rate negotiations. The grain elevator companies have not expressed any interest in owning the hopper cars, but the Farmer Rail Car Coalition (FRCC) advocates ownership by grain producers. Grain producers, through an independent, not-for-profit organization, should have the opportunity to purchase this car fleet. Manitoba agrees with the FRCC that railway competition in grain transportation on the Prairies could be enhanced if such an independent organization made the railcars directly available to interested shippers.

The University of Manitoba Transport Institute has proposed that the organization could use an electronic auction for the railcars that would contribute to increased railway competition. Allocation of rail cars by this organization could be based on commercial market mechanisms, with any surplus from car leases and rentals reinvested in purchasing new railcars. This would eliminate the railways' ability to

reduce the availability of railcars in order to earn rents.

The procedure for shippers to direct the railways to deliver and collect railcars leased from this non-profit organization needs development. If standards negotiated through commercial contracts would not be adequate to ensure rail service is co-ordinated in a timely fashion, then legislated service standards would be necessary.

Interswitching

Recommendation 6: Manitoba recommends that the sections on interswitching in the CTA be improved by deleting the requirement to have storage facilities for railcars at an interswitching point, and removing any legal impediments to the use of shipper-owned facilities as interchanges. The Agency should continue to set actual interswitching rates.

Sections 127 and 128 of the CTA allows the Agency to require the transfer of traffic from one railway to another at regulated rates and conditions if the origin or destination of the traffic is within 30 kilometres of an interchange between the two railways. The CTA allows a railway, a municipal government or an interested party to request such an order. Since a shipper served by one railway is an interested party, the shipper can obtain service from a connecting railway if located near an interchange. A shipper beyond the 30-kilometre distance can also apply to the Agency for interswitching privileges.

Section 127 (2) allows the Agency to order the railways to provide interswitching

facilities at an interchange for the exchange of traffic between the lines of both railways and other railways connected to them. An interchange is defined as a place where the lines of two railway companies connect and where empty or loaded cars may be stored until delivered or received. Using that definition, the railways can choose to establish interchanges where they want, thus limiting shippers and municipal governments from applying for an interchange at a location where rail lines just intersect. However, the railways do transfer traffic at interswitching points where railcar storage is not possible by the receiving carrier providing running rights into its nearest railyard. The railways use these interswitching points for operational efficiency, but not to provide competitive alternatives to shippers. The requirement for an interchange to have immediate car storage capacity limits opportunities for a more competitive environment.

In 1992, Cominco successfully obtained an Agency order to declare the track facilities at an AgPro Terminal in Saskatoon, which were used by both railways, as an interchange for purposing of interswitching traffic. AgPro Terminal had agreed to the use of its facilities as an interchange. Greater rail competition will occur if shippers with terminals connected to more than one railway co-operate with other shippers so that these facilities can be declared interchanges.

The requirement to have storage facilities for railcars at an interswitching point should be deleted from the definition of an interchange. This would permit shippers to use Section 127 at interchanges where the connecting carrier would need to obtain running rights to a shipper's track or a convenient railyard of the local carrier. Alternatively, the Agency could order the provision of storage track when an application to establish

interswitching is made. The Panel should review the 1992 Decision to determine if any legislative amendments to the CTA are required to remove any legal impediments to the use of shipper-owned facilities as interchanges.

Minister Collenette has asked the Panel to consider whether the Agency should set "maximum", not actual interswitching rates when requested to do so. This matter is related to railway competition. Currently, the Agency prescribes interswitching rates to prevent the local carrier from setting an excessive rate that prevents access to the alternative carrier. Manitoba believes that a local railway and shipper could not successfully negotiate a fair and reasonable interswitching rate if that would result in the local railway losing traffic to the connecting carrier.

Competitive Line Rates

Recommendation 7: Manitoba recommends that the CTA Section 131 (1) requirement for a shipper to have an agreement with the connecting carrier before requesting a competitive line rate and service to the interchange be repealed.

A shipper having access to the rail line of only one rail carrier at origin or destination can ask its local carrier for a competitive line rate (CLR) to the nearest interchange with a connecting carrier, or apply to the Agency for one if refused. CLRs give the shipper a choice of service from his local carrier or a joint service from the local carrier and the connecting carrier. Two or more rail carriers must operate a continuous route between origin and destination. The CLR must be proportional to a rate that the local

carrier charges for the long-haul movement. Sections 129-136 of the CTA set out the conditions under which a shipper may seek a CLR.

However, Section 131 (1) of the CTA requires that the shipper have an agreement with the connecting carrier for service from the interchange before asking the local carrier to establish a CLR. With only two major carriers operating in Canada, the requirement for a shipper to have an agreement with a connecting carrier first has rendered this provision ineffective for movements within Canada. Several cases have come before the Agency where the connecting carrier refused to quote a CLR at the request of a shipper. Various shipper organizations believe the refusal of a connecting carrier to quote a CLR has made this competitive access provision ineffective.

Manitoba is concerned that the carriers are reluctant to compete with each other using competitive line rates. Each believes that the traffic gained as a connecting carrier in one market might exceed traffic lost in another market where it is a local carrier. As duopolists, they recognize that they can both gain more revenues by not competing for each other's traffic where each has a local monopoly.

Section 131 (1) of the CTA, should be repealed. In light of actual experience, the Agency should be able to establish the CLR and its terms and conditions if the local carrier does not establish a CLR upon request from a shipper within a specified period.

Recommendation 8: Manitoba recommends that the Agency should be permitted to determine the Competitive Line Rate (CLR) as the lower of its calculated rate or the rate offered by the local carrier.

Section 133 establishes the method by which the Agency calculates the competitive line rate. In summary, the competitive line rate is the applicable interswitching rate plus the average revenue per tonne-mile for the similar traffic movements being considered and then multiplied by the distance beyond the interswitching limits. The Agency has the discretion to decide what specific movements it can include and what is the relevant time period under consideration. For a potential applicant, the method creates the risk that the Agency will determine a higher competitive line rate than the one offered by the rail carrier. Section 133 (4) specifies that the competitive line rate must not be below the variable costs determined by the Agency. This establishes an unknown floor for the competitive line rate, since the Agency would have to determine an appropriate contribution to constant costs.

The CTA should eliminate shipper uncertainty that the Agency may determine a higher CLR than the one offered by the local carrier by permitting the Agency to determine the CLR as the lower of its calculated rate or the rate offered by the local carrier. The CTA now requires the CLR to cover variable costs and the Agency has decided that this meets the requirement of being fair to the carriers (see below). Determining the lower rate to be the CLR would be fair to the shippers.

Recommendation 9: Manitoba recommends that the CLR provisions of the CTA be amended to permit a shipper to simultaneously request a through rate and a CLR from its local carrier, and the beyond rate from the connecting carrier with the carriers providing the rates independently.

Legislation establishing a truly competitive environment would permit a shipper to simultaneously request from the local carrier:

- a) a rate quote for the movement over its rail lines from the origin to destination; and
- b) a competitive line rate for the movement over its rail lines from the origin or destination to an interchange with a connecting carrier; and

from the connecting carrier, a rate quote for a movement over its rail lines between the interchange and the origin or destination.

The shipper should copy both carriers with each request so the requests are within the same time period. The legislation would forbid the carriers to discuss their offers with each other. It would also set a time limit for the railways to respond with formal bids. The shipper must have access to Final Offer Arbitration to settle any rate disputes. The current right to appeal to the Agency to resolve disputes over the competitive line rate and the service offered by the local carrier could remain.

The language of an amendment to U.S. legislation may be appropriate:⁴

Upon the request of a shipper, a rail carrier shall establish a rate for transportation and provide service requested by the shipper between any two

4 S.621, 106th Congress, 1st Session March 15, 1999, p. 8-9

points on the system of that carrier where traffic originates, terminates, or may reasonably be interchanged. A carrier shall establish a rate and provide service upon such request without regard to:

- *whether the rate established is for only part of a movement between an origin and a destination;*
- *whether the shipper has made arrangements for transportation for any other part of that movement; or*
- *whether the shipper currently has a contract with any rail carrier for part or all of its transportation needs over the route of movement.*

Manitoba notes that the submission of the Canadian Shippers' Summit proposed amendments to the CLR provisions that would accomplish the same objectives as Manitoba's for improving competitive access. The Canadian Shippers' Summit proposes renaming the CLRs as Competitive Access Rates (CAR). Manitoba endorses the Canadian Shippers' Summit proposals on competitive line rates.

The Interim Report expresses concern about the CAR proposal by the Canadian Shippers' Summit. It says that the CAR would be a uniform regulated rate that might not reflect differential pricing or the specific costs of a movement. Manitoba favours the local carrier being able to offer a rate to the interchange and a period for negotiation before the shipper approaches the Agency requesting the CAR. Manitoba notes that the CAR would be an average of existing commercial rates and not a typical cost-based regulated rate. The proposal would narrow rate differences among shippers of the same commodity, but not differences among commodities.

The Interim Report observes that CPR has suggested that the CAR, like the CLRs, would be used as a negotiating tool, not a method of obtaining relief from a rate concern. CPR is correct. These measures are intended to encourage competition between the railways. The existence of effective competition would affect negotiations on rates and service conditions.

Section 27(2) and Section 112 of the CTA, which are discussed below, deter shippers from making use of the competitive line rate provisions.

Substantial Commercial Harm - Section 27 (2) CTA

Recommendation 10: Manitoba recommends that "substantial commercial harm" to shippers as a criterion for Agency intervention be eliminated.

Section 27(2) of the CTA requires that the Agency, in considering any shipper application, must be satisfied that the applicant would suffer “substantial commercial harm” if the relief were not granted. This section of the Act created uncertainty in the shipping community about what might be considered “substantial commercial harm”. Shippers are also concerned that the railways could delay a solution of the matter and increase its cost through litigation about the applicability and meaning of the phrase in each case. In addition, shippers are concerned that they may be required to submit confidential information in the process of the application in order to demonstrate “substantial commercial harm”. This uncertainty has resulted in a significant reduction of applications to the Agency.

Manitoba has stated its reservations about this Section previously. With respect to competitive line rates, a shipper must demonstrate to the Agency that it would suffer "substantial commercial harm" if it did not obtain a CLR. In the context of creating a competitive environment, it does not make sense to require shippers to demonstrate "substantial commercial harm" in appeals related to any competitive access provisions. In a competitive transportation sector, like trucking, a shipper will seek and receive service offers from carriers other than the one(s) that it uses. It will select another carrier if it can obtain service under better rates and conditions. No requirement to demonstrate "substantial commercial harm" exists.

The CTA should be amended to eliminate artificial barriers to appeals under the competitive access provisions such as the obligation to demonstrate substantial commercial harm.

Commercially Fair and Reasonable To All Parties -Section 112 of CTA

Recommendation 11: Manitoba recommends that rates or conditions of service established by the Agency for the railway industry meet the test of being reasonable, as is now the case for the airline industry.

Section 112 of the CTA requires that a rate or condition of service established by the Agency must be "commercially fair and reasonable to all parties". This term would apply to competitive line rates and interswitching rates. This section has created uncertainty for shippers, considering any application to the Agency, about what does "commercially fair and reasonable to all parties" mean specifically. Shippers are also

concerned that the railways will delay the resolution of the complaint through litigation over what the phrase means and whether it is applicable in the case before the Agency. Combined with Section 27(2), this section has reduced shipper inclination to pursue applications with the Agency.

Sections 128(3) and 133(4) of the CTA establish a floor for interswitching and competitive line rates. They cannot be below the variable costs determined by the Agency for the movement of the traffic. To arrive at a rate after determining variable costs, the Agency must then determine the appropriate contribution to unallocated expenses or fixed costs.

In an April 1997 Decision on interswitching rates, the Agency established the contribution for interswitching rates to be 7.5%. The selection of the specific number was not explained, but the Agency rejected the railway argument for a percentage that fully covered fixed costs on the grounds that the resulting interswitching rates would impair the use of interswitching for competitive access. Manitoba concurs with the Agency's reasoning. However, the Agency explicitly stated that the decision only applied to interswitching rates.

In that Decision, the Agency stated the Section 128(3) guided its interpretation of the phrase "commercially fair and reasonable". It requires that the Agency consider the average variable cost for all traffic that would use the interswitching rates. Although the Agency determined in this case "commercially fair and reasonable" to a railway means that a rate must be high enough to cover variable costs, what might be "commercially fair and reasonable" to the shipper was left undefined.

In declaring current national transportation policy, Section 5b of the CTA states that "competition and market forces are, wherever possible, the prime agents in providing viable and effective transportation services." In June 2000, the federal government amended Section 66 of the CTA dealing with airline fares and directed the Agency to disallow fares if the Agency finds them to be unreasonable and replace them by ones deemed to be reasonable.

Final Offer Arbitration

Manitoba believes that the process of the Final Offer Arbitration with the reforms introduced in July 2000 provide shippers with an effective tool to resolve disputes with carriers over rates or conditions of service. The Interim Report states that shippers are optimistic about its usefulness while CN and CP object to its availability and prefer commercial arbitration. CN and CP suggest that a shipper may be offered the best combination of rates, service and conditions from a railway and then seek FOA on a lower rate. If the railway's offer were objectively the best one, the railways should be able to make that case to the arbitrator. Manitoba regards FOA as an important safeguard to prevent abuse under differential pricing where a carrier dominates a market.

Development of Regional and Short Line Railways

Recommendation 12 Manitoba recommends that the CTA be amended to require CN and CP to produce a long-term plan identifying their core network of lines that each intends to operate and not offer for abandonment in that time period. All other lines should be available for sale to any buyers interested in a package of lines that could be more efficiently operated as a regional collection system.

Recommendation 13: Manitoba recommends that the CTA be amended to permit the Agency, either upon application by shippers or on its own initiative, to designate certain rail lines where service has deteriorated and then direct the railways to offer the designated rail lines in a package to potential regional or short line railways, or grant running rights to the regional operator with the best service proposal.

Recommendation 14: Manitoba recommends that the CTA be amended to permit interested parties to have an opportunity to appeal a railway's decision to offer only a segment of a rail line or a single line for abandonment, and that the Agency be able to order the railway to offer an entire line or nearby lines to the applicant if the applicant can demonstrate a viable short line or regional railway would be feasible.

Manitoba believes that the CTA needs to be amended to prevent the abandonment of rail lines in a manner that frustrates the development of short line and regional

railways.

The two major railways have the means to ensure that competition does not emerge in the rail sector. Strategically abandoning lines in a manner that frustrates the development of short line and regional railways is one means by which they can do so.

The CTA now permits a railway to list for discontinuance a portion of a railway line or subdivision. This has permitted a railway to segment a line and offer sections of the line in sequence. Each individual section could not be a viable short line railway, but the entire line might be. Segmentation prevents a short line railway from operating the line and preserving the infrastructure. Another approach would be the abandonment of neighbouring rail lines in sequence to discourage the development of a regional railway operating several lines in an area.

Manitoba has witnessed one of the major railways follow this strategy when offering lines for abandonment in this province. The Province requested that the railway not follow this strategy. While the railway complied in one unique case, it disregarded our concerns in other cases.

Each major railway is willing to transfer a branch line to a short line railway only when the latter will be a feeder line delivering traffic to it. A railway that dominates a certain geographic region may be reasonably sure that its existing traffic will still have to be trucked to another point on its network. It would be satisfied to abandon a branch line rather than sell it to a short line railway. The major railways will overlook potential development opportunities for branch lines because their vision and planning is oriented to their role as main line, continental carriers. Abandonment, unlike

conveyance, would allow a railway to dispose of the affected track assets in a manner that can contribute to the network of lines deemed to be its core lines. Strategic abandonment is more likely when the interested buyers of branch lines have the capital and ability to purchase a number of lines to create a regional railway which might not be wholly captive to the one major railway. Such a buyer could seek running rights over main line track setting a precedent that could make it a competitor. It may also, due to location, access an interchange between major carriers, or a port that would provide a competitive alternative or threat to the major carrier for shipper routing of goods.

Maintenance of infrastructure through short lines in conjunction with access remedies will introduce new entrants to the market that could dramatically increase choices to shippers. This would be consistent with the policy principle of using competition to achieve the objectives of the national transportation policy.

Another concept for encouraging railway competition, at least regionally, is the development of regional railways. For example, OmniTRAX wants to establish a regional railway, CanRail West, to operate a network of grain dependent branch lines with running rights over the connecting carrier's main line to competitive interchanges with another Class I carrier. OmniTRAX is interested in purchasing those branch lines, but CN and CP have declined to offer lines for sale to OmniTRAX. The amendments to Section 138 of the CTA proposed above would facilitate new entrants such as CanRail West to establish itself by obtaining running rights, if it cannot purchase branch lines from CN and CP. New regional railroad entrants should be able to set single line rates on the designated lines or joint rates as required, and should be

able to move traffic from the designated rail lines to a competitive interchange and any final destination. Regional railways would then be able to provide competition to CN and CP as well as be competitive with the alternative of truck transport.

Manitoba supports the development of a regional railway based on the following principles:

- a regional railway should be established in a manner that introduces a competitive dynamic within the rail industry, and clearly passes the efficiencies of competition between CN and CP to producers;
- a regional railway should be able to provide access to the Hudson Bay Railway to serve and increase traffic through the Port of Churchill;
- a regional railway should be operated on an economically feasible basis, with no requirement for public subsidy;
- a regional railway should serve to preserve rail infrastructure where feasible; and
- to the extent possible, a regional railway should be established to maximize public, social and environmental benefits.

The Provinces of Manitoba and Saskatchewan hired Travacon Research Ltd. to conduct a feasibility study of a regional railway in our Provinces. The consultant found that a regional railway could be financially feasible for a private company to operate. The consultant estimated the potential benefits to grain producers from the increased competition to be between \$35 and \$43 million annually in the region served, conditional on CN and CP cooperating with the regional railway in selling rail lines

and negotiating fair and reasonable agreements on running rights.

The current CTA requires CN and CP to produce a rolling three-year plan identifying rail lines to be kept or discontinued. An amended CTA should require CN and CP to produce a long-term plan identifying their core network of lines that each intends to operate and not offer for transfer or discontinuance in that time period. All of the remaining lines should be required to be offered to any buyers interested in a package of lines that could be more efficiently operated as a regional collection system.

For the prairies, the offer should include a reasonable set of the grain dependent branch lines (for example, in which CanRail West has expressed interest). The railways could establish a net salvage value reserve bid for the package of rail lines subject to arbitration by the Agency. The same provisions for the purchase of an individual line now would govern the sale and transfer of the package of lines, for example negotiations in good faith and determination of net salvage value. Any individual lines not purchased by a regional operator could be offered under the existing process of the rolling three-year plan.

The Panel should also consider that the potential removal of rail infrastructure carries with it an enormous public impact. Manitoba is also concerned about the process of rail line abandonment from the perspective of losing transportation infrastructure that would be too costly to restore if required in the future.

For this additional reason, the federal government has an ongoing interest and duty to ensure that abandonment of railway infrastructure under its mandate does not proceed

without consideration for the public interest in retaining the infrastructure and service. In the CTA, this has meant the railways must, in all cases, actively seek to convey such lines to short line operators, or failing that, to offer the lines to governments for not more than net salvage value—all in efforts to maintain transport infrastructure and services on a commercial basis where possible.

The current abandonment process requires a great deal of trust by government in the good faith of the major railways. While the CTA provides the broad parameters by which rationalization may occur, the railways are actually accorded the freedom of specifically defining the rationalization process. For example, it is they who establish the process for the reception and evaluation of offers and, as well, who hold all the power in determining the manner and degree to which they will seriously negotiate with a prospective buyer.

The major railways have had four years under the CTA regime to uphold the faith that has been placed upon them. The privilege to manage the process carries with it the moral obligation and responsibility that the intent of the process will not be subverted nor abused. Manitoba believes that the major railways have managed the process in a manner that has hindered the development of short line and regional railways. Restoring a proper balance between the railway decision to exit a market and the public interest in retaining a line is needed.

Manitoba proposes amending the CTA to prevent the major railways from frustrating the intent of the legislation to promote regional and short line development through strategic abandonment.

The CTA should be amended to permit the Agency to designate certain rail lines where service has deteriorated either upon application by shippers or on its own initiative. The Agency would direct the railways to offer the designated rail lines in a package to potential regional or short line railways, or would grant running rights to the regional operator with the best service proposal. The Agency should develop guidelines used to designate specific rail lines. These would include specific traffic measures such as carloads or tonnes per mile of track, measures of service quality, and railway capital and maintenance expenditures.

The amended legislation should permit the Agency to select one or more applicants to purchase these rail lines at net salvage value or to operate under running rights arrangements, and provide service to shippers. The Agency should arbitrate the net salvage value if the owner and buyer could not negotiate a settlement. The Agency should also have the authority to arbitrate any terms of the operating agreement between CN or CP and the buyer where negotiations were deadlocked.

Interested parties should also have an opportunity to appeal a railway's decision to offer only a segment of a rail line or a single line for abandonment or transfer. The Agency should be able to order a railway to offer an entire line or nearby lines to the applicant if the applicant can demonstrate a viable short line or regional railway would be feasible.

Grain companies are closing their elevators in Manitoba and the other Prairie Provinces. Grain producers have the right to order their own railcars to a siding and

load them. Many grain producers would like the opportunity to utilize the rail sidings at the site of the closed elevators, but the railways or grain companies remove sidings without giving interested grain producers the opportunity to make use of the sidings. Grain producers have voiced an interest in having those sidings protected from closure so they as shippers can demonstrate a viable use for them. The legislation governing the abandonment of rail lines should also address this need.

The Interim Report asks a question regarding the entry of new railways and the revenue cap on Western Canadian grain. The Panel should remember that there is a relationship between the achievement of effective railway competition and the revenue cap. In the Estey Report, the revenue cap was to be temporary until effective railway competition is achieved by allowing new carriers into the railway industry. The application of the revenue cap to new entrants should be unnecessary because the new entrants would be offering service at lower rates than both CN and CP to gain traffic from the incumbent railways. Whether or not CN and CP charge higher rates would be a test of how effective the competition really is. The federal government's monitor of the grain handling and transportation system would be able to observe this and report to the federal government and stakeholders on this test. Manitoba would also want to remind the Panel that the railways will seek to have the revenue cap eliminated in five years. Therefore, if the Panel does not want to recommend the measures advocated by Manitoba for achieving effective competition, it must recommend that the revenue cap for Western Canadian grain continue as a permanent feature of the railway regulation. It should also recommend that the revenue cap be adjusted for productivity gains to reflect what would happen in a competitive environment.

COMPETITION AND SUSTAINED CAPITAL EXPENDITURES

Recommendation 15: Manitoba recommends that national transportation policy recognize and accept that competition in the transportation sector enhances productivity and promotes innovation, and these encourage economic growth in other sectors, which benefits the railways through increased business that attracts financial capital.

The federal government asked the Panel to “*consider the effectiveness of the legislative and regulatory environment to sustain capital expenditures required to enhance productivity and to promote innovation*”. Manitoba understands this question as relating to railway competition. During the discussions about the implementation of the Estey recommendation on enhanced running rights, CN and CP argued that increased competition would threaten their ability to finance expenditures on infrastructure and equipment. We recognize that the large requirements for capital of a railway company has led to a concentrated industry in Canada where the railways have the market power to charge rates that yield high profits to finance the infrastructure. CN and CP argues that this market power is necessary for them to sustain the viability of their industry.

The railways position is that they must use differential pricing in order to earn the revenue necessary to cover their high fixed costs and earn the required return on their investment. They would argue that more competition would jeopardize their ability to use differential pricing. The need for differential pricing arises from the nature of most

businesses as multi-product firms and their inability to fully allocate expenses to their products. A competitive multi-product firm will also use differential pricing, but the prices are determined in the markets for the individual products. The market determines the share of fixed costs borne by buyers.

In the absence of effective competition, the railways use their market power in differential pricing so that shippers with weak market power bear a proportionately larger share of the fixed costs or unallocated expenses. Some shippers have greater market power than suppliers or consumers, and pass that burden onto others as does the grain industry pass the burden onto grain farmers. More competition in the railway industry would not prevent differential pricing, but the resulting freight rates would better reflect market forces.

The railways would argue that they need their market power to charge prices high enough to earn the cost of capital on their investments. Management in a competitive industry also must earn their firms' cost of capital on investments, but have no guarantee that they will achieve that goal. Where they make good investment decisions, they are more likely to achieve that goal. Where they make bad investment decisions, they are likely not to achieve that goal. Increased competition becomes an incentive to make good decisions and may also prevent railway management from using pricing policies to mask poor investment decisions.

Competition is recognized as an important driver forcing businesses to increase productivity (reduce costs) and find innovative ways of providing better and newer products. This is the value in having a legislative and regulatory environment that

encourages competition. Competition drives productivity improvement and innovation by limiting a business's ability to increase revenues by unilateral price increases. The farming industry is a prime example where this is true. Increasing competition in the railway industry would encourage more productivity improvements and innovation. For example, enhanced running rights could provide the opportunity for the railways to market running rights on their high-cost infrastructure as new products and gain additional traffic from the trucking industry.

It is necessary to remember that from a public policy perspective, the purpose of the Canadian transportation system is to serve the transportation needs of shippers, and maintaining the economic well being and growth of Canada and its regions. The demand for transportation services is derived from the needs of our industries to receive or ship goods. The long-term viability of carriers and modes of transportation depend on the prosperity of our industries and general economy. Transportation efficiency achieved through competition provides reasonable rates and quality of service that encourages industrial growth that rewards the railways with increased business and profits. In a dynamic economy, the level of competition does not reduce the availability of capital. Public policy should also recognize that the railways' requirement for capital is cyclical.

INTERIM ORDERS ON SHIPPER COMPLAINTS

Recommendation 16: Manitoba recommends that the CTA be amended to permit the Agency to issue interim orders to remedy a complaint from a shipper until the matter of the complaint is resolved.

In some cases, competition in the rail sector is thwarted through an onerous, costly and quasi-judicial Agency process that intrinsically favours carriers with deep pockets and able legal representation, at the expense of small shippers with limited resources, personnel and time constraints. Manitoba has previously addressed in our railway competition submission the significant issue of shipper problems with accessing the Agency. To this we add the concern that the CTA, unlike the National Transportation Act 1987, lacks a provision to permit the Agency to issue interim orders to remedy a complaint from a shipper until the matter of the complaint is resolved. Shippers may have avoidable problems receiving adequate service from a railway to deliver product to a seaport to meet a vessel by a specific date. Unless the service is provided in a timely manner, the buyer may turn to a foreign supplier. Alternatively, the shipper is burdened with the extra costs incurred in the shipment's missing the intermodal connection. Interim orders would require the service to be performed expeditiously so the product is delivered on time. Settlement of the terms and conditions of the movement can be resolved by the Agency after the fact.

Competition In The Airline Industry

In the air industry, the credo to use competition as the mechanism to assure efficient, viable, reliable and affordable services should apply—but we are far from an ideal structural situation to say that competition truly exists.

The structure of the air industry is as follows—Air Canada dominates the domestic air passenger market by having in excess of 80% of the traffic. It has the best airport slots, the most infrastructure, the deepest capitalization, a marketing dominance (points, reservations, and so on), and the most profitable designated international routes to ensure its dominant position. Although a number of relatively new scheduled and charter carriers exist (WestJet, CanJet, Canada 3000, Air Transat, and Royal) and have expanded service, they collectively constitute a small portion of the market. All told, none of them has the fleet or resources to compete with Air Canada as a full service carrier serving all points in the country. Canada 3000's purchase offer for Royal, if successful, will not change that.

The air industry structure is unique in that the treaty negotiation requirement of international air travel imposes severe limits on international competition between carriers, and also competition between domestic carriers on foreign routes. Truly, the industry operates as two markets—domestic and transborder/international—and we must treat each in turn to determine how competition in the air sector can be promoted.

DOMESTIC AIR COMPETITION

Recommendation 17: Manitoba recommends that the effects of reciprocal cabotage rights for non-Canadian carriers, and of reciprocal provision of the “right of establishment” of a domestic service using Canadian employees and equipment, be investigated.

Domestically, we do not have an entirely healthy situation—in fact, we have one that is substandard, from a fare and service viewpoint, for most Canadians. From the Panel’s perspective, means must be sought to meet the objectives of a viable and competitive industry structure, which requires measures to encourage new and viable entrants, and to limit the myriad market power tools of Air Canada to crush any competitive “insurgency”. A good start was made with Bill C-26, and we recommend its continuance and the vigilance of the Competition Bureau to deal with market abuses by Air Canada. Further steps, however, are necessary.

Manitoba recommends that the Panel investigate permitting cabotage on a reciprocal basis—which could introduce more competition into the domestic market place through the use of non-Canadian-based carriers. Similarly, the Panel should investigate providing an investor from another nation the right to establish a Canadian domestic service, using Canadian employees and equipment, where the investor’s nation provides reciprocal rights to Canadian investors. Again, the primary focus of governments must be to reasonably satisfy the air service needs of Canadians.

INTERNATIONAL AIR COMPETITION

Recommendation 18: Manitoba recommends that the federal government, in concert with other national governments and relevant international institutions, remove current impediments to increased international air carrier competition, including the immediate liberalization of all air cargo restrictions.

Recommendation 19: Manitoba recommends that the federal government strive, through bilateral agreements or other means, to liberalize the provision of international air services on a reciprocal basis.

The international market is circumscribed by the 1944 Chicago Convention requirement that only national governments, on a bilateral basis, can negotiate carriage rights and designate the specific carriers to fulfill those rights. In other words, it is far from a free and competitive market, even though an adequate number of large international carriers exist to allow for competition in the marketplace.

The flag on the tail fin of the aircraft is of little concern to passengers, shippers and receivers. Once safety and security are assured, consumers of air transportation services are interested in adequate services at affordable, reasonable and acceptable prices. The focus of the Canadian government should be to reasonably move to a functioning air transport marketplace that meets these requirements.

What will an open competitive and efficient international market do? It will foster economic development in Canada through increased trade and new markets, it will

reduce the costs of imports for consumers and exports for shippers, it will increase the ability of Canadians to travel abroad, and it will enhance the competitiveness of Canadian goods and services (including air transportation services) in foreign markets and tourism operators.

Ideally, in an open global market, any safe carrier of any nationality would be allowed to fly between any two airports in the world, subject only to the rules implemented for traffic control and safety. However, we recognize this is not likely to happen soon. The focus then is for government to liberalize all restrictive bilaterally determined regimes.

In the absence of global open skies or multi-national open skies agreements, we advocate that the federal government continue to strive to achieve bilateral air service agreements which are as unrestricted as practicable. Manitoba urges that Canada should continue to negotiate bilateral air transportation services agreements, to permit for increased numbers of international flights by carriers of either nationality between Canada and other countries. The “Open Skies” agreement between Canada and the United States, for example, is a revolutionary and progressive treaty. Transborder travel has increased and additional services are being provided to meet the demand. This regime has benefited carriers, travelers, shippers, consumers and producers. Clearly, more “open skies” are needed.

In its negotiations, Canada must consider that if no Canadian air carrier is interested in serving an international route but a foreign carrier sees a market opportunity and wishes to provide service, the foreign carrier should be allowed to operate without the

requirement of a specific benefit to a Canadian carrier. Service between Canada and Iceland is one example of this situation. We, of course, are in favour of reciprocal rights for Canadian carriers.

Through the International Air Transportation Association and the International Civil Aviation Organization and other organizations, Canada must work to eliminate other undue interference in the market, such as the regimentation of schedules and frequencies, aircraft gauge, fares, city pairs, and other international practices that restrict competition and inhibit carriers' abilities to rationalize services and prices with demand. Regulations, for example, pertaining to citizenship, nationality, customs and immigration can be valid, but again, all need to be examined for unintended consequences for the supply of efficient and competitive international air transportation services.

Some parties might point to Canadian carrier viability concerns in the face of any such actions. We are cognizant of these concerns, but believe Canadian air carriers are capable of competing on a global scale provided a level playing field is established and maintained. Air Canada is the 10th largest air carrier in the world, has a world-class reputation as witnessed by a number of international awards, and has announced plans to expand service around the globe. Air Canada would agree that it, in particular, has been able to reap substantial rewards when skies are "opened", as witnessed by its US transborder success. The number of Canadian charter and discount carriers that have recently entered the domestic markets should further be allowed to take advantage of international opportunities.

Competition In The Trucking Industry

Recommendation 20: Manitoba recommends that the Government of Canada renew efforts to persuade provincial governments, the Governments of the United States and Mexico and their state governments, to harmonize their commercial vehicle weights and dimension regulations, and commence negotiations with the United States to liberalize cabotage restrictions.

Manitoba has no significant concerns with the state of intramodal competition in the trucking industry nationally. Over the course of the last decade, overt economic controls on the intra and extra provincial industry have been removed, to the benefit of shippers across the nation. The industry is naturally structured in such a manner that competition is a constant motivator of carrier behaviour.

Motor carriers cannot be fully effective in providing intermodal competition within North America because provincial and state regulations regarding vehicle weights and dimensions vary. The discrepancies limit the use of tractors, trailers, and their various combinations likely resulting in inefficient and ineffective use of equipment. While the federal government has made efforts to encourage harmonization of regulations in Canada, renewed efforts by the federal government to harmonize interprovincial, interstate, and international regulations can only provide positive benefits. These benefits include better utilization of equipment and reduced trucking costs for motor carriers, lower rates to shippers, and increased trade throughout North America.

Further, the inability of commercial drivers from Canada to make US domestic movements while repositioning equipment for return international movement reduces the efficiency and competitiveness of the Canadian trucking industry, unnecessarily adding to the volume of empty miles and air emissions of the sector.

Currently, both the U.S. and Canada permit limited domestic point-to-point movements by carriers of the other country. These types of shipments assist carriers to increase efficiency and avoid empty hauls. While the changes to the customs cabotage regulations have been beneficial, immigration regulations have not been amended accordingly, resulting in an easing of cabotage restrictions for the equipment, but not for the drivers. Currently, while the U.S. has been enforcing the law, Canada has not. Consequently, U.S. carriers have had an operating advantage over their Canadian counterparts. The Canadian federal government must ensure reciprocal treatment in enforcement of the existing regulations. It should also immediately pursue negotiations with the U.S. toward fully reciprocal liberalization of the current restrictions on cabotage in the trucking sector.

Competition In The Domestic Marine Industry

Recommendation 21: Manitoba recommends that the federal government rescind the 25% duty imposed on foreign built ships for domestic use and investigate the feasibility of allowing cabotage in the domestic Canadian market.

We have two concerns with competition in the domestic shipping industry. The 25% duty imposed on foreign built ships for domestic use, under the *Coastal Trading Act* is

an unnecessary provision that openly protects the Canadian shipbuilding industry, but only at the expense of shippers and receivers that use domestic marine transportation. Additionally, the Panel should explore the feasibility, opportunities and threats of introducing cabotage in the domestic Canadian market. From our perspective, rules limiting marine cabotage (port to port service in Canada must be undertaken by Canadian-flag ships) may hinder the development of northern Canada and Arctic resupply and hinder the use of the Port of Churchill.

The Relevance Of Mergers To Transportation Competition

Recommendation 22: Manitoba recommends that, in the air and rail modes, the responsible federal government agencies be afforded the legislative and other tools necessary: to protect travellers and shippers from market power abuse of dominant carriers, until effective competition in these industries is achieved; and to review and prohibit anti-competitive mergers.

Recommendation 23: Manitoba recommends that current legislative and regulatory share ownership limits in the air and rail mode be retained until measures to enhance competition are shown to be effective.

The thrust of transportation policy is the promotion of competition among carriers as a method to deliver effective, viable and efficient services to shippers and passengers. To be successful, the industry structure in all modes should be conducive to competition. However, a recent trend in many industries including transportation has been for a decrease in the number of competitors by firms merging through acquisition and

consolidation. This is a matter of public concern. The federal government asked the Panel to address this issue through the question of whether or not the legislative and regulatory environment is appropriate to deal with public policy issues arising from newly emerging industry structures.

We in Manitoba are concerned about transportation company mergers that create a dominant carrier having market power to charge unreasonable prices and disregard the service needs of shippers and travellers. We are also concerned about a dominant carrier having the ability to engage in predatory pricing to drive new entrants from a market. In the air industry, the federal government has acted appropriately by passing legislation giving the Competition Bureau additional authority to act on complaints about predatory pricing behaviour (of the dominant carrier), and by directing the Agency to act promptly on service quality and pricing complaints. We expect these federal agencies to protect travellers and shippers of airfreight until effective competition in the airline industry exists.

In the rail mode, the current legislative and regulatory environment is silent on the issue. The possible future mergers of CN with Burlington Northern-Santa Fe and of CPR with the Union Pacific Railway may make legislation necessary unless measures to increase railway competition are taken. The President of CN has recently repeated his suggestion that a merger of CN and CP Rail might be appropriate after the conglomerate CP Ltd. indicated in February that it would split into five separate companies. This would position CP Rail as its own publicly traded company, which in turn would make it more easily and readily available to acquire. As a parallel step to introducing competitive measures into the industry, the federal government must

ensure adequate means are in place to review and prevent anti-competitive domestic and international rail mergers, and co-ordinate any efforts to examine merger plans with American regulatory agencies.

The proposed amendments to enhance running rights for competitive purposes will become the only effective means of encouraging competition should a purchase of CP Rail by CN be allowed. It would be equally critical that existing and future regional and short line railways have the ability to become competitors to the Class I carrier, not just a local partner.

In both of the air and rail modes, ceilings exist on the ownership of shares by one entity in Canadian carriers that were formerly Crown corporations—CN and Air Canada have a 15% share ownership restriction. The President of CN has publicly observed that these restrictions make potential mergers more difficult. These restrictions are in place to ensure that carriers, through widespread ownership, reasonably reflect the greater public interest in their corporate approach, rather than act in a manner befitting one or two dominant shareholders. Manitoba recommends the maintenance of such restrictions in the public interest, if measures in both the air and rail industries to increase competition do not prove to lead to true competitive behaviour of carriers.

REMOVING REGULATORY IMPEDIMENTS TO COMPETITION

Recommendation 24: Manitoba recommends that Transport Canada should always include full stakeholder consultations, risk assessment and cost-benefit analysis in the developmental process for regulations applicable to transportation industries.

To this point, this submission has dealt with means of structuring transport industries in such a manner that competition among transport firms is a predominant characteristic. This is consistent with the fundamental principle of national transportation policy, that competition among transport firms best achieves the system objectives of adequate, affordable, efficient, and effective services, and viability of transport modes.

Safety is another objective of the transportation system. National transportation policy encourages carriers to compete within the constraint of the system meeting the highest practical safety standards. Governments have the obligation to impose regulations to ensure the safety and security of transportation. Since these regulations may inherently restrict carriers' ability to attain ultimate efficiencies, governments must define rules that attain the desired safety level with the least adverse impact on the carriers' ability to provide cost-effective services to shippers.

The federal government is the one most responsible for regulatory oversight of the air, rail and marine modes. As it withdraws from the provision and subsidization of transportation services, its attention to this guideline must be constant. In its approach

to issues of safety regulation, the federal government has only occasionally done so. Amendments to railway safety legislation in the last decade streamlined safety-rule making processes—with administrative and economic benefit to carriers—without circumventing the quality of safety requirements. Regulations now are subject to industry impact assessments and minimal cost-benefit analysis, increasing the likelihood that unnecessary and arbitrary measures are rejected early in their development. In some cases, however, the federal government has not adhered to this guideline. Two specific issues in the air and marine modes being CARS 308 in the air sector and marine pilotage in the marine sector exemplify regulations that may compromise our transportation system’s cost-effectiveness if left unaddressed.

Air Safety Regulations

Recommendation 25: Manitoba recommends that Transport Canada re-examine existing air safety regulations about which stakeholders have concerns, particularly their introduction without adequate consultation and benefit-cost analysis. Transport Canada should work with stakeholders to develop more acceptable regulations that reasonably balance safety requirements with the costs imposed on airports and air carriers to meet such regulations.

A recent example is **Canadian Aviation Regulation 308 (CARs 308)**, a new regulation that requires a 3-minute response time for fire fighting at all airports. Manitoba and most other stakeholders agree that Transport Canada's development of the regulation was flawed by its lack of consultation and a further lack of any benefit/cost analysis or risk assessment. A majority of stakeholders consider the

regulation to be an unnecessary and onerous burden on the smaller airports. Meeting its requirement is increasing costs for airports and airlines, adversely affecting their financial viability, international competitiveness and likely imposing unnecessary costs on users. For stakeholders, CARs 308 simply represents the imposition of an unreasonable regulation without due process that impedes the competitiveness of our transportation system.

Marine Pilotage

Recommendation 26: Manitoba recommends that the federal government examine competitive alternatives to providing marine pilotage service and the value of having Transport Canada responsible for setting the regulations pertaining to marine safety.

In 1998 and 1999, the Prairie Provinces participated in an Agency review of marine pilotage that was restricted from examining the legislative framework for pilotage in Canada. Marine pilotage services are provided by federal crown corporations (called Pilotage Authorities) that operate regionally. The Prairie Provinces agreed to raise concerns about the nature of the provision of pilotage authority services during the CTA review since the matter rests in the Pilotage Act.

The Pilotage Authorities both provide and regulate pilotage services. The pilots are either Authority employees or members of a pilots' corporation [a co-operative] that has a contract covering fees and work rules with a Pilotage Authority. Canadian ship owners are concerned that the current monopoly structure inflates the cost of pilotage

by imposing unnecessary requirements. They are concerned that the pilots have undue influence over the setting of rules and fees because the Minister of Transport appoints pilots to the Boards of the Authorities. They are also concerned about the involvement of pilots in the licensing of new pilots and their ability to restrict the number of pilots available.

The marine mode is the only one where an individual with "local knowledge" must take control of the vehicle from its operators on part of the trip. In all other modes, traffic control systems are designed to assist trained operators, e.g., automobile and truck drivers, train engineers, airplane pilots, in operating their vehicle. From the perspective of competition among modes, the requirement for marine pilotage may add an unnecessary and excessive cost. The requirement may be unnecessary because charts, channel markers, and buoys might be able to provide guidance to shipmasters as maps, road signs, and pavement markings do for automobile and truck drivers. Furthermore, electronic navigation technology may provide shipmasters with adequate information for safe passage.

Canadian shipping companies argue that shipmasters who make trips through waterways on a regular basis gain through experience the knowledge and skills necessary to handle their vessels without aid of a pilot. They feel the shipmasters should be exempt or licensed to operate their own vessel.

The current pilotage system may inflate the price of goods imported into Manitoba and diminish unnecessarily the prices Manitoba farmers receive for grain. We have not estimated its economic cost to Manitoba or the benefits from its reform. Our estimate

of the annual financial benefit alone to Manitoba farmers of allowing qualified Canadian shipmasters to operate in the Laurentian Region without pilots would approximate \$700,000.

Regulatory Impediments In Other Legislation

Much of the institutional setting affecting the transport industry occurs through non-transport statutes. The Panel should take an expansive view of its mandate and consider non-transport legislation that has a detrimental impact on the evolution of competition and efficiency in the transport sector.

For example, we have spoken briefly above to cabotage in the air, trucking and marine sectors. The Panel should consider the specific issue of cabotage to be within its mandate. While cabotage restrictions are established under immigration and customs legislation, they adversely affect the state of competition and efficiency in all modes of transportation.

Today, international economic forces through globalization and trade agreements provide opportunities for the transportation sector. In addition, increasing consumerism via electronic mechanisms also place different demands on the transportation sector. As the demand on transportation services evolves so must the regulations that govern the transportation sector. In examining the CTA legislation, these economic realities must be given consideration.

In addition, with transportation being a derived demand product, and therefore

connected to so many other segments of the economy, the impact of regulations in other areas also have implications for transportation. For example, to address increasing trade amongst the NAFTA countries, main routes known as corridors are being developed. These routes are selected as being an efficient, effective means to move goods and people. However, because the corridors generally cross boundaries (including international) there are a myriad of issues that affect their ability to achieve the objectives of providing cost-effective, intermodal, safe movement of goods.

One of the issues that is clearly important with regard to cross-border facilitation involves customs and immigration issues. In order for one country's carriers and shippers not to be disadvantaged against the other, treatment at the border by the agencies must be equitable. This is currently not the case between Canada and the U.S. as the two countries employ different approaches in processing international shipments. While Canada customs moves toward a "client profile" approach for U.S. goods, U.S. customs still inspects Canadian goods on a shipment by shipment basis. This adversely affects Canada's competitiveness because the U.S. does not provide the staff resources to meet its requirements for this type of processing expeditiously. The Canadian federal government must pursue reciprocal treatment with the U.S. with regard to customs and immigration legislative and regulatory requirements.

Another issue affecting the competitiveness of the Canadian trucking industry is the lack of harmonized truck size and weight regulations. This is an issue for both domestic and international corridor development. The current regulatory environment results in different limits on specific roadway types for tire and axle loads, gross vehicle weights, vehicle heights, widths and lengths. For movement between

jurisdictions, carriers comply with regulations in all jurisdictions throughout the entire trip length. Consequently, the regulations can prevent carriers from operating in an efficient manner and can also result in vehicle configurations that are not only inefficient, but also not the safest. Moreover if multiple truck movements are required, this can also contribute to road congestion and poor air quality.

Another impediment to competitiveness at the international level is the higher capital cost allowances on transportation equipment in Canada relative to the United States. Canadian carriers require a longer time period to recover investments in capital equipment than their American competitors. This discourages more frequent investment in newer equipment that can be more efficient and safer to use. The consequence is that Canadian carriers have higher operating costs than their American competitors. Manitoba believes that the federal government should reduce its capital cost allowances on transportation equipment to the same levels offered by the United States government.

The Panel should analyze existing legislation and policy statements in selected Acts for which the Minister of Transport is not responsible to see if the existing legislation enables the achievement of transportation policy objectives. For example, the transportation resupply of remote communities via air (Food-Mail Program) is largely a political and administratively determined system not based on any “natural” market. This program prohibits Churchill from capitalizing on its natural competitive advantages as an eastern Nunavut gateway, over other Canadian designated food mail points. The Panel should note that these programs could conflict with national transportation policy and goals and should recommend that the federal government act

to modify them accordingly.

TRANSPORTATION INFRASTRUCTURE DEVELOPMENT

Let us reiterate that market solutions, whether naturally occurring or "aided" by government action, will go far towards achieving the policy objectives of a healthy transport system and, concomitantly, a healthy exporting economy. However, market forces and commercial discipline cannot alone fully ensure that all Canadians benefit from acceptable levels of transportation infrastructure and service. The National Transportation Policy Statement recognizes that government regulations may be required to serve the needs of shippers and travellers in certain regions of the country. It also recognizes that government involvement in infrastructure investment may be required to support regional economic development.

In many parts of the nation, especially rural and northern areas, the market for transport services may not be sufficient to support even one service provider. Similarly, the huge amounts of capital required for building and maintaining transport infrastructure may prevent private sector willingness to invest. Where the market cannot support investment in transport infrastructure and services, then government should consider public investment if doing so has an overriding public interest, or if there are clearly quantifiable public benefits in excess of public costs that will result.

These particular conditions are especially applicable and relevant to northern and remote communities. We note that the federal government must continue to take a central role in providing minimum acceptable transportation access to remote

aboriginal communities, which are beset by immature transportation markets and climatic variations that affect the sustainability of their current transportation systems. Affordable and reliable transportation access is necessary for these communities to create an environment in which their social, economic and health needs are met and sustained. Since most of the cost of moving goods to these communities is either directly or indirectly borne by the federal government, it is reasonable for the federal government to fund or provide the infrastructure that would result in both lower freight and travel costs, and a higher level of service to communities.

It is in this manner that transportation can still contribute to the economic development of regions and provide access to our natural resources. We would prefer that the private sector take the lead role in developing access to specific resource projects in Canada. However, where private interests are unable to provide the infrastructure, but significant socio-economic benefits will accrue, government in partnership with private interests and the beneficiaries of such access should provide the appropriate public sector support. This requirement, however, must still be guided by the conditions that users and other beneficiaries of public investment should share equitably in its costs, and that governments remain accountable to those from whom funds are appropriated.

Based on the above, Manitoba sees a justifiable and necessary role for federal government investments in transport networks of particular strategic importance to Canada, precisely because they meet the criteria of conferring upon Canada significant socio-economic benefits. Historically, the federal government has been responsible for public investment in, and regulation of, the rail, marine, and air modes. It also has constitutional responsibility for regulation of extra-provincial motor carriers, and for

trade and commerce. These responsibilities, we assert, must continue, even as the federal government withdraws from the provision, subsidization and operation of services. Manitoba is concerned that, given evidence of the need for continued federal support in many cases, the current federal withdrawals have the potential to off-load investment responsibilities to the provinces. This practice is evident in many sectors, and compromises the efficiency and competitiveness of our transport system, and its viability in a global context.

Government investment in infrastructure or services, however, must still be reconciled with the policy objective of utilizing market solutions to shape the transport system. From this, Manitoba supports the key condition that when government does intervene in the transportation marketplace in some form, it should strive to ensure that its interventions do not undermine any transportation sector, or provide any mode, carrier or route with undue competitive advantage over others. Recent federal actions, however, do not meet this condition, and must be corrected before the transportation system is further compromised.

The Infrastructure Challenge And Current Infrastructure Deficit

Recommendation 27: Manitoba recommends that the federal government's revenues from user fees (including road motive fuel taxes), rents and other charges be dedicated to mode-specific expenditures on transportation infrastructure.

Much of this submission has dealt with competitive issues, whereby governments

create an atmosphere where modes and carriers are obliged to compete. The issue of infrastructure presents a different challenge, because the treatment of how infrastructure is provided and maintained also has an impact on the domestic and international competitiveness and viability of our transport industries.

Manitoba agrees that there are certain areas where a transportation entity with local and commercial direction can better serve the public interest, and this has rightly occurred with regard to the air navigation system, airports and ports. However, the withdrawal of federal funding support must be accompanied by a concerted effort to establish a policy framework that permits these entities to effectively compete domestically and globally.

There appears however to be a disturbing trend being undertaken by the federal government that renders these initial moves for devolution as moot. It is a trend toward the federal government utilizing its existing taxation and rent charging powers to withdraw more money from these infrastructures than its actual current investment in the system would reasonably warrant. This is especially apparent in the airport, port and road modes, and this system deficit is undermining the competitiveness of our transportation system.

This practice and approach in all modes should be addressed because it violates several aspects of current national transportation policy established in the CTA, which Manitoba espouses, to optimize the system. The federal extraction of revenue from certain system components so that they are in a deficit position unfairly limits the ability of the affected sector to compete freely with any other carrier or mode. This

practice contravenes the condition that each carrier or mode should receive fair and reasonable compensation for the resources, facilities and services that it is required to provide as an imposed public duty. Thirdly, it breaches a need to have systems in place that reasonably permits economic viability for each mode. The solution from Manitoba's perspective is to ensure that a process is in place so that moneys extracted from a particular mode or transportation system component are rededicated to that mode or component.

We provide three examples of airports, ports and highway infrastructure as proof of these detrimental actions with recommendations to correct the problem.

AIRPORTS

Recommendation 28: Manitoba recommends that the CTA be amended to establish the responsibilities of the various levels of government in providing airports, and to identify the means of funding (whether user fees or input taxes) these responsibilities.

Recommendation 29: Manitoba recommends that the Government of Canada—in conjunction with stakeholders including the provinces, carriers, passengers and shippers—evaluate the long-term financial condition of the system of airports and all its components to ensure the long-term viability of all existing airports and the system as a whole.

The federal government collects millions of dollars in rental payments from airport

authorities, ostensibly due to the fact that the federal government owns the land upon which they are situated, with the facilities being leased to them. Not-for-profit airport authorities must set user fees at a level that recovers the rent payments. These revenues are not provided to the ports as the responsible authorities for infrastructure or services. The Province of Manitoba and its transportation sector stakeholders urge that the CTA Review Panel strongly recommend that this imbalance be corrected.

The federal government (through the Minister of Transport) created a largely federally owned and operated national airports system under the authority in the Aeronautics Act. Because this Act did not obligate the Minister to provide airports, the federal government was able to establish its National Airports Policy (NAP) in 1994. Under this policy, airports were transferred to either junior governments or local entities sanctioned by them. The transfers have been mostly completed. The federal government sold its Air Navigation System to a single authority, NAV Canada.

Under the NAP, the federal government has withdrawn from the direct operation of most airports. The 26 National Airport System (NAS) airports with the largest passenger traffic are to be leased for 60 years to not-for-profit non share corporation Canadian Airport Authorities (CAA). Most NAS airports have been transferred. With the exception of remote airports, almost all other airports are owned, operated and maintained by provinces, territories, municipalities or other local entities. Only the eight largest airports in Canada are financially viable. The federal government is extracting increasing rents from these eight (\$223 million in 2000) without a clear policy rationale, while Canada's other 716 certified airports struggle with inadequate support from an Airports Capital Assistance program (up to \$190 million over 5 years

or about \$38 million a year).

Manitoba is concerned about the long-term financial condition of the system of airports in Canada. In the case of the large NAS airports, the federal government collects rents while the CAAs have implemented Airport Improvement Fees (AIF) or Passenger Facilitation Charges (PFC) to assist them in covering their costs. These costs include the rents, capital improvements that Transport Canada had deferred in recent years, and expansion projects to accommodate expected future growth in air transportation. The smaller NAS airports and the Regional/Local airports may not attain long term financial viability due to large fixed costs and low traffic volumes. Consequently, their ability to continue to serve the smaller population centers of the country may be in jeopardy.

Contrary to the recent Federal Auditor General's report,⁵ Manitoba regards past federal expenditures on airports as sunk costs. As a matter of public policy, these expenditures were made over the years to provide all regions of the country with a reasonable degree of access to the rest of the world and the resulting economic development opportunities. The citizens of Canada should not have to pay the federal government twice for these benefits.

We reject the Auditor General's argument that airports should be transferred at fair market value because no fair market value could be determined for any airport. Fair market value is the amount a willing buyer (or tenant) would pay to a willing seller (or landlord) in an open market situation. Airports were not auctioned or tendered in an open market. Transport Canada wrote the rules under which transfers were to occur

5 2000 Report of the Auditor General of Canada, October 2000, Chapter 10

and insisted on dealing with only one recognized entity, an Airport Authority. Each Airport Authority was required to have the support of its community, Chamber of Commerce, provincial government, and so on.

Transport Canada could not tender an airport in an open market. All airports are unique in their communities and at different stages of maturity. An airport is unique within the catchment area it serves. Real estate appraisers have nothing with which to compare the value of an airport as no similar sales or rentals exist within a given market area. Any estimate of the real estate value of airport lands and buildings is irrelevant since continued operation as an airport was and is required under the lease terms. The use of airport lands and buildings for purposes other than an airport is constrained to those that are compatible with airport operations.

The Auditor-General's report suggests that Transport Canada should have used an airport's "financeability" as being a good and practical indicator of fair market value. It defines "financeability" as a measure of the amount investors would be willing to risk in a business. However, the airports are by definition to be operated as not-for-profit institutions. No private investor would invest in something that is by definition not-for-profit.

Most airports in Canada are not financially self-sufficient and continue to rely on public funding to some extent, either transition funding from the Federal Government or on-going funding from a junior government or governments. Airports with sufficient traffic to be financially viable have had to institute AIF or PFC to pay the rent and fund infrastructure renewal and future capital investments. Manitoba would

argue that there should have been a possibility of negotiating a negative rent under the lease agreements.

We question the amount of money the Government of Canada is, and will be, extracting from the NAS airports, mainly from the largest eight airports. While the Federal Government and taxpayers may be entitled to be “no worse off” after the devolution of the NAS airports, (Transport Canada's objective under the NAP), their position has become a case of “much better off”, and getting better. Prior to the 1994 NAP, the system of Canadian airports was on the expenditure side of the government ledger. The cost of ownership, operation and maintenance of Canada’s airport system was approximately \$200 million per year. The rents now being charged the larger NAS airports will soon exceed \$200 million annually. These rents are passed on to consumers of air transportation services (passengers and cargo) through higher charges, and ultimately affect the competitiveness of Canadian goods and services in world markets. The federal government does not dedicate the rent revenue to the air transportation system that it is extracted from.

The federal government's extracting of rent hinders the economic development of airport facilities, communities and regions. Successful airport authorities, which generate funds in excess of operating costs by attracting sufficient traffic to achieve economies of scale, have revenue siphoned off by the federal government through the participatory rent formula. These surplus funds should be invested for future capital improvements and expansion of these airports, not paid to the Government of Canada.

The ability of locals to market their airports, communities and regions was one of the

premises under which the management and operation of Canadian airports were transferred from federal to local control. Continuing restrictions contained in bilateral air transportation services agreements severely hamper the efforts of Canadian businesses, including airports and tourism operators, to sell their products in international markets. Local and regional markets are as diverse as Canada and Canadians. Regions and communities compete in the global tourism market.

In the sparsely populated country of Canada, it is necessary to have a viable system of airports to serve residents and facilitate trade and economic growth. We believe the continued financial viability of some smaller airports may be in jeopardy once their transition funding is exhausted. Manitoba recognizes the airports system is one consisting of all airports in Canada and we continue to encourage the Government of Canada to ensure the sustainability of all system components.

Manitoba is willing to work with Canadian jurisdictions including Transport Canada to determine fair and equitable treatment of airport authorities, air carriers, taxpayers, air passengers, and shippers/receivers.

PORTS

Similar to the issue of airports, Manitoba is also concerned about the rents payable by port authorities. Goods shipped to and from this province pass through various port authorities, with Manitobans bearing the economic costs of higher port charges made necessary by these rents.

HIGHWAYS

Recommendation 30: Manitoba recommends that the federal government—in consultation with all provinces—institute a legislated process so that moneys extracted by it through various road-related user charges and taxes are fully dedicated to Canada’s strategic trade and transportation routes, under the auspices of a National Highways Policy.

The federal withdrawal from road infrastructure investment is not as straightforward as that for airports or seaports. This it has performed surreptitiously, by extracting money in the form of fuel taxes, but not returning these moneys through the actual infrastructure providers—the Provinces.

Much like rail was in the 19th century, road travel is the predominant means by which Canadian citizens and communities are physically connected. For the carrying out of every day activities, travel to other communities and the transport of goods, road and highway infrastructure has proven crucial to Canada's social evolution and commercial success. Even as governments are getting out of the transportation business in other modes, it is widely accepted by the general public that government has the key role of providing for adequate and reliable national road infrastructure.

We assert that our current approach to the national highway system is not serving Canadians well. The mere fact that a national highway policy does not exist rightly implies that our highway infrastructure is not the focus of a single united effort, but has been approached in a piecemeal fashion by the various responsible jurisdictions. This,

in turn, further implies that the key highways in our nation vary in comfort, efficiency, reliability and safety from jurisdiction to jurisdiction.

How does this patchwork quilt of highways materially affect Canadians and Canadian businesses? Firstly, it must be remembered that our national transport network, including our highway system, is in competition with the American system for both travelers and carriers. An inconsistent and inadequate infrastructure will literally "drive" carriers and travellers to use US networks whenever they can, representing a loss of money spent in Canada on major items such as fuel, lodging, food and tourism. At an even more basic level, this inefficient, non-standardized system will cost more to Canadian carriers who may operate over the route, putting them and shippers at a competitive disadvantage.

For example, tourism, which is a growing industry, depends on convenient, inexpensive transport to bring travellers to Manitoba. It is our highway system that provides the least expensive means of transport for tourists, as evidenced by the fact that on a passenger-kilometre basis, road travel accounts for 99% of the movement of travellers. Tourists and other travellers coming to Manitoba are an important source of demand for traded and non-traded goods and services. In fact, Manitoba receives in excess of 700,000 US tourists annually, who spend upwards of \$200 million in the province. Unfortunately, it is clear that the lack of a standardized, divided highway system between the provinces has diverted much commercial and tourist traffic to the US interstate system, resulting in lost economic and tourist development opportunities in Canada and Manitoba.

Special studies undertaken by the provinces and federal government in recent years provide much evidence in support of concerted highway infrastructure investments. Roads support about 90% of all intercity passenger-trips and 75% of Canadian freight shipments by value. Significant highway improvements in the nation would permit shippers and receivers to accrue additional cost-savings through restructuring of logistics and production which represents up to 20% of benefits over and above any direct transport cost savings. The benefit derived from investment in public highways will be over three times the cost of the investment (benefit-cost ratio of 3:1).

Like other provinces, Manitoba is feeling the effects of changing institutions and market structures that necessitate an upgraded highway system. Manitoba is becoming increasingly dependent on highway transportation for interprovincial/international trade and tourism. Manitoba is a trading province exporting over \$13 billion worth of goods and services annually to other provinces and countries. Moreover, Manitoba's trade with the United States and Mexico has seen dramatic increases as a result of NAFTA, and it is expected to further increase. Investment in highway infrastructure is key to the promotion of our domestic and international trade competitiveness.

Manitoba has taken a lead role over the past seven years to spark a collective agreement between the federal and provincial governments on the need for a national highway program. At one point, all jurisdictions except Quebec and the federal government had come to an agreement on a National Highway Policy (NHP), including funding commitments in excess of over \$2.5 billion. The stumbling block, from Manitoba's point of view, is the federal government's unwillingness to fund its share, despite ample evidence that a NHP would contribute greatly to the Canadian

economy. **Manitoba re-iterates that it is still very much ready to participate in a National Highway Policy.**

Much like the issue of airports and seaports, the federal government is withdrawing more money from our road system than it contributes. Historically, the federal government's spending on roads totaled \$3.4 billion from fiscal year 1991/2 to 1996/7 while its revenues from road-based fuel taxes totaled \$19.9 billion⁶. Federal spending on Canada's National Highway System—based on the recently announced national infrastructure program (\$150 million annually for highways over the last 4 years of the program)—amounts to about 2.5% of revenues that the federal government will collect from road users, over the next 6 years. By way of comparison, Manitoba, living up to the ideals of national transportation policy, fully re-dedicates its road use fuel tax revenues to provincial roads and highways. What we recommend is simple—that the federal government returns to Canada's strategic trade and transportation routes, under the auspices of the NHP, a reasonable proportion of the user tax revenue that it receives from the use of the highway system.

Much has been said and done about strengthening our trade and transportation links with the United States, and rightly so, since the US represents an increasingly attractive market for our goods and services. While this is important, any efforts in this direction must be tempered by the fact that commerce and trade within Canada is of even higher importance. While we forge ahead in many sectors to create a seamless border with the US, we must ensure that our attention is also devoted to doing the same amongst the provinces, that is, removing impediments to our own internal trade and transportation. A national highway policy will prove an important first step in

⁶ University of Manitoba Transport Institute, Federal Transportation Spending & Revenues, Dec. 1999, p.11-12 (Source Statistics Canada)

allowing trade flows to be strengthened between the provinces, benefiting all Canadians. Manitoba concludes that the growth of a north-south orientation should not in any way preclude the maintenance and strengthening of our own east-west transportation links. In all, our nation will be better off if our internal east-west linkages are of equal calibre to any international north-south linkages we may have.

Many of our assertions on the NHP hinge upon the actions of the federal government. What this does is underscore the importance of the national government in assuming a leadership and coordinating role with regard to the provision of key transport infrastructure. In fact, this federal role has already been recognized by the US government, and backed up in the form of federal legislation and funds to improve transport networks in that country. A recent policy paper by the USDOT asked and answered the following:

"...What is the federal role in surface transportation infrastructure? The answer is clear. We need strong federal leadership. Efficient national cargo movement is key to our ability to benefit from expanding trade opportunities. Truckers and other freight operators need uniform facilities and regulatory standards. We also need national consistency if we are going to move forward with deployment of new technology. We cannot achieve other national priorities without efficient and accessible transportation. And the challenges we face...do not stop at state borders."

Manitoba fully agrees with the philosophy of this statement. We would like to see a

federal government with the foresight to not only show a leadership role with regard to our internal surface infrastructure, but to simultaneously help enhance our trade links with other nations, principally the US. We contrast our federal inaction to the US, where the United States Government in 1998 announced \$218 billion (US) for transportation projects over six years.

Manitoba reiterates that the airport, port and highway infrastructures in this nation are suffering a competitive deficit due to the federal practice of withholding from the responsible authorities more money collected—either through rents or excessive taxation—than otherwise reasonable. The federal government by legislation should reach agreements with the responsible authorities and dedicate those revenues to renewed infrastructure investments.

ROAD SAFETY

As previously noted, the Canadian transportation system must not only be efficient and sustainable, but it must also be safe. For Manitoba, as for many other jurisdictions, road safety is an area of high concern.

In 1999, motor vehicle traffic collisions on Canadian roads resulted in 2,969 fatalities and 222,275 injuries. In Manitoba, there were 113 fatalities and 9,697 injuries. For Canada as a whole, the annual highway traffic death toll is equivalent to having commercial passenger airplanes crashing and killing everyone on board at the rate of one crash every 2 weeks for an entire year. If in fact commercial passenger airplanes were to crash with such frequency, the response from Canadians would be outrage and

demands for immediate action. In the past, Canadians and Canadian jurisdictions have been far too complacent about Canada's road safety record. However, the strong public support for initiatives against drunk driving shows that Canadians' attitudes towards road safety are changing, and that Canadians are now increasingly expecting their governments to take decisive steps to improve road safety.

Canadian jurisdictions have made some progress in improving road safety. In 1996, the Council of Ministers Responsible for Transportation and Highway Safety endorsed the Road Safety Vision 2001 initiative. This initiative was developed by the Canadian Council of Motor Transport Administrators (CCMTA), and was aimed at making Canada's roads the safest in the world by 2001. The specific goals of this initiative were to:

- raise public awareness of road safety issues;
- improve communication, cooperation, and collaboration among road safety agencies;
- toughen enforcement measures; and
- improve national road safety data collection and quality.

Road Safety Vision 2001 comprised a broad range of initiatives focused on road users, road networks and vehicles. Transport Canada, on behalf of CCMTA, annually produces an update report summarizing progress and highlighting initiatives.

Since the inception of Road Safety Vision 2001 in 1996, road user fatalities have decreased by 5 per cent and serious injuries by 8 per cent. Using the international measure of "deaths per registered motor vehicle," Canada's level of road safety has

improved over this period by almost 9 per cent. However, despite these impressive figures, Canada's road safety position in the world is slipping. During 1998, Canada's ranking fell from eighth to ninth among the world's most developed countries. For the second consecutive year, Canada lost ground to other nations, despite an improvement over the previous year's fatality rate.

CCMTA is proposing to extend the vision of having the safest roads in the world with a successor plan. The new strategy, called "Road Safety Vision 2010," will feature a 9 year time frame. The new plan will retain the 4 goals in place for the current vision, and would augment these with additional priorities and targets that would be regularly monitored. CCMTA is currently reviewing proposed new targets relating to occupant restraint use, drinking and driving, speed- and intersection-related crashes, commercial vehicle crashes, young drivers, vulnerable road users, crashes on rural roads, and high-risk drivers.

Manitoba supports the Road Safety Vision 2010 initiative of CCMTA, which is intended to make incremental improvements in highway safety by focusing resources on specific known road safety problems.

However, Manitoba also believes that there is a need for a National Highway Safety Research Program (NHSRP) that will analyze all of the complex factors in highway safety, including driver behaviour, vehicle design, infrastructure design and engineering, enforcement, and the interaction among these elements. This proposed highway safety research program would study highway safety from a comprehensive systems perspective, and would develop integrated solutions that would include both

traditional approaches to improving road safety as well as applications of intelligent transportation systems (ITS) technologies. Ideally, this highway safety research effort would also allow decision-makers to understand the costs and benefits of various highway safety improvement initiatives, and to thus be able to target limited resources to the safety measures that are the most efficacious.

In the United States, the Transportation Research Board (TRB), at the direction of Congress, is designing a Future Strategic Highway Research Program (F-SHRP) which will be a successor to the highly successful Strategic Highway Research Program (SHRP). One of the strategic goals of the proposed new program is “Make a Quantum Leap in Highway Safety.” In order to achieve this goal, the TRB is proposing an in-depth study of highway crash causation that will analyze the respective roles of the driver, the vehicle, and the roadway in highway crashes. This proposal recognizes that reducing the number and severity of highway crashes requires an integrated approach that considers all the factors involved in traffic accidents. The results of this comprehensive crash causation study would be used to develop a wide range of prototype safety countermeasures and programs, including:

- safer vehicle and infrastructure designs;
- operational strategies;
- warning and prevention technologies;
- analysis tools for decision makers in highway planning, design, operations, and maintenance; and
- driver training.

The U.S.’s Future Strategic Highway Research Program, like its predecessor the

Strategic Highway Research Program, will be funded from the Highway Trust Fund, which is financed from U.S. federal fuel tax revenues. As the Canadian Federal government only reinvests a small portion of its own highway fuel tax revenues back into Canada's National Highway System, there are ample resources available for the Federal government to fund a Canadian highway safety research program.

Recommendation 31: Transport Canada should take a leadership role in developing and funding a National Highway Safety Research Program for Canadians.

URBAN TRANSIT

The federal government currently has no funding role with respect to urban transit in Manitoba. Municipalities are responsible for public transit, and the provincial government (through Manitoba Intergovernmental Affairs) provides operating and capital grants to municipalities that offer this service in order to cover a portion of transit costs. Provincial support for transit recognizes the environmental, social and economic benefits of a viable public transit service for urban communities.

Municipalities are facing significant challenges in providing an adequate public transit service at a reasonable cost to users, in the face of escalating operating costs (e.g., fuel) and capital replacement costs.

Federal government funding could assist municipal and provincial efforts to ensure urban communities have affordable and effective public transit systems that offer a

competitive alternative to the private automobile. However, federal support would have to meet the following conditions:

- It must be incremental to the federal funding already provided to Manitoba (i.e., it should not take money away from other provincial priorities);
- It must be part of a long term commitment to transit. Funding that disappears after a few years would only exacerbate the financial pressure on municipalities and the province;
- It cannot be dependent on new matching funding from the province and municipalities, who are already making a significant financial contribution to transit, and,
- If the funding would necessitate changes in service delivery, there must be consultation with and agreement by the municipality and the province.

TOWARD A NATIONAL TRANSPORTATION VISION

Recommendation 32: Manitoba recommends that the Panel develop a comprehensive National Transportation Vision Statement, suitable for incorporation into the CTA. The Panel should consider sponsoring and facilitating a National Transportation Visioning Conference.

The current National Policy Statement contained in Section 5 of the CTA sets out the purpose, the objectives, the operating principle (competition among carriers) and some limiting conditions for the Canadian transportation system. Manitoba generally supports this conceptual framework for the transportation system, despite its vague and

often conflicting conditions. One means of giving eventual direction and meaning to the actions to be recommended by the Panel is to develop a true national transportation vision statement. The current policy framework for transportation as contained under the CTA and various other statutes is meaningless unless accompanied by a true national vision upon which to measure the performance of the policy. For this reason, a national vision statement, with concrete, rather than simply theoretical, objectives must be enshrined in legislation.

Manitoba asserts that a national vision must start with a concrete, future-oriented description of what the transportation system should look like in 15-20 years time.

Manitoba sees such a concrete vision involving the following core elements:

- Designated National Highway System;
- Designated National Airports System;
- Designated National Ports System;
- Minimum level of airport infrastructures;
- Minimum level of port infrastructures;
- Minimum level of rail infrastructure;
- Minimum levels of rail passenger services; and,
- Minimum acceptable levels of service/infrastructure requirements on a regional and modal basis, especially applicable to northern and remote regions.

Part of the problem with the current CTA policy statement is it is passive—it does not outline the rights and obligations of parties involved in the transportation system. The development of a concrete vision implies the requirement to develop mechanisms to

strive for that vision. The development of mechanisms itself implies the need for the responsibilities and rights of each participant in the transportation system to be clearly put forth. A policy vision stating that competition is to be the driving force behind transportation efficiency would have more teeth if, for example, the obligation of carriers to compete were clearly set out. The vision statement would also give greater effect to more specific regulatory efforts in the Act itself.

A Designated National Highway System

We use the example of a designated National Highway System to give the Panel a sense of what we mean by the integration of vision and responsibility. Firstly, the National Vision Statement must confirm the federal and provincial roles in highway funding. Next, the vision, to permit the primary involved parties to fulfill their roles, must clearly demarcate lines of financial responsibility. From here, we urge the Panel to be truly visionary and creative. We recommend the vision could establish a road pricing policy that would direct the federal and provincial governments to move deliberately towards the full funding of infrastructure costs through user charges that price externalities such as health costs and other environment damage such as those caused by the use of fossil fuels. Actually, such moves are consistent with the Panel's mandate to consider the extent to which the current framework provides the government with the necessary powers to support sustainable development objectives.

The vision would require the responsible governments to strategically accomplish this goal through current user charges (such as fuel taxes and registration fees). Federal fuel taxes on motor vehicles would be returned to the highway authorities through ongoing

federal infrastructure programs or the transfer of fuel tax points from the federal to the provincial governments. The provincial governments could peg their fuel taxes on motor vehicles based on funding requirements solely, and in consideration of change in fuel price and fuel consumption patterns.

These actions must be supported by the principle that the use of these revenues for these purposes be transparent. Canadians have generally resisted the introduction of user charges for publicly provided services, so it may be necessary to concurrently reduce general taxes such as income taxes if existing programs were previously funded through income tax revenues—all to make the user charges more acceptable.

Consistent with a future-looking vision, the National Vision Statement could direct governments to examine ways of employing "smart technology" in motor vehicles and roads to price road use more accurately than the use of motor fuel taxes and registration fees. New technologies—not far removed from current global positioning system technology—could be developed where readers scan a bar code with a vehicle's registration number located on the vehicle's roof. With such technology, road authorities could record a vehicle's use of a highway or street and bill the user monthly like other public utilities. These devices may also be used to price roads so that users pay for the congestion costs in urban areas. The price for using an urban highway or street could vary throughout the day rising during peak traffic hours and falling in off-peak hours. The price schedule would be public information so drivers can make a choice of when they want to use the roadway.

Rail Passenger Service

Recommendation 33: Manitoba recommends that the federal government should establish a legitimate and viable legislative and policy environment for VIA Rail, within the greater scope of national transportation system objectives.

A national vision statement must include the peculiar issue of national rail passenger service, which from our viewpoint has been sorely overlooked in the development of federal transportation policy.

Currently, VIA Rail operates in a “mandate” vacuum, and has not been given an appropriate fit into the transportation system by the federal government. The establishment of a clear set of responsibilities, levels of service and general mandate for VIA is necessary within a national vision statement, otherwise, the rail passenger system will continue to be in decline.

The primary “caregiver” for VIA must be the federal government, with its responsibilities to VIA—from a regulatory and funding perspective—to be clearly set out within any statement. We note that over its history, VIA’s funding has been inconsistent and unsure. Despite a recent five-year capital boost from the federal government, the long-term issues facing VIA—such as need for investment capital, uneconomic operations, governance issues and its relationship with the mainlines—remain unaddressed. Given the additional importance of rail passenger service in northern communities across Canada and in Manitoba, the Panel must consider the inclusion of VIA Rail in national transportation vision development.

Accessibility For Persons With Disabilities

While the objective of National Transportation Policy has included accessibility for persons with disabilities, a primary obstacle has been the lack of affordable, safe and readily accessible vehicles. The major obstacle is the inability of most persons with disabilities to afford to pay fares that would be required to cover the extra costs of such vehicles. This is an example of market failure where government participation is warranted. The National Vision Statement should direct governments to provide funding in these vehicles so that transport services can be fully available to persons with disabilities.

Sustainable Development

In its paper on Issues under Consideration, the Panel asked two questions: Are there limitations in legislative authority or knowledge gaps that are hampering the federal governments ability to promote sustainable development in transportation? How can all Canadian governments promote the development of sustainable transportation systems?

The principal limitation in legislative authority and knowledge that hampers the federal government's ability to promote sustainable development in transportation is the lack of an operational definition of sustainable development. Most Canadians are unsure what sustainable development in transportation means and cannot apply it to their own lives. Establishing a clearly articulated, operational definition of sustainable

transportation is necessary. Sustainable transportation must balance environmental, social and economic factors.

All Canadian governments can promote the development of sustainable transportation systems in the following ways. They should establish mechanisms and processes for effective federal and provincial partnerships for implementing action. All governments should develop an assessment framework for integrating economic, social and environmental criteria. They should develop techniques and indicators to measure the effectiveness of implemented actions. All governments should design proactive processes to identify and resolve potential conflicts between federal and provincial priorities for sustainable transportation.

Governments should expand the scope of sustainable development to include all of Canada. Governments should provide flexibility in policy, program, project and funding mechanisms to respond to regional needs. They must co-ordinate, plan, and direct sound investment decisions in transportation systems. They need to design and implement specific national/provincial response strategies to the use of salt, chemicals and inclusion of recyclable materials in maintenance and construction activities. All governments should design and deliver outreach education and awareness programs about sustainable transportation. All governments need to prepare a business plan, and comprehensive identification of legislative, policy and program tools currently in place to address sustainable transportation. All governments should conduct appropriate public consultation processes.

The federal government needs to undertake several specific steps to facilitate this

process. The federal government needs to acknowledge there is a shared federal and provincial responsibility for infrastructure. It should negotiate a fair and equitable transfer of financial resources to provinces to accomplish agreed goals. The federal government should declare the relative importance of sustainable transportation within the mandate and responsibilities of Transport Canada. Transport Canada should advocate sustainable transportation actively. The federal government should welcome meaningful provincial partnership in federal programs and projects. As we said above, the federal government needs to address transportation needs of remote northern communities.

CONCLUSION

This submission represents the views of the Province of Manitoba on the questions before the Panel. We reiterate the need for the Panel to approach its deliberations on our national transportation policies from the perspective that the system in all its components exists to reasonably serve the larger interests of Canadian shippers and the Canadian public.

We strongly agree that competition and market forces, wherever possible, should be the instrument by which infrastructure and services are provided. Governments must work—by means of legislation and policy—to structure our transport industries so that competition between service providers can be channelled to the greater purpose of an efficient and effective transportation network. Governments must also work to ensure that efficiencies in the system are actually captured and passed on customers of transportation services, which means putting in place support regulatory systems

applicable to transportation that do not impede or obscure the benefits that competition will entail.

Where there is an overriding public interest and where this interest cannot be properly served by the transportation market—such as for road infrastructure or remote community access—governments have the obligation to provide infrastructure. In no way, shape or form should governments be using the transportation system for general revenue extraction purposes—revenues taken from the system by governments must be dedicated to the mode(s) from which it was taken. To do otherwise is to leave our transportation system in an infrastructure deficit position, to the detriment of our economic health. Lastly, a long-term national vision must be established, to give direction, guidance and effect to the transportation policies established by governments.

Manitoba wishes the Panel success in its deliberations. At any time, we invite the Panel to discuss this submission with us.