

FINAL

CANADA TRANSPORTATION ACT REVIEW

**OVERALL POSITION
PAPER**

**for consideration
by the
CTA Review
Panel**

**Government of
Alberta**

November 17, 2000

FOREWORD

This paper has been prepared subsequent to the Canada Transportation Act Review Panel's request for positions, and follows a stakeholder consultation process.

The paper also clarifies positions on competitive rail access, as previously transmitted to the Panel on a tentative basis in order to meet its October 6, 2000 target date.

Alberta Department of Infrastructure

[on behalf of Government of Alberta
Interdepartmental Steering Committee
on the CTA Review]

November 17, 2000

[ctar overall pos paper final]

CONTENTS

FOREWORD

EXECUTIVE SUMMARY..... iii

1.0 INTRODUCTION1

2.0 CHALLENGES, OPPORTUNITIES AND FUTURE NEEDS3

2.1 Challenges and Opportunities.....3

2.2 Government of Alberta’s Overall Approach.....6

3.0 ENSURING A TRULY COMPETITIVE AND RESPONSIVE
AIR SYSTEM.....8

3.1 Government of Alberta’s Approach – Air8

3.2 Airline Competition and Predatory Actions 10

3.3 Airline Service and Fares..... 13

3.4 International Air Policy 16

3.5 Viability of Large Airports..... 18

3.6 Viability of Local and Regional Airports 21

4.0 BALANCING THE RELATIONSHIP BETWEEN SHIPPERS
AND RAILWAYS..... 24

4.1 Government of Alberta’s Approach – Rail 24

4.2 Access to the Canadian Transportation Agency 27

4.3 Competitive Line Rates 28

4.4 Interswitching 31

4.5 Expanded Running Rights 33

4.6 Final Offer and Other Arbitration Mechanisms 37

5.0	ADDITIONAL RAIL AND MARINE ISSUES	41
5.1	Level of Service and Car-allocation in Grain Sector	41
5.2	Rail Line Abandonments and Transfers	42
5.3	Rail Mergers and Acquisitions.....	43
5.4	Marine Pilotage	44
5.5	Shipping Conferences Exemption Act.....	45
6.0	IMPROVING ACCESSIBILITY FOR PERSONS WITH DISABILITIES	46
7.0	A NEW TRANSPORTATION AND LOGISTICS POLICY FOR CANADA.....	48
7.1	Federal Transportation Policy and CTA Declaration.....	48
7.2	Towards a New Vision for Transportation in Canada	49
7.3	Canada’s Future Transportation and Logistics System	51
8.0	CONCLUDING REMARKS.....	54
	LIST OF WORK SHOP PARTICIPANTS	56
	LIST OF ADVISORY COMMITTEE MEETING PARTICIPANTS	58
	SELECTED DOCUMENTS CONSULTED	59

EXECUTIVE SUMMARY

Introduction:

Following guidelines issued by the federal Minister of Transport, this Government of Alberta Position Paper assesses “whether the [Canada Transportation] Act [CTA] and related legislation provide Canadians with an efficient, effective, flexible and affordable transportation system”, and recommends “amendments to the national policy and to the legislation where necessary or desirable”.

The Paper incorporates the contents of a document already provided to the CTA Review Panel in accordance with its October 6, 2000 target date, entitled, **Canada Transportation Act Review: Tentative Positions on Competitive Rail Access Provisions**. The present overall paper holds to these tentative positions, but makes a number of important clarifications.

Government of Alberta’s Approach to Transportation:

The Government of Alberta’s approach to transportation has been based on one overarching policy objective: that every traveller and shipper must have effective, competitive options, preferably through the workings of the marketplace but, where necessary, through legislative measures. It is Alberta’s belief that the current **CTA**, related legislation and federal government policies should be judged against this objective.

This approach is based on the premise that a trading country like Canada, with more than 40 percent of its Gross Domestic Product generated by international trade, must meet global challenges by taking a thoroughly collaborative approach, and by thinking “outside the box”. We must start by defining what will be needed well into the future to ensure the prosperity of all Canadians, then tailor our transportation and logistics policy accordingly.

It should be noted that this is a **policy**, not a research paper, whose purpose is to set forth a reasoned set of positions based on long-standing policies advanced by the Government of Alberta, but updated to take current and future needs fully into account.

It makes use of extensive consultation performed by the Alberta Economic Development Authority at the request of the Government, as well as documents already provided to the Panel by various stakeholders.

Key Government of Alberta Positions – Air:

Air travel is absolutely crucial, given Canada's huge geographical extent. Residents must be able to visit friends and relatives virtually everywhere in the world; good business connections are vital, to ensure that existing companies remain and new ones locate here; and tourism must be encouraged in what has become a hugely competitive international market.

The air provisions of the **CTA**, as amended by Bill C-26 to address concerns following the merger of Air Canada and Canadian Airlines, attempt to deal with the reality that Air Canada is now very much the dominant carrier in this country. It is Alberta's contention that **effective** competition will not be achieved through regulation; rather, impediments to new entrants, whether Canadian or foreign owned, will need to be removed.

Therefore, the Government of Alberta recommends that the Review Panel call upon the federal government to:

- remove current **CTA** restrictions on foreign ownership of airlines operating within Canada;
- ensure that, where the dominant carrier (or regional affiliates) serve low-volume, regional air routes, the same range of fares is available as is provided on high-volume routes, and that these fares are proportional to those available on the high-volume routes;
- greatly liberalize the current approach to international air policy by aggressively moving to expand open-skies agreements with other countries, beginning with a push to include air-cargo traffic rights under the General Agreement on Trade in Services; and

- reduce the rents now being extracted from airport authorities, to cover only those expenses now being directly incurred by the federal government where each airport is concerned, and transfer ownership to the operator of each large airport as it reaches sustainable financial viability;
- request an independent body to evaluate what it will take to make local and regional airports viable (including removal of unnecessary impediments).

For additional important air recommendations, please refer to the body of this paper.

Key Government of Alberta Positions – Rail:

The competitive rail provisions of the **CTA**'s predecessor legislation, the **National Transportation Act**, represented at best a first step in addressing issues involving an industry which still exhibits natural monopoly characteristics. The changes made in the **CTA** weakened these initial provisions.

Because the Government of Alberta would much prefer that the needs of rail shippers be met through the workings of the marketplace, it recommends legislative measures with considerable reluctance. The reality is that highways, airways and waterways feature publicly owned way/infrastructure, meaning that shippers have more choices. In contrast, the rail mode consists of privately owned way/infrastructure, requiring competitive access mechanisms for those captive to rail, or worse, to one railway.

Therefore, the Review Panel should call for the:

- repeal of both the “substantial commercial harm” and “commercially fair and reasonable to all parties” sections of the **CTA**, on the grounds that these provisions have significantly reduced the effectiveness of the shipper-relief provisions;

- adoption of the Competitive Access Rate concept, on the understanding that it would be reviewed after an initial two-year period to determine its effectiveness;
- inclusion of provisions in the **CTA** that extend interswitching to a railway company operating over trackage owned by another railway, on the basis of a lease or running rights;
- evaluation of the operational, administrative, financial and regulatory implications of an Expanded Running Rights model based on the Kroeger elements, with a completion date of no later than December 31, 2001; with implementation to be considered provided the concept is determined to be effective in providing shippers with greater access to rail infrastructure, while assuring the viability of the rail mode, no later than July 1, 2002;
- retention of the Final Offer Arbitration mechanism in its current form and provision of an arbitration process for shippers located on provincially regulated short lines;
- removal of inconsistencies between the **CTA's** section 113 and 114 "level of service requirements", and car-allocation powers granted to the Canadian Wheat Board under section 28(k) of the **Canadian Wheat Board Act**, by designating grain companies as shippers under the **CTA**.

For additional important rail (and marine) recommendations, please refer to the body of this paper.

Key Government of Alberta Position – Accessibility:

Forecasts right across Canada show a dramatic increase in the proportion of persons having transportation disabilities. Some require access for mobility devices such as wheelchairs, while others need assistance to compensate for sight and hearing impairments. Many must be accompanied on their trips, at considerable additional cost.

Therefore, the Review Panel should call upon the federal government to:

- enshrine in the new **CTA** the right of persons with disabilities to bring along a bonafide attendant, free of charge, on all modes under federal jurisdiction.

A New Transportation and Logistics Policy for Canada:

The **CTA**'s Section 5 "Declaration" attempts to be both a preamble to a legal document and a statement of national transportation policy. It may be adequate for the former purpose in a strict, legal sense, but not for the latter. This country still lacks a comprehensive, national transportation and logistics policy capable of dealing with today's issues, let alone one geared to the challenges of a global economy.

Therefore, the Review Panel should call upon the federal government to:

- prepare, in concert with key stakeholders, a comprehensive, clearly defined, "National Transportation and Logistics Policy".

Concluding Remarks:

The air positions outlined above follow from the belief that effective competition will be achieved only by removing foreign-ownership restrictions as they apply to airlines operating within Canada, and by quickly negotiating open-skies agreements with other countries as the norm, not the exception. Users of air services, together with communities and airport operators, generally will support these positions, whereas Air Canada and perhaps other airlines will take issue with some of them, particularly as they pertain to competition and foreign ownership.

The rail positions are supportive of competitive access for shippers, and are necessary because the rail mode is the only one featuring privately owned way/infrastructure. They are taken with considerable reluctance, because Alberta believes in minimal regulation and interference with the marketplace.

Most shippers will support the positions as the minimum necessary to give them leverage, while the railways will oppose them as interfering with their right to function according to what they see as key business principles.

The position on free attendant travel is based on the premise that persons with disabilities should not be penalized simply because they must be accompanied when travelling, whether for work or other purposes.

The most important position included in this paper is the one calling for a national policy to be developed as soon as possible, to guide the future development of Canada's transportation and logistics system. Without this long-overdue policy, legislative tools such as the **CTA** will continue to operate in a vacuum, and our competitiveness as a country – and therefore the future prosperity of Canadians – will be placed unnecessarily at risk.

Finally, a statutory review of the new **CTA** should be conducted no later than three years after its enactment, that is by the year 2004, given how quickly things are changing in the transportation and logistics sector.

1.0 INTRODUCTION:

In announcing the statutory review of the **Canada Transportation Act (CTA)**, the federal Minister of Transport, Honourable David Collenette, stated that the objective was to “assess whether the Act and related legislation provide Canadians with an efficient, effective, flexible and affordable transportation system”, and to “recommend amendments to the national policy and to the legislation where necessary or desirable”.

The Minister specified the following issues as being important to consider as the legislation is reviewed:

- ensuring that necessary capital expenditures are made in the transportation system;
- meeting the challenge of globalized logistics and e-business;
- addressing policy issues related to “newly arising industry structures”;
- supporting sustainable development objectives; and
- evaluating measures to preserve urban rail corridors.

The Government of Alberta’s objective is to provide the Panel charged with reviewing the **CTA** with an overall Position Paper which: (i) considers the views of shippers, travellers, carriers, facility operators, labour and other stakeholders, on the effectiveness of the **CTA** in supporting the future prosperity of Albertans and Canadians generally; (ii) recommends changes to the act and other federal legislation where necessary; and (iii) calls for the early development and implementation of a comprehensive, national transportation and logistics policy.

The **CTA** itself, and this paper, both focus on air, rail and accessibility for persons with disabilities. The paper also addresses two marine issues, then brings everything together when making the case for a national transportation and logistics policy.

The Government of Alberta process has included two stakeholder work shops, sponsored by the Alberta Economic Development Authority (AEDA), staged by the Van Horne Institute for International Transportation and Regulatory Affairs, and designed to solicit views on rail, air and general transportation topics. The first was held on September 6; the second on October 25. (Participants are listed at the end of this paper.)

Accessibility issues were discussed at an October 24 meeting of the Alberta Advisory Committee on Barrier Free Transportation, a group chaired by the Alberta Department of Infrastructure and made up of consumers, service providers, and facility operators. (Please note that this document uses 14-point Arial type style and avoids italics, in consideration of persons with sight impairments.)

The views expressed by stakeholders during these forums have been considered by the Government's Interdepartmental Steering Committee on the CTA Review in preparing this Paper. The Committee is chaired by Alberta Infrastructure and includes representatives from the departments of Agriculture, Food and Rural Development, Economic Development, International and Intergovernmental Affairs, and Resource Development, as well as the Northern Alberta Development Council.

The Government of Alberta already has provided the Panel with a paper entitled, **Canada Transportation Act Review: Tentative Positions on Competitive Rail Access Provisions**, in accordance with its October 6, 2000 target date. The Panel set this date in consideration of the Minister of Transport's request that it submit an interim report by December 31, 2000 on these issues. This earlier paper described the wider context in which the issues should be addressed, reviewed Alberta's traditional support of strong competitive access provisions, outlined positions on the key provisions, and asked the Panel to treat the positions as tentative, pending further stakeholder consultation. The present, overall Paper holds to these tentative positions, but makes a number of important clarifications.

Finally, it should be noted that this is a **policy**, not a research paper, whose purpose is to set forth a reasoned set of positions based on long-standing policies advanced by the Government of Alberta, but updated to take current and future needs fully into account. It also makes use of documents already provided to the Panel by shippers, carriers, governments and other stakeholders, as listed at the end of the document.

2.0 CHALLENGES, OPPORTUNITIES AND FUTURE NEEDS:

2.1 Challenges and Opportunities:

Generally speaking, Canada's transportation system **seems** to be working well, despite failures such as the 1996-1997 grain-transportation crisis on Fraser Valley rail routes, recurring labour-management disputes at the Port of Vancouver in particular, and turmoil following in the wake of airline restructuring.

In future, the challenge will not be a lack of demand for either passenger or freight transportation, but rather how to get shippers, carriers, facility operators, labour and government working together **proactively** to determine what shape traffic will take, what facilities will be required to meet this demand, and what impediments must be removed. Canada's **future** competitiveness is at stake here, in relation to what other trading countries are doing to improve their transportation and logistics infrastructure.

During the fall of 1999, the Western Canadian Corridors and Gateways group (made up of shippers, travellers, carriers, facility operators, labour, academic and government stakeholders from across the west) determined that, in this global context, Canada was moving into the twenty-first century on what could be termed a "burning platform". The group pointed to these examples:

- The U.S. **Transportation Equity Act for the 21st Century (TEA-21)** program contemplates the spending of \$218 billion through 2003. In Canada, we have **no** equivalent national strategy or program designed to meet our crucial needs. This is despite the fact that, using roads as the example, the federal government took in well over \$4 billion in fuel taxes alone in 1998-99 and returned only \$600 million to provinces and territories in the form of transfers and grants for projects.
- **TEA-21** also allocates \$600 million for research, training, standards development, and deployment of Intelligent Transportation Systems applications, and \$700 million to improve border crossings and trade corridors. Again, Canada has no comprehensive strategy or equivalent funding allocated to meet its needs.
- Many aspects of **TEA-21** are designed to anticipate the trend towards value-added export production. In contrast, there is no strategy in this country addressing the transportation implications of the explosive growth occurring in this sector. For example, value-added exports from the four western provinces alone have experienced, on average, double-digit growth during each of the last 10 years.
- Construction has begun on the \$391 million Freight Action Strategy Corridor (“FAST”), which will improve access to the Ports of Tacoma, Seattle and Everett, with **TEA-21** allocating \$35 million in federal funding for initial projects. To date, there has been no overall strategy on rail corridors in this country, or funding proportional to that available to U.S. rail corridors under **TEA-21**.
- The ocean-shipping industry is moving towards huge container ships of 8,000 T.E.U.’s (Twenty-foot Equivalent Units), compared to a maximum 6,600 today. This is a challenge for all Pacific and Northern deep-water ports, as they compete to serve as hubs. Traffic volumes at ports will depend on the overall efficiency of the corridors serving them. Canada needs to have a strategy and take steps to meet this competitive threat.

- Canadian tax regimes affecting transportation vary considerably between provinces, and between Canada and the U.S. Together, they constitute a significant barrier to trade, considering that Canada is a trading country. Canadian railways face aggregate taxation rates that are roughly 50 percent higher than in the U.S., and they pay higher municipal property taxes. Tax depreciation rates for Canadian railways are also uncompetitive: asset write-off policies take more than 21 years for equipment to be fully depreciated, while U.S. railroads achieve this in as little as eight years. Ultimately, higher taxes on transportation find their way into the price of goods and services.
- Revenue collected by the federal government for fiscal year 1999-2000, from airport leases and excise tax on fuel, was expected to total some \$276 million (airport leases were to contribute \$200 million, while excise revenue on aviation fuel added another \$76 million). In contrast, combined federal expenditures were to be only \$120 million – a \$156 million gap, making it difficult for the aviation industry to upgrade facilities and compete globally. This situation is not expected to differ greatly in 2000-01, and is in stark contrast to the U.S., where an Airport and Airway Trust Fund supports, amongst other things, an Airport Improvement Program, and the federal government is providing additional funding from general revenues to the tune of \$6.7 billion for the next three years.
- Management and research functions are the most easily overlooked aspects of competitiveness. In the U.S., \$187 million is available in matching funds for transportation programs in engineering and economics at the university level, and some \$2.9 billion is being provided for education and research projects. In Canada, transportation's share of the education budget is negligible, despite wide recognition of its essential contribution to the economy.

It should be acknowledged that the federal government does have several excellent initiatives underway designed to deal with specific problems (e.g., streamlining Canada-U.S. border-crossing procedures). But the above examples together suggest that Canada has a competitiveness problem where transportation is concerned, and that there is no comprehensive national policy in place to deal with it. This is the overall context within which the review of the **CTA** should be conducted.

2.2 Government of Alberta's Overall Approach:

The Government of Alberta's approach to transportation has been based on one overarching policy objective: that every traveller and shipper must have effective, competitive options, preferably through the workings of the marketplace but, where necessary, through legislative measures.

It is Alberta's belief that the current **CTA**, related legislation and federal government policies should be judged against this objective.

The Alberta approach is based on the premise that a country like Canada, with more than 40 percent of its Gross Domestic Product generated by international trade, must meet global challenges by taking a thoroughly collaborative approach, and by thinking "outside the box". We must start by defining what will be needed well into the future to ensure the prosperity of all Canadians, then tailor our transportation and logistics policy accordingly.

The following statements of future need logically follow:

- There needs to be a strong, viable transportation and logistics foundation upon which **shippers** can depend as they take advantage of global and domestic opportunities, and which travellers can use for business, visiting and tourism purposes.
- The interests of **carriers** are best achieved by having several major carriers within each mode of transportation, with each carrier having practical access to every shipper or traveller (as the case may be).

- Canada's transportation and logistics systems must be capable, first, of meeting the competitive threat posed by programs such as those resulting from **TEA-21** and various aviation initiatives in the U.S.; and second, of handling value-added, high-tech, and e-commerce production in an efficient, time-sensitive manner.
- Canadians need to be on the leading edge, not followers, and understand that transportation carriers, facility providers, freight forwarders, customs brokers, and other components of the "supply chain" are **enablers** of prosperity, not themselves entities to be preserved at any cost. It is the **entire** supply chain that is important, not the viability of every entity that makes it up.
- Canadians must move on from any lingering belief that Canadian-owned, controlled or based carriers must be protected from outside competition. This is the old way of looking at things, and applies today to virtually no other industry sector; furthermore, it cannot be justified on the grounds of national pride or security. Like our shippers, the management of Canadian carriers must succeed in the global context or be allowed to fail, to be replaced by new management in existing carriers or in more innovative carriers – again, not necessarily Canadian-owned, controlled or based. Opponents of this stance will cite the higher employment levels created by domestic carriers, and say that these jobs tend to be better paying than average. But some 500,000 jobs in Alberta, and one in three in Canada as a whole, are dependent on international trade, and therefore will require an efficient, highly competitive transportation and logistics system.
- Where international services are concerned, our policy must be based on the needs of travellers and shippers, with foreign competition welcomed where Canadian carriers are unable or unwilling to meet specific needs. Canada should be a world leader in this regard, even if it poses challenges to incumbent Canadian carriers. For example, Air Canada's success in exploiting the Canada-U.S. Open-Skies Agreement suggests that our carriers do not need to be protected through restrictive bilaterals, and that they would benefit greatly from additional liberalized agreements. Where Air Canada is concerned, the lack of further agreements could end up hindering its own ambitious expansion plans.

- To facilitate both innovation and productivity, governments need to ensure competitive tax regimes, capital cost allowances, fuel taxes, property taxes, and user charges. This will require major changes in everything from international air policy to the way railways are taxed, and will do much more to ensure the viability of Canadian carriers than restrictive policies or regulations that serve only to hinder everyone.
- There is a real need to address the consequences, for both travellers and shippers, of the Air Canada-Canadian Airlines merger and future railway mergers. Because this consolidation trend will lead to a greater concentration of power on the part of the carriers, it will be very important to rectify any future absence of **effective** competition in these modes.

3.0 ENSURING A TRULY COMPETITIVE AND RESPONSIVE AIR SYSTEM:

3.1 Government of Alberta's Approach – Air:

Alberta's approach to air issues is based on the belief that the province, and Canada as a whole, needs a viable air system that offers the option of at least two major competing carriers to travellers and shippers, whether for domestic or international travel.

In addition to those outlined in Sub-section 2.2 above, the following statements of need are important, especially in view of airline restructuring:

- Air travel is absolutely crucial, given Canada's huge geographical extent. Residents must be able to visit friends and relatives virtually everywhere in the world; good business connections are vital, to ensure that existing companies remain and new ones locate here; and tourism must be encouraged in what has become a hugely competitive international market.

- Alberta companies – including those engaged in downstream, value-added production in traditional industry sectors such as agriculture, and those in telecommunications and other high-technology fields – require effective, reasonably priced air-cargo service at nearby airports. Intermodal ground transportation to far away, out-of-province airports is not always an option, due to the time-sensitive nature of such shipments. Severe global competition means that, like bulk-commodity producers, such industries have no choice but to improve productivity and thereby reduce transportation, logistics and other costs.
- The air provisions of the **CTA**, as amended by Bill C-26 to address concerns following the merger of Air Canada and Canadian Airlines, attempt to deal with the reality that Air Canada is now very much the dominant carrier in this country. It is Alberta's contention that **effective** competition will not be achieved through regulation; rather, impediments to new entrants, whether Canadian or foreign owned, will need to be removed.
- International air policy must be based on the specific needs of our economy, today and tomorrow – not the narrow needs of the airline industry. The federal government must re-examine its approach towards international bilateral agreements, particularly if the dominant carrier in Canada is not interested in linking certain foreign markets with Canadian destinations.
- The continued success of the federal government's **own** airport policy is threatened by the apparent focus on extracting increased rents and legislating to correct what the government considers to be an accountability problem. The original purpose of airport devolution, namely to get these important facilities out from under government control and into the hands of authorities accountable to the regions being served, must not be compromised.
- Local and regional airports are crucial to the prosperity of the areas they serve, but face long odds at reaching viability unless major impediments are removed. These include the imposition of new costs as a result of additional or toughened federal regulations whose benefits have not been proven.

Users of air services, together with communities and airport operators, generally will support these statements, whereas Air Canada and perhaps other airlines will take issue with some of them, particularly as they pertain to competition and foreign ownership. An overview of Air Canada's views is included in its document, **Submission to the CTA Review Panel** (November 24, 2000).

3.2 Airline Competition and Predatory Actions:

There is a need to ensure that Canada has a truly competitive system in this one large airline era, so that any abuse of dominant position is avoided.

Section 61 of the **CTA** requires that domestic service must be provided by carriers in which Canadians (as defined in section 55) control at least 75 percent of voting interests, although the Governor in Council can order exceptions. While not specifically mentioned in his announcement, this topic fits within the Minister of Transport's stated desire that the CTA Review address policy issues from "new arising industry structures".

The federal government acknowledged this problem, and chose the regulatory route in trying to ensure effective competition in the aftermath of the merger. It did this by amending the **Competition Act** to allow for the definition, in regulation, of anti-competitive acts and predatory behaviour. The government did not relax the foreign-ownership restriction, but the **Air Canada Public Participation Act** now allows for this in future.

Most stakeholders agree that capacity and service in the marketplace above all should reflect the needs of communities. Several competitors already are expanding, or plan to expand, scheduled flights to compete with Air Canada on major routes, including WestJet, Canada 3000, Royal Airlines and CanJet. Others have announced their intention to compete, including Roots Air and LondonAir. At the same time, several small airlines are trying to fill gaps within Alberta, including Capital City Air, Peace Air and Corporate Express.

Impediments facing these carriers include: the difficulty of raising sufficient capital while meeting the foreign-content rules; the strong, entrenched position of the dominant carrier; and cost-prohibitive regulatory processes. Whether they succeed will depend, both on the suitability of whatever strategy these airlines choose, and how Air Canada acts where competition is head-to-head.

There are doubts as to whether it is possible to determine predatory pricing under any circumstances, given the complexity of airline pricing structures. Does the Complaints Commissioner and staff have sufficient resources? Are powers granted to the Canadian Transportation Agency under the **CTA** sufficient, both on complaint and on its own motion? It has been suggested that the federal government should listen to the recommendations of the Competition Bureau and make the Bureau more effective in this area.

One problem is the lack of adequate passenger, cargo and air-facility data, at least equivalent to that available in the U.S. This deficiency makes it difficult for stakeholders with a vital interest in this sector to challenge the actions of the dominant carrier in particular. Where data are available, Statistics Canada can take a long time in publishing them, often to the point at which they are too dated to be of much use. Transport Canada itself has indicated an interest in having better data for its forecasting purposes, but has no legislative mandate to require the submission of data on this scale.

Questions also have been raised about whether it is fair to allow Air Canada, not only to dominate the core air market, but to set up its own budget airline as well. In this regard, the Competition Bureau has issued a cease and desist order against Air Canada in response to a pricing complaint by CanJet, but in doing so the Commissioner himself alluded to the difficulty of proving such complaints. The reality is that, if allowed, Air-Canada is in such a dominant position as to be able to drive just about any competing carrier out of any domestic market. It also is in a position to hinder foreign carriers in providing through, international service beyond the two or three top gateways into Canadian cities beyond.

Where the foreign-ownership issue is concerned, Air Canada believes that it is a national asset whose value to the country should not be jeopardized by removing key restrictions, especially without reciprocity from the Americans. Furthermore, the airline argues that the aviation sector contributes a lot to the Canadian economy, and that competition will develop without letting in foreign airlines. Air Canada does favour raising the foreign-ownership limit to 49 percent, and has raised a legitimate concern about inconsistencies between the powers of the Agency and the Competition Bureau.

Others strongly support the view that the days of treating the air mode as one requiring special protection in the national interest must end. If truck, bus, rail and most marine carriers can be foreign owned or controlled, and still be vital components of our transportation system, there is no reason why airlines cannot be so as well.

There are already some airlines around the world whose ownership is determined on a regional, not national, basis. Scandinavian Airlines System has been owned for decades by Norwegians, Swedes and Danes, with no national group holding a majority stake. Australian carriers can now be majority owned by New Zealanders, and vice versa. Future global airline alliances may render national ownership obsolete, in any case.

Position:

The Government of Alberta believes that the only way to achieve effective competition, prevent predatory actions, and bring the air mode in line with the other modes of transport is to remove current restrictions on the foreign ownership of airlines operating within Canada. At the same time, management must be fully accountable to shareholders, suggesting that the current 15 percent limit on ownership of Air Canada shares by single investors should be eliminated entirely. Air Canada's concern about inconsistencies between the powers of the Agency and the Bureau should be addressed. Finally, there is a real need for better aviation statistics in Canada. Therefore:

- **The Review Panel should call upon the federal government: (1) to remove current CTA restrictions on foreign ownership of airlines operating within Canada; (2) to remove the existing constraint on ownership of Air Canada shares by single investors; (3) to remove any inconsistencies between the powers of the Agency and Competition Bureau; and (4) to propose that the new CTA require aviation entities to provide comprehensive data equivalent to that collected in the U.S.**

3.3 Airline Service and Fares:

Communities across Canada must have air service which meets their passenger and cargo needs, regardless of what airline or airlines are involved, and air fares must not, where there is no longer effective competition, artificially constrain travel for personal, business or tourism purposes.

Section 66 of the **CTA** gives the Canadian Transportation Agency the power to review prices and prevent price gouging on monopoly routes. Section 64 requires a carrier to provide 120 days' notice if it plans to withdraw or significantly reduce service on a route, and to consult with affected communities. While not specifically mentioned in his announcement, this topic fits within the Minister of Transport's stated desire that the CTA Review address policy issues from "new arising industry structures", and the **CTA's** role in supporting sustainable development objectives.

A basic reality is that the speed of business decisions is quickening and our companies need to have transportation options **now**. When businesses are asked to rank location factors in order of importance, most list access to markets as number one. Better air service is especially crucial for Alberta-based companies wishing to expand, and companies wishing to come here will make their decision on the same basis. Another issue raised by businesses is the absence of volume corporate discounts at the same level as were available in the past, when there was effective competition.

Oil and gas manufacturing companies located in the Edmonton area make products that are highly time sensitive and need direct access to foreign markets. Unfortunately, the lack of choices means that shipments requiring wide-body aircraft and main-deck handling must be trucked to other airports, losing valuable time (e.g., if destined for the Middle East through European gateways). Even some Calgary-based industries find that they have to truck to Seattle or Chicago, due to the lack of adequate air-cargo service. The danger is that Alberta will get a reputation of being a difficult place to access. This can cause serious damage to the province's ability to attract and retain investment, and impact its huge tourism industry.

Access to smaller communities is also a significant concern, despite Air Canada's three-year commitment to continue flying to all points formerly served by the Air Canada and Canadian families. A carrier can exit a route on as little as 120 days' notice, and some new entrants may find it necessary to concentrate on routes they know will be profitable, not smaller regional routes. Centralized decision-making by Air Canada may lead to inadequate service for communities located in western Canada and other regions.

Assuming that a community does continue to be served, there is also the possibility that the dominant airline will increase fares unfairly where no competition exists - or at least no effective competition. The timing of service improvements may be designed to benefit Air Canada's short-term needs, not those of Alberta travellers and shippers. Where two competing airlines were once forced to anticipate needs, communities will now have to lobby the Air Canada family for service, despite rarely having the resources to do so.

Air Canada's position is that it voluntarily offered to guarantee service to all communities previously served by itself or Canadian Airlines, and that safeguards and procedures established by the federal government will be adequate to protect their interests. Air Canada argues that it is always ready to discuss the cargo and passenger needs of specific communities and regions, and can point to improvements made as a result of such discussions. Communities and other stakeholders are also free to approach other airlines to provide service that Air Canada is not in a position to provide.

Air Canada also has pointed to certain outmoded provisions of the legislation, such as requiring hard copies of tariffs to be available in every ticket outlet.

Finally, there is the argument that Air Canada must be protected from foreign carriers or their subsidiaries on domestic routes, because the latter would drive down profits on high-volume routes while refusing to serve low-volume routes. Air Canada itself says that it serves low-volume routes in order to obtain valuable feeder traffic, suggesting that such routes are net contributors to its bottom line, and would continue to be so regardless of whether foreign carriers or their subsidiaries were allowed to compete on lucrative, high-volume routes.

Position:

As stated under the first Position above, the Government of Alberta believes that removal of current **CTA** restrictions on foreign ownership of airlines operating within Canada is the only effective way to ensure the availability of needed passenger and cargo services. Until effective competition exists, the same range of fares should be available on low-volume routes as are provided on high-volume routes, and these fares should be proportional to those available on the latter routes. Outmoded provisions requiring carriers to have hard-copy versions of tariffs in every ticket outlet should be removed. Therefore:

- **The Review Panel should call upon the federal government: (1) to ensure that, where the dominant carrier (or regional affiliates) serve low-volume, regional air routes, the same range of fares is available as is provided on high-volume routes, and that these fares are proportional to those available on the high-volume routes; and (2) to remove outmoded provisions from legislation, such as that requiring hard-copy versions of tariffs to be available in all ticket outlets.**

3.4 International Air Policy:

International air services must be available to meet the future needs of travellers for business and tourism purposes, also for shippers of cargo given strong growth anticipated in the value-added, high-technology and e-commerce sectors.

CTA sections 71 (scheduled service), 74 (non-scheduled), and 76 (ministerial direction) are key to current international air policy. While not specifically mentioned in his announcement, this topic fits within the Minister of Transport's stated desire that the CTA Review address policy issues from "new arising industry structures", the **CTA's** role in supporting sustainable development objectives, and the challenge of globalized logistics and e-business.

While an open-skies agreement exists for Canada-U.S. services, other international services are closely regulated through a system of bilaterals with other governments, driven by each government's desire to get as much for its own carriers as possible. The Canadian federal government typically restricts entry to foreign carriers unless it deems there to be equivalent "benefits" for Canadian carriers – perhaps at the other end of the country, or perhaps related primarily to cargo rather than passenger (or vice versa). The result is that foreign carriers sometimes view Canada as an overly bureaucratic nation with which to deal, and this may be limiting the interest of these carriers in serving this country. Furthermore, Canada has fallen far behind the U.S. in concluding open-skies agreements with other countries.

With air-cargo services being closely regulated between Canada and countries other than the U.S., there is a concern that needed services will not be available to support value-added, high-technology and e-commerce growth. Canadian carriers have not shown much interest in recent times in providing all-cargo services.

The Canada-U.S. open-skies agreement allows any Canadian or U.S. carrier to provide scheduled, all-cargo service between any point in Canada or the U.S. There is one important restriction: co-terminalization of points is not permitted for scheduled, same plane, all-cargo courier service operated with aircraft having a maximum, certified, takeoff weight greater than 35,000 pounds. For example, FedEx cannot carry packages on a flight arriving from the U.S. beyond Winnipeg to Edmonton, let alone pick up packages in the former city and fly them to the latter.

Some believe that these restrictions are a throw-back to the days of a Canadian economy protected from foreign competition, and have implications for future trade between the two countries. While their removal could benefit some carriers and airports more than others, these are decisions to be decided by shipper need and carrier/facility provider performance, not policy makers or regulators.

There is also support for the view that international air policy must be primarily based on the specific needs of our economy, today and tomorrow. Air Canada, as the only major Canadian carrier left on international routes, should now be large enough to meet tougher foreign competition on international routes. Indeed, Air Canada has made pro-competitive statements in the past, including advocating an exchange of cabotage rights with the U.S. during the open-skies negotiations, and sees itself as becoming a much bigger international player. In the interim, the airline should be willing to accept the challenge of wider fifth-freedom rights for foreign airlines, as a means of providing a modest degree of additional competition (e.g., Air France handling local traffic between Montreal and Toronto on a flight originating in Paris).

Where open-skies agreements cannot be arranged, communities believe that the federal government needs to be more open to input from them and from airport authorities when negotiating and implementing bilaterals. The federal government also must ensure that domestic regulations complement, rather than conflict with, these bilaterals. Furthermore, communities and airport authorities should not be discouraged from directly approaching foreign carriers in order to convince them to provide service. (It is no longer feasible to stand by, waiting to see what the federal government might be able to come up with through bilateral negotiations.)

Air Canada has highlighted two aspects of the **CTA** which unnecessarily hinder sales and operations. Section 59 restricts an airline from beginning to sell seats in advance of actually receiving a licence to serve a new route, thereby affecting revenue, while Section 60 requires the Agency to approve use of aircraft and flight crew provided by another carrier, even in emergencies.

Position:

The Government of Alberta believes that current international air policy must be significantly liberalized, as it affects both passenger and cargo traffic, by moving to more open-skies agreements, and by improving the current agreement with the U.S. One way to advance this would be to push for global open skies through inclusion of air-cargo traffic rights under the General Agreement on Trade in Services. Finally, sections of the **CTA** restricting prior sale of tickets on a new route, and occasional use of foreign airlines' aircraft and flight crews, clearly need to be addressed. Therefore:

- **The Review Panel should call upon the federal government: (1) to greatly liberalize the current approach to international air policy by aggressively moving to expand open-skies agreements with other countries, beginning with a push to include air-cargo traffic rights under the General Agreement on Trade in Services; (2) to ensure that no co-terminalization restrictions on cargo services exist in such agreements; and (3) to remove unnecessary restrictions on prior sale of tickets on a new route and the occasional use of foreign airlines' aircraft and flight crew.**

3.5 Viability of Large Airports:

There is a need to ensure that, in the short term, federal rents charged to airport authorities do not hinder their ability to be globally competitive and make necessary capital investments; also that, in the long term, the issue of continued federal ownership is considered.

No provisions of the **CTA** specifically address this topic, but a resolution is necessary if the competitiveness of our large airports is to be assured. While not specifically mentioned in his announcement, this topic fits within the Minister of Transport's stated desire that the CTA Review address policy issues from "new arising industry structures", the **CTA's** role in supporting sustainable development objectives, the need for adequate capital expenditures in the transportation system, and the challenge of globalized logistics and e-business.

Our airport authorities face many challenges in competing with foreign airports for current and future traffic, in an era where there is one dominant carrier domestically. Many observers feel that the federal government, through its rents, is now receiving more than a reasonable return on large airport assets, to the extent that these rents are far in excess of funding now provided by federal government for all aviation purposes put together in Canada. They also are greater than when Transport Canada was itself running these airports.

Airport authorities point out that they must offset the federal rent by increasing fees charged to airlines and the travelling public, in part through airport improvement fees. Passengers may resist flying from an airport that is paying onerous rents to the federal government. These rents are being imposed despite the fact that the federal government no longer has the financial risk of ownership; furthermore, airport authorities are improving the leased asset through capital expenditures – a reality not reflected in reduced rents, incentives or credits. In effect, the federal government is benefiting unfairly from the airport authorities' hard-earned success.

The authorities feel that there is a need for a better formula to determine rents, including a defined cap. Instead, the federal government keeps changing the playing field when dealing with airport authorities, making it difficult for them to plan for the long term.

The problem is mainly philosophical, but has serious practical implications. Transport Canada, and the Auditor General in his recent report, appear to view transportation infrastructure as something to be taxed, especially if it is owned by the federal government, as is the case with airport authorities. Others view transportation as an investment in economic prosperity. Excessive rents could raise airport costs to the point at which traffic is curtailed, investments are delayed, and the decline in general economic activity exceeds any benefit that might come from the federal government's eventual use of that money.

Some critics of the authorities believe that they are, in effect, unregulated monopolies with the freedom to increase charges and impose improvement fees with impunity. The airline industry feels that it does not have enough say in how airports are improved, considering that they end up paying for part of the cost through various charges. The federal government apparently is planning legislation to address what it sees as inadequate accountability. But under current federal accountability provisions (and, in the case of Alberta, provincial regional airport authority legislation), the authorities feel that they are more accountable than most organizations. If there are problems, these can be addressed without harming the authorities' ability to operate these facilities in accordance with local needs and objectives.

Some observers are even asking this question: what is the purpose of continued federal ownership of large airports, once they have reached viability? The federal government's objective is for each of these airports to become self-sufficient, without the need for ongoing subsidies, meaning that there should be no need to transfer profits from one large airport to another. Safety and common standards could be ensured through the federal government's general jurisdiction over aviation, without actual ownership of the facilities.

Position:

The Government of Alberta believes that rents now being extracted from airport authorities must be reduced, so that these rents cover only those expenses directly incurred by the federal government where each airport is concerned. Furthermore, the federal government should shelve any thought of playing a larger role in the day-to-day administration, planning, marketing and operations of these airports. Finally, ownership of these facilities should be transferred to the authorities once sustainable financial viability is reached, at prices that cover only outstanding obligations the federal government might have – not based upon what is usually called fair market value. Therefore:

- **The Review Panel should call upon the federal government: (1) to reduce the rents now being extracted from airport authorities, to cover only those expenses now being directly incurred by the federal government where each airport is concerned; (2) to shelve any contemplated action that might result in the federal government playing a larger role in the day-to-day activities of these airports; and (3) to transfer ownership to the operator of each large airport as it reaches sustainable financial viability.**

3.6 Viability of Local and Regional Airports:

There is a need to ensure that local and regional airports have the means by which to become viable, given their devolution by a federal government which continues to impose costly regulations and procedures.

No provisions of the **CTA** specifically address this topic, but a resolution is necessary if the future competitiveness of our smaller airports is to be assured. While not specifically mentioned in his announcement, this topic fits within the Minister of Transport's stated desire that the CTA Review address policy issues from "new arising industry structures", the **CTA's** role in supporting sustainable development objectives, and the need for adequate capital expenditures in the transportation system.

Transport Canada has devolved most local and regional airports to provinces, territories, municipalities, or other entities, providing some transitional funding in the process. These airports are rarely financially viable and their new owners are generally unwilling to use tax dollars to support them. Transport Canada does provide some capital support through the Airports Capital Assistance Program (ACAP), but it is restricted to airports receiving scheduled service, and then to safety-related capital requirements; furthermore, funding is limited and not guaranteed. Airport operators complain that the application process can be costly and cumbersome, and that all local and regional airports must compete for a fixed amount of money.

Although Transport Canada says it is monitoring the adequacy of the current funding level, ACAP does remain limited in its ability to meet the capital requirements of Canada's local and regional airports. These airports are price sensitive: traffic falls as fees are passed on to the travelling public, either directly through an airport improvement fee or indirectly through the carriers. While they pay no rent to Ottawa, the airports are working on very thin margins which, in some cases, have been impacted by lower frequencies (and therefore revenue) stemming from the airline restructuring process. Thus, there is a real risk that the country will lose many of its smaller airports over the next 10 years.

Airport operators say that additional costs are being imposed by federal regulations, such as the reintroduction of a higher level of fire-fighting capability and recent demands for improvements under the **Aeronautics Act** – often with questionable value in enhancing safety. Airport operators also complain that Transport Canada inspectors sometimes are tougher on them than they used to be on Transport Canada staff when it owned these facilities, and that they are inconsistent in their interpretations (e.g., of the provisions contained in Transport Canada's Airport Operators Manuals).

Airline pricing is also affecting the viability of Alberta local and regional airports, as a ticket feeding into the provincial hub can cost a lot more than one on the longer flight to Toronto or even some foreign destinations. Companies look at air fares and service levels in deciding whether to stay in a community or locate there, but fares are so high that some find chartering an aircraft is cheaper on a per-passenger basis.

Some airport operators are concerned that, when Transport Canada sets regional priorities under ACAP, it will be consulting in future with the airlines. This could result in funds being directed to certain airports on the basis of an airline's best interests, to the competitive disadvantage of other airports. Another concern is that an airport operator wishing to establish an airport improvement fee must sign an agreement with the Air Transport Association of Canada requiring air-carrier approval prior to subsequent projects. This has obvious implications, given that Canada now has one dominant airline family.

Finally, airport operators feel that changes to ACAP are needed to guarantee multi-year funding on a project basis, to allow smaller airports to do proper, long-term capital planning.

Large airports have suggested to the federal government that, as part of a new rent formula, \$100 million of the current surplus be placed in the ACAP program to assist smaller airports. They have made this suggestion apparently on the assumption that the federal government will continue to extract rents above and beyond what is needed to cover federal costs, and that some of this money therefore might as well be returned to the aviation sector for what everyone agrees is a good cause.

This would have the effect of requiring our large airports, in the face of global competition, to impose charges on their users in order to support local and regional airports. This type of cross-subsidization has been steadily removed from other modes of transportation, on the grounds that it perpetuates inefficiencies.

Position:

The Government of Alberta believes that all impediments to viability should be evaluated by an independent body and removed on an airport-by-airport basis, including emergency response regulations whose need has not been proven and other federal requirements that place an unnecessary financial burden on facilities having limited revenue-generating opportunities. This should be done before redirecting rents collected from airport authorities toward these airports. Once all of the impediments have been squeezed out of the system, the need for funding support should be determined, beyond that already provided under ACAP. Therefore:

- **The Review Panel should call upon the federal government: (1) to request an independent body to evaluate what it will take to make local and regional airports viable (including removal of unnecessary impediments); (2) to revamp the Airports Capital Assistance Program to make it less costly and cumbersome, and more attuned to long-term needs; and (3) to undertake a proper risk-management analysis of the new emergency response regulations.**

4.0 BALANCING THE RELATIONSHIP BETWEEN SHIPPERS AND RAILWAYS:

4.1 Government of Alberta's Approach – Rail:

Alberta's approach to competitive rail access has been long standing and is based on the reality that Alberta, and Canada as a whole, needs a viable rail system that offers the option of more than one carrier to its shippers, whether they are producing goods for domestic consumption or for export.

In addition to those outlined in Section 2.0 above, the following statements of need are important:

- Basic resource industries (along with those involved in downstream, value-added products and spin-off technologies) continue to be crucial to the prosperity of Alberta and the other western provinces in particular. These industries ship heavy commodities in large volumes over long hauls, meaning that they have no real choice but to use rail – and, in many cases, the single railway upon which they are located. Furthermore, global competition means that such industries must be “price takers”, in that they have no choice but to improve productivity and reduce costs.
- The competitive rail provisions of the **CTA**’s predecessor legislation, the **National Transportation Act (NTA)**, represented at best a first step in addressing issues involving an industry which still exhibits natural monopoly characteristics. The changes made in the **CTA** weakened these initial provisions.
- Shippers need to be able to work with railways which provide reasonable rates and good service, accept liability for goods being moved, and share productivity gains fairly. Because the chances that these requisites will be available are improved significantly by ensuring shipper access to a second Class 1 carrier (i.e., CN or CP), there is strong agreement within the shipper community in Alberta, and indeed across Canada, that the existing competitive rail access provisions of the **CTA** need to be strengthened.
- To be effective, legislative mechanisms must be advanced together as a package, including Competitive Line Rates, interswitching, Final Offer Arbitration, and running rights.
- Governments must recognize, in legislation, the implications for shippers of the growing interaction between provincially regulated short-line operators and federally regulated Class 1 railways.

- The North American nature of the rail industry must be taken fully into account as legislative changes are considered, despite the calling off of the CN-Burlington Northern Santa Fe merger. There are serious concerns about the Canadian Transportation Agency's ability to ensure competitive rail access, especially given the likelihood of such mergers in the future.

Shippers generally support these statements, as best evidenced by the Canadian Shippers Summit paper, **Enhancing Rail Competition in Canada** (October 2000). The Summit is comprised of: Alliance of Manufacturers & Exporters Canada; Canadian Chemical Producers Association; Canadian Fertilizer Institute; Canadian Industrial Transportation Association; Canadian Pulp and Paper Association; Council of Forest Industries; Mining Association of Canada; Western Canadian Shippers Coalition; and Western Grain Elevators Association.

CN has provided a paper to the Panel entitled, **Initial Submission to the Canada Transportation Act Review Panel: Perspectives on Competitive Rail Access Issues** (October 6, 2000). CP has transmitted a paper called, **Railway Infrastructure, Access and Competition: Brief to the Canada Transportation Act Review Panel** (November 2000). These and other documents, as well as comments made at the two Alberta work shops, indicate that the railways view competitive access provisions as an undesirable return to regulation. They believe that only a tiny percentage of shippers are truly captive, and that they must pay according to "value of service", which by definition is going to be high because they are captive.

Instead of being hindered by such legislative provisions, the railways believe that they must be allowed to function according to what they see as key "business principles", including the freedom to price differentially according to the particular circumstances. If they do not have this freedom, shippers – including those who are genuinely captive – will find that the rail system is no longer able to provide the service they need. At any rate, the railways say that no one has made a valid case that shippers would actually be helped by strengthening these mechanisms.

Before stating the positions which follow, it is worth reiterating that the Government of Alberta would much prefer that the needs of rail shippers be met through the workings of the marketplace. It recommends legislative measures with considerable reluctance, for two reasons: first, they are, by nature, interventionist; and second, Alberta has been a leader in comprehensively reviewing all of its own regulations, then removing those that serve no purpose and streamlining those which absolutely have to be retained.

But the reality is that highways, airways and waterways feature publicly owned way/infrastructure, meaning that shippers have more choices. In contrast, the rail mode consists of privately owned way/infrastructure, requiring competitive access mechanisms for those captive to rail, or worse, to one railway. Shippers themselves share the view that if rail infrastructure were a true public good like the other modes, there would be no need for such mechanisms.

It is important that the following competitive access positions be seen in this light.

4.2 Access to the Canadian Transportation Agency:

The **CTA** retained various shipper-relief provisions introduced in the previous **NTA**, including Competitive Line Rates (CLR's) and Interswitching.

Two additional provisions were included in the **CTA** which relate to these competitive access provisions, as well as to the level of service provisions contained in sections 113-116: Section 27(2) requires that a shipper applying to the Canadian Transportation Agency, in respect of a transportation rate or service, must demonstrate that it would suffer "substantial commercial harm" if the relief being sought were not granted; and Section 112 requires that a rate or condition of service established by the Agency must be "commercially fair and reasonable to all parties".

Shippers feel that these sections add nothing of value, are adversarial, cost a lot of money to satisfy, and cannot be adequately defined. Section 27(2) poses considerable uncertainty as to what constitutes “substantial commercial harm” and can require a shipper to provide confidential information in the process to demonstrate this harm. The requirement in section 112 that all rates and conditions of service established by the Agency be “commercially fair and reasonable to all parties” has created similar uncertainty. The result has been that shippers have made no applications for CLR’s since the **CTA** was enacted.

In contrast, the railways believe that the statements are necessary to convey the need for a commercial approach, and in any case are benign. All stakeholders should be able to support them.

Position:

The Government of Alberta agrees that these commercial provisions have reduced the ability of shippers to use the competitive access provisions. In any case, the Section 5 Declaration already states, as a general principle, that each carrier should receive “fair and reasonable compensation for the resources, facilities and services that it is required to provide as an imposed public duty”. Therefore:

- **The Review Panel should call for the repeal of both the “substantial commercial harm” and “commercially fair and reasonable to all parties” sections of the CTA, on the grounds that these provisions have significantly reduced the effectiveness of the shipper-relief provisions.**

4.3 Competitive Line Rates:

Sections 129-136 of the **CTA** set out the process for establishing Competitive Line Rates (CLR’s). Under these provisions, a shipper located on the line of a single local carrier must have reached an agreement with a connecting carrier from the point of interchange **before** that shipper can even request a CLR.

Shippers have indicated that the unwillingness of the Class 1 Canadian railways to compete beyond a point of interchange has meant that shippers are unable to secure the necessary connecting carrier rate to allow a CLR application. This is because if a CLR is established to an interchange, the originating carrier loses that traffic and has no further opportunity to compete for it. The result is that these provisions have not afforded the relief for captive shippers that was originally contemplated.

Various shipper organizations have proposed options for improving the existing CLR provisions. In addition to the elimination of section 27(2) (“substantial commercial harm”) and section 112 (“commercially fair and reasonable to all parties”), they have advanced two specific proposals, both addressing the unwillingness of the originating carrier to turn over traffic to another carrier.

Setting Rates on the Connecting Carrier:

One proposal suggests that the provision in section 131(1) – requiring the shipper to have a prior, agreed rate with the connecting carrier – be abolished, as it is short circuiting the existing CLR process.

Where a connecting carrier refused to make a deal with a shipper for movement beyond the interchange point, a revised provision would allow the shipper to apply to the Agency to set the rates, terms and conditions, using the process already set out in section 133. The shipper’s intent: an average tonne-mile, pro-rate.

Where a connecting carrier did provide an offer but the shipper found it unacceptable, the shipper would be able to apply to the Agency to review the offer. If, based on the criteria set out in the existing section 133, the review determined that the rates, terms and conditions were not “commercially fair and reasonable”, the Agency would establish rates, terms and conditions, using the basis set out in the remaining sub-sections of section 131.

It should be noted that this proposal, as put forward by its proponents, requires the retention of section 112, with its “commercially fair and reasonable to all parties” wording. It also appears that two CLR’s would be the result, one on the local, the other on the connecting carrier.

Competitive Access Rate:

A second proposal is called Competitive Access Rate (CAR), and is based on the premise that a connecting carrier will be more inclined to compete from the point of interchange if the shipper already has a rate with the local carrier over the captive portion of the route.

The CAR concept would allow a shipper to route its traffic to or from an interchange with a connecting railway under a predetermined rate formula established by the Agency, for up to half the distance of the total movement. The regulated interswitching rates would be used for the first 30 kilometres of the movement, and other rates (such as a railway's average revenue per tonne-mile) for the balance of the movement to or from the point of interchange. Beyond the point of interchange, there would be opportunity for the two railways to compete for the traffic.

The Final Offer Arbitration (FOA) mechanism contained in the **CTA** would be available to shippers beyond the point of interchange if a mutually acceptable rate could not be negotiated. FOA (sections 159-169) is the most frequently used shipper mechanism, and was improved through Bill C-34 to require the final offers of both shipper and carrier to be submitted at the same time.

Shippers advancing this proposal suggest that the local railway would be in a better position to compete for traffic beyond the point of interchange because of the cost efficiencies associated with a single carrier movement, reduced interchange time, lower administrative costs, and established relationships with shippers. In some respects, it is less interventionist than the "Setting Rates on the Connecting Carrier" proposal outlined above.

The railways oppose CAR, saying that the FOA process already gives shippers recourse if they do not like the rate being offered. In their view, CAR would limit their ability to price differentially at the high end, and therefore have an adverse effect on revenue and capital spending. The imposition of a pre-determined rate formula would jeopardize railway viability, and would not encourage competition anyway. It would also mean the subsidization of certain industries at the expense of the railways, which must continue to meet their common-carrier obligations.

The railways also warn that, should CAR be implemented, the continued use of the FOA process could not be justified, as shippers would have their choice of two railways beyond the point of interchange.

Position:

The Government of Alberta believes that the CAR concept should be tested for a short period to determine its effectiveness. Therefore:

- **The Review Panel should call for the adoption of the Competitive Access Rate concept, on the understanding that it would be reviewed after an initial two-year period to determine its effectiveness.**

4.4 Interswitching:

The interswitching provisions of the **CTA** (sections 127-8), as well as “Regulations Respecting the Interswitching of Rail Traffic”, allow a shipper located on the line of one carrier to access a second carrier for a line-haul movement.

The Minister of Transport specifically directed that the Panel address whether the Canadian Transportation Agency should have the powers to set “maximum” as opposed to “actual” interswitching rates.

Current regulations establish the maximum per car rate, based on a distance up to 30 kilometres, that may be charged by a railway providing interswitching service (actually farther in certain situations, termed “extended interswitching”). The railway **providing** the interswitching service charges the railway delivering the traffic for the transfer, rather than billing the shipper directly. The railway **receiving** the interswitching service may either absorb this charge or include it when billing the shipper for the total line-haul movement.

Overall, interswitching and extended interswitching have served as an effective tool in providing increased transportation options for shippers. The current provisions, and process whereby rates are established by the Agency (either as maximum or actual rates), are strongly supported by a large portion of the shipping community in Alberta and Canada as a whole.

Despite this general support, shippers have pointed out that there are some instances where a railway does not own the line over which it operates, but rather enjoys access on the basis of a lease or running rights. Because of the reference to track ownership in the **CTA**, interswitching between two railways cannot occur in this situation. Competition could be further enhanced by making reference only to transferring traffic between railway companies, regardless of who owns the track being used.

CP and CN feel that this approach would be highly interventionist, violate the rights of shareholders, and alter relationships between carriers. In their view, the current approach works well, and changing the rules would be unfair to short lines in particular. Should the proposal be adopted, railways likely to benefit should realize that they might well have to allow interswitching on a reciprocal basis on their own lines.

Position:

The Government of Alberta believes that interswitching should be extended to railway companies operating over the lines of other railways on a lease or running-rights basis, given the likely proliferation of such arrangements and the consequences for shippers. Therefore:

- **The Review Panel should call for the inclusion of provisions in the CTA that extend interswitching to a railway company operating over trackage owned by another railway, on the basis of a lease or running rights.**

4.5 Expanded Running Rights:

The current Running Rights provisions, as set out in sections 138 and 139 of the **CTA**, allow one railway company to apply to the Agency to operate over the lines of another. The onus is on the applicant railway to demonstrate that the granting of a running-rights order is in the public interest. These provisions apply only to federally regulated railways.

CN and CP have entered into various agreements whereby one railway can operate over the other's lines. For example, CP has operated its own trains over the Toronto-Hamilton line of CN and its predecessors for well over a century, and an arrangement was recently made to move some of CP's Chicago traffic through CN's Sarnia gateway. VIA Rail Canada's own train crews operate VIA trains over certain routes.

Other recently announced arrangements will allow CN to move forest products from Quebec to distribution centres in New York and Pennsylvania, while CP will receive reciprocal haulage rights from CN to ship similar commodities into Ontario, Quebec and the Maritimes. In British Columbia, the two railways are sharing tracks in the Fraser Canyon. In effect, where the railways see potential efficiencies and increased productivity, they have long shared infrastructure through various forms of running rights, with no apparent adverse effects.

Those who feel that there is insufficient competition in the Canadian rail system have suggested various options for expanding access to railway infrastructure. Justice Estey, in his final report of the **Grain Handling and Transportation Review** (December 21, 1998), recommended that the rail system be opened up by allowing "any person" to apply for running rights on a federal railway.

Arthur Kroeger was subsequently appointed facilitator of a process to develop operational details, and the matter was dealt with in the subsequent **Stakeholders Report – Consultations on the Implementation of Grain Handling and Transportation Reform** (September 1999).

In the course of the Kroeger process, Working Group #3 on Competition and Safeguards developed a detailed proposal featuring several elements of what, in an attempt to keep the various concepts straight, Alberta will refer to here as “Expanded Running Rights”.

These elements were: (i) “any person” would be able to apply for running rights on and over a federal railway; (ii) competency of the applicant would have to be determined by the Agency on a case by case basis; (iii) the onus would be on the owning railway to demonstrate that granting the running rights application was **not** in the public interest; (iv) the owning railway would have the ability to price differentially, based on service levels; (v) restrictions would be placed on the access fees owning railways could charge; (vi) the Agency would have the power to arbitrate disputes between the applicant and owning railway concerning access fees; (vii) the owning railway could expect fair compensation (including a reasonable return on its investment and facilities), but could not extract monopoly rent from captive shippers; and (viii) the Agency could place orders on both the owning railway and applicant.

The Working Group recommended the early implementation of this Expanded Running Rights concept for an initial period of five years, during which time a study would be undertaken to assess the implications of allowing what perhaps could best be termed “Full Open Access”. The latter concept would involve: (i) implementing an access fee structure; (ii) eliminating the case-by-case consideration of applications by the Agency; and (iii) potentially removing existing interswitching and CLR provisions from the **CTA**. The study also would assess the impact of the new “reverse onus” entry test for Expanded Running Rights applications.

The Kroeger **Stakeholders Report** referenced above proceeded to identify two options for the federal government to consider: (i) proceed with implementation of Expanded Running Rights according to the elements described above; or (ii) examine (with the benefit of advice from experts in the field) both Expanded Running Rights on the one hand and alternative measures, such as enhanced interswitching and more effective CLR’s, on the other.

Please note here that the **Stakeholders Report** referred in both options to the “open access plan” developed by the Working Group. Again, this tends to confuse the concepts, and “Expanded Running Rights” may be a better descriptor of the Working Group’s elements.

The **Stakeholders Report** recommended that the evaluation be conducted expeditiously, so that legislation could be enacted prior to the 2000-2001 crop year, beginning August 1, 2000. To accomplish this, the report also recommended that the CTA Review Panel should deal with competitive rail access in advance of its general review of issues, so that the results could be incorporated in the new **CTA**.

In a separate letter to the Minister of Transport, Mr. Kroeger associated himself with the second option just described, on the grounds that not enough was known about the implications of implementing any of these concepts. He suggested that this examination should be done in time for the 2000-2001 crop year. The Minister of Transport asked the CTA Review Panel to address these matters and report back to him in advance of its overall review, specifically by December 31, 2000.

The Premier of Alberta, Honourable Ralph Klein, subsequently wrote to the Prime Minister on December 9, 1999, stating that “the status quo is not sustainable and we must look to substantive change to the system”. Furthermore: “Alberta has participated in both the Estey and Kroeger processes and strongly supports the comprehensive package of reforms in the final report submitted to the Federal Transport Minister. It is vitally important that the entire package of reforms be implemented as soon as possible”. The Premier reiterated this position in a second letter to the Prime Minister dated January 27, 2000, with copies to the federal Ministers of Agriculture and Transport.

Key shippers have supported concepts akin to Expanded Running Rights, for the most part following the Kroeger elements. Proponents have argued that this basic concept has been successfully used in the telecommunication, gas-transmission, power-transmission and air-navigation sectors.

Furthermore, it is in place in the rail mode in certain other countries, including key competitors for Canadian bulk commodities such as coal and grain. Some shippers believe that there are useful lessons to be learned from other countries, and that the concept need not require public subsidies. They do fear, however, that a call for further study could effectively kill the concept.

CN and CP strongly oppose mandatory Expanded Running Rights, let alone Full Open Access. They argue that there is significant competition already in the system, and that costs would be increased, service would be jeopardized, and frequent government intervention would result. Most of all, they express the concern that capital spending would be eroded, thereby requiring an infusion of capital from the taxpayer. They point to critics of the concept, including those heard at the September 15-16, 2000 Saskatoon symposium organized by the Van Horne Institute and University of Saskatchewan, and warn that more regulation could result – as well as higher, not lower, rates. Furthermore, they say that the Kroeger elements were designed for grain, and would not necessarily be appropriate for other commodities.

Position:

The Government of Alberta continues to agree with Mr. Kroeger that there is a need to evaluate these concepts, and that such work is absolutely crucial to the CTA Review process now underway. There should be a three-stage process: (i) a comprehensive evaluation – in line with the Kroeger principles – of the operational, administrative, financial and regulatory implications; (ii) implementation of Expanded Running Rights, provided it is determined that this concept would be both feasible and effective in providing shippers with greater access to rail infrastructure, while allowing the future rail industry to be viable; and (iii) a review of experience after a further appropriate period.

It will be important that the basic concepts be well defined and that all stakeholders accept those definitions at the outset. The evaluation should go beyond merely looking at the obvious benefits to shippers and effects on the railways, to determine how this concept would assist the various industry sectors in proportion to the other major challenges they face.

It also should be kept in mind that, while the experience in other countries should be examined, significantly different contexts may require Canada to break new ground here. Furthermore, the implications of Canadian railways operating under such a concept, while their American counterparts (or partners) presumably would not, will need to be examined.

It goes without saying that the evaluation must be **impartial** and completed as **expeditiously** as possible, although it seems obvious that such a task could not now be completed in time to enable the Panel to make a recommendation by the July 1, 2001 deadline for its overall report. Therefore:

- **The Review Panel should call upon the federal government: (1) to evaluate, in concert with interested parties, the operational, administrative, financial and regulatory implications of an Expanded Running Rights model based on the Kroeger elements, with a completion date of no later than December 31, 2001; (2) to consider implementing such a concept, provided it is determined to be effective in providing shippers with greater access to rail infrastructure, while assuring the viability of the rail mode, no later than July 1, 2002; and (3) to review the experience two years after implementation, to determine success in increasing competition and impact on the owning railways.**

4.6 Final Offer and Other Arbitration Mechanisms:

In the course of the CTA Review, a number of shipper organizations have indicated that, within the current legislation, the Final Offer Arbitration (FOA) process has been the single most important provision for them.

Shippers see FOA as an effective mechanism for securing more competitive rates without regulatory intervention, and they do not want to see additional barriers (such as the “substantial commercial harm” test) instituted to limit access to the process. Improvements made earlier this year through Bill C-34, to require the final offers of both shipper and carrier to be submitted at the same time, are seen as positive, although it is too early to make an assessment as to their effectiveness.

As the two Class 1 railways in Canada continue to rationalize their networks, an increasing number of shippers will find themselves located on short-line railways which, in most cases, come under provincial jurisdiction. (Please note that, in this sub-section, the term “short line” also could apply to carriers commonly referred to as “regional” railways.)

The concern has been raised that shippers who were initially “captive” to a Class 1 carrier might still be captive, but now to a short-line railway which is not subject to the **CTA**’s competitive access provisions. Furthermore, in circumstances where the short line is connected to only one Class 1 railway, the carrier itself can be considered captive to that major railway, just as the shipper located on the former federal line can be considered captive.

The idea of providing extended running rights for a short line on the tracks of a Class 1 railway has been suggested as a means of enhancing competition. The onus would be on the Class 1 railway to demonstrate that the granting of such running rights would **not** be in the public interest.

Another approach would be to make the **CTA** competitive access provisions (including CLR’s, Interswitching, and FOA) available to shippers finding themselves in this position. The following discussion of this approach applies only where provincially regulated short lines are involved, as the full range of these provisions is available where such lines are federally regulated.

Through rates:

Where a line has been transferred from a Class 1 to a short-line operator falling under provincial jurisdiction, a shipper located on the line continues to have access to the existing CLR and Interswitching provisions **only** for the portion of the haul that is routed over a Class 1 railway.

Where the provincially regulated short line is connected to a **single** Class 1 carrier, and the latter establishes a “through” rate for the shipper from the origin station on the short line to the final destination on the Class 1, the shipper continues to have access to the FOA mechanism on the entire rate.

This is because the overall rate is one established by a federal railway in a tariff or contract. The short line is not directly involved in negotiations with the shipper, but subsequently must deal with the Class 1 to determine the amount of payment to be received (“revenue division”) for the service provided from the short-line origin to the interchange with the Class 1 carrier. This access to the FOA mechanism applies even where the short-line operator is under contract to a Class 1 carrier for conditions of service as well as revenue division.

The same situation applies where a short-line operator enjoys connections with **two** Class 1 carriers, except that the operator will have the opportunity of negotiating with either Class 1 carrier for movements, thereby creating greater competition.

Combination rates:

A situation may arise where the Class 1 railway chooses to quote a rate only from the point of interchange with the short line to destination on its own line, in order to avoid a potential FOA process on a rate quoted for the **entire** movement (including the short-line portion). The short-line operator is then required to quote its own rate from the origin on its line to the point of interchange with the Class 1 carrier, resulting in what is called a “combination” rate.

Again assuming that the short line is provincial, the shipper is able to use the CLR, Interswitching and FOA provisions in the **CTA** on the Class 1 portion of the rate only. Shipper recourse to similar provisions on the short-line rate is available only if provincial legislation provides for it.

Neither the national nor most short-line railways see the need for the latter to have running rights over the former, or for provincial legislation to include an arbitration process or other competitive access provisions. Short-line railways are usually agents, handling traffic at through rates negotiated by the national railways and, in their view, short-line rates already are low in response to truck competition.

Alberta's current legislation does not include an arbitration process for shippers located on provincially regulated short lines, but regulations are expected to do this once the updated **Alberta Railway Act** is proclaimed. While this would be a positive step, the interaction between short-line operators and Class 1 railways, or between shippers located on short lines and Class 1's, needs to be more formally recognized under federal legislation.

Position:

The Government of Alberta believes that the current FOA mechanism, as improved through Bill C-34, should not in any way be weakened. Instead of mandating running rights for provincially regulated short lines over CN and CP at this time, an arbitration process would be sufficient. Should the comprehensive evaluation recommended in Sub-section 4.5 above demonstrate that the Expanded Running Rights concept is feasible, then short lines would have access to CN and CP through that mechanism anyway. In the meantime, provision also needs to be made in both the **CTA** and provincial statutes to facilitate a single, joint process where necessary between the Canadian Transportation Agency and provincial agency responsible for dealing with rail issues. There also may be other gaps between the **CTA** and various provincial rail statutes on issues that arise between a federal and provincial carrier. Therefore:

- **The Review Panel should call upon the federal government: (1) to ensure that the current Final Offer Arbitration mechanism is retained and not weakened; (2) to work with provinces to ensure that shippers located on provincially regulated short lines have recourse to an arbitration process for the purpose of addressing disputes involving rates and conditions of service; and (3) to include provisions in the CTA giving the Agency authority to work with provincial agencies in making decisions on matters involving railways operating under the two jurisdictions.**

5.0 ADDITIONAL RAIL AND MARINE ISSUES:

5.1 Level of Service and Car-allocation in Grain Sector:

There are serious inconsistencies between the **CTA** “level of service” requirements and car-allocation powers granted to the Canadian Wheat Board (CWB) through the **Canadian Wheat Board Act (CWBA)**.

Sections 113 and 114 of the **CTA** specify level of service obligations for the railways and require them to provide transportation, including cars, to all shippers, while section 28(k) of the **CWBA** gives the Board power to allocate hopper cars. Under a Memorandum of Understanding, the Board is considered the “shipper” and is supposed to notify the government of its intention to use the powers under section 28(k). Although it has not done this, the Board has announced plans to implement changes to car allocation.

Grain companies have expressed concern that the Board will have a monopoly over car allocation, thereby affecting their ability to acquire hopper cars required to ship non-board grains such as canola, oats, flax and rye. They also argue that the recent legislative changes give the Board more power, despite the fact that the Board – unlike the grain companies – has no investment in the logistics system. Considering the grain companies as shippers under the **CTA** would serve to address their concerns.

The railways feel that the entire grain-transportation system is attempting to come to grips with the new arrangements implemented earlier this year, and warn that there is no consensus within the grain community itself. CN has suggested that Board powers be made subordinate to the level of service provisions, in order to clarify **its** obligations and capacity to contract.

Position:

The Government of Alberta supports the removal of inconsistencies between the two acts, by designating grain companies as shippers under the **CTA**. Such an amendment would provide the grain companies with the sole authority to deal with the railways in the allocation of cars. Therefore:

- **The Review Panel should call for the removal of inconsistencies between the CTA's section 113 and 114 "level of service requirements", and car-allocation powers granted to the Canadian Wheat Board under section 28(k) of the CWBA, by designating grain companies as shippers under the CTA.**

5.2 Rail Line Abandonments and Transfers:

Sections 140-6 of the **CTA** deal with abandonments and transfers, and there are two key issues of concern: segmentation and transfer by lease.

Railway companies sometimes have utilized the existing abandonment process to "segment" branch lines in a manner that reduces the potential viability of a line as a short-line operation. While a particular line may be designated in the three-year plan for abandonment required by the **CTA**, Class 1 railways have used the process such that only a portion of the line is offered for transfer. As a result, the viability of the entire line as a short-line operation may be reduced.

The existing abandonment provisions also provide that a line may be transferred by sale, lease or other means to a short-line operator. A transfer under lease does not necessarily provide for a long-term arrangement for operation of a line. Having gone through the transfer process as currently worded, the Class 1 railway has no further obligations with respect to the federal abandonment process and can discontinue the line in any manner and at any time it chooses.

The railways point out that while there are some cases in which a carrier needs an entire line to achieve viability, there are others where being forced to take an unsegmented line could have the opposite effect (i.e., part of the line could be operated viably, but not all). The railways also suggest that a long-term lease is often the best way to accomplish a transfer, and that control of the line is effectively with the short-line operator under such a lease.

Position:

The Government of Alberta supports giving the Agency the authority to prevent segmentation where a prospective short-line operator needs the entire line to be viable. Where a lease to a short-line operator expires, the line should revert back to the Class 1 carrier, and therefore be subject to the **CTA** abandonment provisions. Therefore:

- **The Review Panel should call upon the federal government: (1) to give the Agency the authority to prevent segmentation of a line by ordering the Class 1 railway to include additional segments of that line which might provide a better opportunity for a short line to continue operations over its full length; and (2) to ensure that, where a lease to a short-line operator expires, the line reverts back to the Class 1 carrier and therefore is subject to the CTA abandonment provisions.**

5.3 Rail Mergers and Acquisitions:

As referred to at the end of Section 2.0, concerns have been raised that the Canadian Transportation Agency did not have the authority to review the proposed merger between CN and Burlington Northern-Santa Fe, and that representations on this issue instead had to be directed to the U.S. Surface Transportation Board.

The Agency could be expected to take a macro-level approach to such mergers, using its expertise in transportation in general and railways in particular, while the Competition Bureau probably would evaluate impacts more on a market-by-market basis. This suggests that both bodies should have important roles to play.

CN feels that an effective process is needed, through a body having clear powers and responsibilities vis-a-vis other modes. CN also would like the current 15 percent limit on ownership of its shares by single investors removed, to provide more options as the rail industry restructures.

Position:

The Government of Alberta suggests that, considering the North American nature of the rail industry and the strong possibility of future mergers involving both CN and CP, Canadian railway legislation should allow the Agency to assess the impact of such mergers on rail shippers, and their ability to use the competitive rail access provisions. The Agency would then make appropriate recommendations to the Minister of Transport. CN's desire to have the 15 percent limit on ownership of its shares by single investors removed seems reasonable, in the context of impending changes in the industry. Therefore:

- **The Review Panel should call upon the federal government: (1) to amend the CTA to provide the Agency with the authority to investigate proposed mergers and acquisitions in the rail sector as to their impact on Canada and its shippers, and to make appropriate recommendations to the Minister of Transport; and (2) to remove the 15 percent limit on ownership of CN shares by single investors, as requested by the railway.**

5.4 Marine Pilotage:

The Canadian Transportation Agency conducted a Ministerial Review of Marine Pilotage during 1998-99, in accordance with a provision of the **Canada Marine Act**.

While the terms of reference did not allow for an examination of the legislative framework for pilotage in Canada, the provinces of Alberta, Saskatchewan and Manitoba jointly expressed their concern that the pilotage authorities and cooperatives were involved in both the regulation **and** provision of pilotage services. Unless addressed, the monopolistic nature of this situation could only result in the imposition of costly, unnecessary requirements.

The three provinces had stated this concern, during October of 1996, in a joint submission and presentation to the House of Commons Standing Committee on Transportation when it was considering Bill C-44, the **Canada Marine Act**.

Position:

The Government of Alberta still believes that new strategies are needed to reduce pilotage costs and marine service fees, and that this issue should be addressed during the course of the CTA Review. Therefore:

- **The Review Panel should call upon the federal government to investigate all options for separating the regulation of pilotage from the provision of pilotage services, including moving to a more commercialized system and promoting competition in the delivery of services.**

5.5 Shipping Conferences Exemption Act:

Transport Canada undertook a review during 1999 of the **Shipping Conferences Exemption Act (SCEA)**, including consultations with interested parties to determine the need and continued relevancy of this legislation.

Position:

The Government of Alberta continues to believe that **SCEA** is an anti-competitive piece of legislation that increases shipper costs and decreases service quality. While previously suggesting a phase-out period of seven years, the Government now feels that this should occur over a much shorter period. Therefore:

- **The Review Panel should call upon the federal government to complete the SCEA review process early in 2001, and to eliminate the provisions that permit shipping cartels to operate in Canada by the end of 2003.**

6.0 IMPROVING ACCESSIBILITY FOR PERSONS WITH DISABILITIES:

The number of persons with restricted mobility will continue to grow as Canada's population ages, requiring improved access to transportation services.

Sections 170-2 of the **CTA** enable the Canadian Transportation Agency to make regulations designed to eliminate "undue obstacles in the transportation network under the legislative authority of Parliament to the mobility of persons with disabilities". The Agency also can order that corrective measures be taken and compensation paid where undue obstacles exist. While not specifically mentioned in his announcement, this topic fits within the Minister of Transport's stated desire that the Review address all policy issues arising from matters dealt with in legislation for which he is responsible.

Forecasts right across Canada show a dramatic increase in the proportion of persons having transportation disabilities. Fifteen percent of adult Albertans are already thought to be in this category, more than half of them seniors, and they suffer from the entire range of disabilities, from physical to cognitive.

Some require access for mobility devices such as wheelchairs, while others need assistance to compensate for sight or hearing impairments. Many also must be accompanied on their trips, which means double the cost unless the carrier provides for free or reduced fares for attendants.

The airline industry continues to refuse to allow attendants to travel free of charge, in contrast to carriers in all the other modes, and despite the possibility that this refusal could lead to human-rights rulings which mandate this. Air Canada believes that, by providing a 50 percent discount, it is already being more generous than most airlines around the world.

Some observers feel that governments should fund the travel of persons with disabilities through social programs, rather than forcing transportation companies to subsidize this travel.

Position:

The Government of Alberta believes that a comprehensive accessibility policy is required, in which the responsibility of the Minister to make policy, and of the Agency to regulate based on that policy, is clearly defined. Given the refusal of airlines to match the other modes, the new **CTA** should enshrine the right of persons with disabilities to bring along a bonafide attendant free of charge on all modes. Therefore:

- **The Review Panel should call upon the federal government: (1) to prepare, in concert with stakeholders, a national accessibility policy; and (2) to enshrine in legislation the right of persons with disabilities to bring along a bonafide attendant, free of charge, on all modes under federal jurisdiction.**

7.0 A NEW TRANSPORTATION AND LOGISTICS POLICY FOR CANADA:

7.1 Federal Transportation Policy and CTA Declaration:

Section 5 of the **CTA** is a “Declaration” having these key components:

- providing a “safe, economic, efficient and adequate network of viable and effective transportation services”, making “the best use of all available modes at the lowest total cost”;
- serving “the transportation needs of shippers and travellers, including persons with disabilities”; and
- maintaining “the economic well-being and growth of Canada and its regions”.

The Declaration goes on to say that this should be accomplished “having due regard to national policy, to the advantages of harmonized federal and provincial regulatory approaches and to legal and constitutional requirements”.

The problem with this type of declaration is that it attempts to be both a preamble to a legal document and a statement of national transportation policy. It may be adequate for the former purpose in a strict, legal sense, but not for the latter. It also focuses on domestic transportation instead of the entire transportation/logistics supply chain – and the value-added, high-technology, e-commerce revolution which will up the ante for speed, responsiveness, flexibility, and global reach.

In sum, this country still lacks a comprehensive, national transportation and logistics policy capable of dealing with contemporary issues, let alone one geared to the challenges of a global economy.

7.2 Towards a New Vision for Transportation in Canada:

Several attempts have been made to devise a concise vision statement capable of fronting a comprehensive national transportation and logistics policy.

During the fall of 1999, the Western Canadian Corridors and Gateways group devised a statement which, if altered to suit the national context, might read as follows: “a seamless, safe, environmentally sound, efficient and sustainable network of globally competitive transportation facilities and services, enabling maximum economic growth and prosperity for the benefit of all Canadians”.

During the summer of 2000, a subset of Western Canadian Corridors and Gateways participants, informally calling themselves the “Delta Group”, came up with the following statement: “Transportation in its broadest sense is a key enabler of Canada’s economic activity and social well-being. To support its policy of liberalized trade and the achievement of an internationally competitive and successful economy, government will implement policies that assure Canada’s position as an innovative leader in the transportation of people, goods and information.”

Both of these vision statements capture the essence of what is needed, but to achieve such a vision, there is a strong need for a comprehensive, clearly defined, “National Transportation and Logistics Policy”.

This Policy should operate within the following context:

- federal legislation whose main purpose is to provide, where the marketplace is inadequate, the tools necessary to achieve the objectives of this Policy;
- an accompanying investment strategy dealing with all modes of transport and with both transportation and logistics (which, of course, are inseparable in today’s world), and recognizing the need to coordinate with U.S. policy;

- a federal department responsible for transportation and logistics that implements this clearly defined Policy, and a federal regulatory agency whose main role is to oversee the application and effectiveness of the tools contained in the legislation, while avoiding making policy itself;
- harmonized federal, provincial, territorial and municipal transportation policies, operating under the umbrella of the national Policy, which is itself respectful of regional and local needs and priorities;
- federal taxes, rents and charges that cover only the actual costs currently being incurred by the federal government in fulfilling its duties under the Policy – including funding its fair share of infrastructure of national scope, such as for the National Highway System;
- the ultimate return, after meeting these obligations, of any temporary federal surpluses to the users of transportation, in the form of reduced taxes, rents and charges;
- avoidance of input taxes, such as fuel taxes, wherever possible, in favour of levying reasonable taxes on the outputs (i.e., profits);
- full life-cycle, activity-based accounting of all transportation facilities, with user-charge proceeds being returned to cover the real costs incurred, not put into general revenue or used for other purposes;
- carriers operating within Canada having no restrictions on domicile or degree of foreign ownership, and cost structures appropriate to the specific type of service being provided (e.g., small, low-cost carriers on regional and local routes, not large national carriers);
- subsidization of regional and remote transportation facilities only where necessary, and only after inefficiencies and impediments have been removed from the system – avoiding cross-subsidization wherever possible;

- regulations, standards or other requirements implemented only where the need is first proven by independent observers on the basis of full benefit-cost analysis (including risk-management analysis where safety investments are contemplated);
- close attention paid to customs procedures, immigration rules, cargo-liability regimes, security arrangements, and all the other ingredients that, if not streamlined to a high degree, will prevent best performance by carriers and facility operators;
- modernized labour practices to ensure that intermodal transfers and border-crossings are flexible, reliable and oriented to superior customer service;
- enhanced use of Intelligent Transportation Systems applications in all modes, especially to smooth the flow of traffic at border crossings – while being careful not to go beyond the point of diminishing returns where these systems are concerned;
- protection of urban transportation corridors where future use for transit purposes can be shown, provided that the owners of these corridors receive fair compensation; and
- a statutory review of the new **CTA** no later than three years after its enactment, that is by the year 2004, given how quickly things are changing in the transportation and logistics field.

7.3 Canada's Future Transportation and Logistics System:

The Government of Alberta would like to conclude with an overview of what our future national transportation and logistics system should look like, to provide guidance as Panel members consider the positions outlined earlier in this paper.

In 10 or 15 years, Canada's transportation and logistics system should have these basic characteristics:

- A National Transportation and Logistics Policy guides the evolution of a top-class, globally competitive system, with provincial and territorial policies dovetailing in essential respects.
- Services are affordable to travellers and shippers who must use them, and key carriers and facility providers are themselves viable on a long-term basis.
- Carriers and facility providers operate to the highest practical degree of safety and in accordance with best environmental practices.
- At least two major carriers or families of carriers compete vigorously with each other, within each mode of transportation, and the way/infrastructure is available for use by bonafide carriers where feasible and viable.
- Carriers operate within Canada with no restrictions on domicile or degree of foreign ownership, and are highly competitive with those operating in other countries.
- Carriers have cost structures appropriate to the various types of service being provided (i.e., large carriers on high-volume, small carriers on low-volume, routes).
- Carriers provide full access to persons with disabilities, at no charge to bonafide attendants.
- Carriers deploy a wide range of Intelligent Transportation System technology to enhance efficiency and safety, while not going beyond the practical and useful limits of such technology.
- There are fully harmonized regulations and standards across the country, and with American states, including streamlined border-crossing arrangements.

- Intermodal transfers and border crossings are flexible, reliable and customer-oriented.
- Federal government taxes, rents and charges follow a full life-cycle, activity-based accounting approach, and cover only the actual costs incurred by that government as it fulfils federal duties under a National Transportation and Logistics Policy.
- All federal regulations or standards still in effect are based on full benefit-cost analysis, including risk-management analysis where safety is concerned.

Additional points specific to the **air** mode:

- Airlines and airports are highly competitive with those of other countries, due to an approach to international policy which is no longer based on protecting Canada's carriers but rather on the needs of travellers and shippers – and which has achieved numerous open-skies agreements.
- Large airports, having reached sustainable financial viability, are owned, not just operated, by regional authorities or other entities.

The **rail** mode:

- Rail lines are open by law to use by both commuter and intercity passenger carriers, including VIA Rail Canada, for reasonable compensation.

The **highway** mode:

- An efficient and safe National Highway System is in place across Canada, with the federal government providing substantial funding under an equitable, long-term, sustainable program.
- The intercity bus industry is totally deregulated where entry and exit are concerned, for both scheduled and charter.

The **marine** mode:

- Pilotage and marine services are commercialized.
- Shipping cartels are no longer allowed.

Concluding position:

The Government of Alberta believes that a national policy must be developed as soon as possible, to guide the future development of Canada's transportation and logistics system. Therefore:

- **The Review Panel should call upon the federal government to prepare, in concert with key stakeholders, a comprehensive, clearly defined, "National Transportation and Logistics Policy" that: (1) has as its objective a competitive and viable system; (2) is respectful of local needs and priorities; (3) incorporates best safety and environmental practices; (4) promotes intermodalism wherever possible; (5) is concerned more with outcomes than who owns and operates facilities or carriers; and (6) is mindful of the reality that Canada is a trading nation operating in a highly competitive, North American and global context.**

8.0 CONCLUDING REMARKS:

The positions outlined in this paper are based on the objective that every traveller and shipper must have effective, competitive options, preferably through the workings of the marketplace but, where necessary, through legislative measures.

The air positions follow from the belief that effective competition will be achieved only by removing foreign-ownership restrictions as they apply to airlines operating within Canada, and by quickly negotiating open-skies agreements with other countries as the norm, not the exception. Users of air services, together with communities and airport operators, generally will support these positions, whereas Air Canada and perhaps other airlines will take issue with some of them, particularly as they pertain to competition and foreign ownership.

The rail positions are supportive of competitive access for shippers, and are necessary because the rail mode is the only one featuring privately owned way/infrastructure. They are taken with considerable reluctance, because they are, by nature, interventionist, and because Alberta believes in minimal regulation and interference with the marketplace. Most shippers will support the positions as the minimum necessary to give them leverage, while the railways will oppose them as interfering with their right to function according to what they see as key business principles.

The position on free attendant travel is based on the premise that persons with disabilities should not be penalized simply because they must be accompanied when travelling, whether for work or other purposes.

The most important position included in this paper is the one calling for a national policy to be developed as soon as possible, to guide the future development of Canada's transportation and logistics system. Without this long overdue policy, legislative tools such as the **CTA** will continue to operate in a vacuum, and our competitiveness as a country – and therefore the future prosperity of Canadians – will be placed unnecessarily at risk.

Finally, a statutory review of the new **CTA** should be conducted no later than three years after its enactment, that is by the year 2004, given how quickly things are changing in the transportation and logistics sector.

LIST OF WORK SHOP PARTICIPANTS

Agrium
Air Canada
Alberta Department of Agriculture, Food and Rural Development – Grain
Sector Task Force
Alberta Department of Economic Development
Alberta Department of Infrastructure
Alberta Department of International and Intergovernmental Affairs
Alberta Department of Resource Development
Alberta Economic Development Authority
Alberta RailNet Inc.
Alberta Value Added Corporation
Aviata
Brewster Transport
Brotherhood of Locomotive Engineers
Calgary Airport Authority
Calgary Chamber of Commerce
Calgary Economic Development Authority
Canadian Freightways
Canadian National Railway
Canadian Pacific Railway
Canadian Resource Shippers Corporation
Canpotex
City of Medicine Hat (Economic Development)
Economic Development Edmonton
Edmonton Regional Airports Authority
Fording Coal
Global Forage Alliance
Grande Prairie Airport
I-XL Industries
Leduc/Nisku Economic Development Authority
Lethbridge County Airport
Luscar
Mullen Transportation
Northern Alberta Development Council
OmniTRAX
Pearce Consulting
PROLOG Canada
Quorum Corporation

RailAmerica
R.P. Erickson & Associates
Shell Chemicals Canada
Strang Management
Sultran
Table Mountain Consulting
Travel Alberta
Union Carbide Canada
United Grain Growers
University of Calgary
Van Horne Institute

LIST OF ADVISORY COMMITTEE MEETING PARTICIPANTS

Alberta Department of Infrastructure
Alberta Premier's Council on the Status of Persons with Disabilities
Alberta Association of Municipal Districts and Counties
B.I.M. Larsson & Associates [Observer]
Calgary Transit
Canadian Hard of Hearing Association
Canadian National Institute for the Blind
Canadian Paraplegic Association
Checker Cabs, Calgary
City of Edmonton Disabled Adults Transportation Service
Lethbridge Handi-bus Association
Parkland Community Living and Supports Society
Transport Canada [Observer]

Other members:

Alberta Committee of Citizens with Disabilities
Calgary Handi-bus Association
Greyhound Canada Transportation Corporation

SELECTED DOCUMENTS CONSULTED

Air Canada, **Submission to the CTA Review Panel** (November 24, 2000);

British Columbia Railway, **Submission to the Canada Transportation Act Review Panel on Competitive Rail Access** (October 6, 2000);

Canadian Chemical Producers Association, **Submission to the Canada Transportation Act Review Panel** (October 2000);

Canadian Fertilizer Institute, **Brief to Canada Transportation Act Review: Enhancing Rail Competitive Access** (October 4, 2000);

Canadian Fertilizer Institute, **“CAR”: Competitive Access Rate – Improving & Simplifying Competitive Access** (undated);

Canadian National, **Initial Submission to the Canada Transportation Act Review Panel: Perspectives on Competitive Rail Access** (October 6, 2000);

Canadian Oilseed Producers Association, **A Submission to the Canada Transportation Act Review Panel** (September 2000);

Canadian Pacific Railway, **International Regulatory Reform of Railways and Other Network Industries: Lessons for Canadian Freight Railways** (June 7, 2000);

Canadian Pacific Railway, **Introductory Position for the Canada Transportation Act Review** (September 2000);

Canadian Pacific Railway, **Railway Infrastructure, Access and Competition: Brief to the Canada Transportation Act Review Panel** (November 2000);

Canadian Shippers Summit, **Canada Transportation Act Review 2000: Enhancing Rail Competition in Canada** (October 2000);

Canadian Wheat Board, **Review of the Canada Transportation Act: Submission** (October 6, 2000);

Commissioner of Competition, **Submission to the Canada Transportation Act Review Panel** (November 17, 2000);

Commissioner of Competition, **Submission to the Canada Transportation Act Review Panel Regarding Rail Access and Related Issues** (October 6, 2000);

“Delta Group”, **Vision Statement for Transportation in Canada** (August 10, 2000);

Estey, Justice, **Grain Handling and Transportation Review** (December 21, 1998);

Government of Alberta, **Canada Transportation Act Review: Tentative Positions on Competitive Rail Access Provisions for Consideration by the CTA Review Panel**, prepared by Interdepartmental Steering Committee on the CTA Review (October 6, 2000);

Government of Alberta, **Towards an Effective Transport System for the Future**, prepared for transmittal to the National Transportation Act Review Commission (June 1992);

Government of British Columbia, **Canada Transportation Act Review: British Columbia’s Draft Position on Rail Competition** (November 6, 2000);

Government of Canada, **2000 Report of the Auditor General of Canada: Transport Canada – Airport Transfers, National Airports System** (October 2000);

Government of Manitoba, **A Submission to the Canada Transportation Act Review Panel on Competitive Rail Access** (October 25, 2000);

Government of Nova Scotia, **Foundation for the Future: Canada Transportation Act Review Panel Submission** (November 2000);

Government of Ontario, **Submission to the Canada Transportation Act Review Panel Regarding Competitive Railway Access issues** (October 6, 2000);

Government of Saskatchewan, **Submission to the Canada Transportation Act Review Panel on Competitive Access Provisions** (undated);

Government of Yukon, **Canada Transportation Act Review: Issue Identification** (November 2000);

Kroeger Process, **Stakeholders Report – Consultations on the Implementation of Grain Handling and Transportation Reform** (September 1999);

Luscar Ltd., **Brief for the Canada Transportation Act 1996 Review Panel** (August 2000);

Luscar Ltd., **Brief to the Review Panel, Canada Transportation Act 1996, RE: Competitive Rail Access Provisions** (October 2000);

Northwest Corridor Development Corporation, **Presentation to the Canada Transportation Act Review Panel** (November 8, 2000);

OmniTRAX, Inc., **Submission to the Canada Transportation Act Review Panel: A Proposal to Enhance Competition in the Canadian Railway Marketplace** (October 3, 2000);

PROLOG Planning, DataMetrics and P.M. Bunting & Associates, **Changing Tracks: Canadian Competitiveness and Transportation - Policy In Transition**, Working Paper No. 1 prepared for Alberta Transportation and Utilities for transmittal to Comprehensive Review of the 1987 National Transportation Act and Other Legislation (June 1992);

PROLOG Canada Inc., **A Proposal to Enhance Railway Competition: Submitted to the Canada Transportation Act Review Panel** (October 6, 2000);

PRR Transportation Consulting Services Inc., **A Research Paper on: (1) the Proposed Combination of Canadian National Railway Co. and the Burlington Northern Santa Fe Corp. into North American Railways Inc., and (2) the Probability of Further North American Rail Mergers**, prepared for Canadian Fertilizer Institute, Canadian Chemical Producers Association, and Canadian Industrial Transportation Association (February 2000);

Railway Association of Canada, **Building on Success: Canada's Railway Industry and Deregulation** (Fall 2000);

Railway Association of Canada, **Myths and Realities of Rail Access and Competition Issues** (October 1998);

Shepherdson Management Consulting and G.K. Seddon & Associates, **Rail Shipper Study**, Working Paper No. 3 prepared for Alberta Transportation and Utilities for transmittal to Comprehensive Review of the 1987 National Transportation Act and Other Legislation (June 1992);

Sultran Ltd., **A Submission to the Canada Transportation Act Review Panel** (September 26, 2000);

Travacon Research Ltd., **Rail Provisions Study**, Working Paper No. 2 prepared for Alberta Transportation and Utilities for transmittal to Comprehensive Review of the 1987 National Transportation Act and Other Legislation (June 1992);

Travacon Research Ltd., **A Regional Railway Network in Manitoba and Saskatchewan**, prepared for Manitoba Highways and Government Services, and Saskatchewan Highways and Transportation (July 2000);

TransLink (Greater Vancouver Transportation Authority), **Submission to the Canada Transportation Act Review Panel** (September 29, 2000);

Van Horne Institute, **Canada Transportation Act Review: Work Shop No. 1 - Proceedings**, prepared for Alberta Economic Development Authority (September 28, 2000);

Van Horne Institute, **Canada Transportation Act Review: Work Shop No. 2 - Proceedings**, prepared for Alberta Economic Development Authority (November 3, 2000);

Van Horne Institute and Department of Agricultural Economics, University of Saskatchewan, **Competition and Access in the Rail Industry**, proceedings of symposium (September 15-16, 2000);

Western Canadian Corridors and Gateways Initiative, **Corridors West – Strategic Business Plan** (December 22, 1999);

Western Canadian Shippers Coalition, **Canada Transportation Act Review: Presentation to the Canada Transportation Act Review Panel** (September 25, 2000).