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Re: Consultation on Determining Fair and Reasonable Interswitching Rates — Competition Bureau Submission to the Canadian Transportation Agency

The Competition Bureau (Bureau) is pleased to respond to the Canadian Transportation Agency's (CTA or Agency) request for feedback regarding its [Consultation on commercial market factors to be considered in determining fair and reasonable interswitching rates](#).

The Bureau values the CTA's commitment to enhancing competition and transparency within Canada's rail sector and supports its efforts to ensure regulated interswitching rates accurately reflect market conditions and foster a fair, competitive environment for all stakeholders.

This submission provides the Bureau's perspective on the CTA's specific request to incorporate commercial market factors into the interswitching rate-setting process, focusing on competition considerations.

About the Bureau

The Bureau is an independent law enforcement agency that protects and promotes competition for the benefit of Canadian consumers and businesses. We administer and enforce Canada's *Competition Act* – which applies to almost all economic activity in Canada – and advocate for rules and regulations that promote competition at all levels of government.

As part of our mandate, we have actively advocated for more competition in the rail sector. See for example our [Submission to the Canada Transportation Act Review Panel: Rail, air and marine transportation](#).



Executive Summary

The CTA is seeking input on how commercial market factors should be considered when determining “fair and reasonable” regulated interswitching rates under the Canada Transportation Act (Act). The consultation follows the Federal Court of Appeal’s decision in *Canadian National Railway v. Canadian Transportation Agency*, 2025 FCA 184, which set aside the Agency’s 2024 interswitching rate determination and directed the Agency to re-determine rates in a manner that properly accounts for commercial market factors, consistent with the Act.

In this submission, we offer the following considerations:

- **Maintain cost-based estimates for rate setting, with commercial market rates potentially serving as secondary checks.** Given the rail sector’s potential for uncompetitive pricing and other terms of supply, commercial rates should be used cautiously. This is because commercial pricing may reflect market power, rather than truly competitive outcomes.
- **Additional information can help put commercial rates in context.** If the Agency considers commercial rate data, it should also obtain information on supply and demand factors to help put those rates in context.
- **Balance carrier investment incentives and competition protection.** As a guiding principle, interswitching rates are “commercially fair and reasonable to all parties” when they balance the railways’ needs to cover their costs while protecting shippers from uncompetitive pricing. This approach preserves investment incentives for railways while safeguarding shippers from the exercise of excessive market power.

We discuss these points in more details in the sections below.

Competition perspectives on commercial market factors

Regulated interswitching is a provision in the [Act](#) that allows shippers served by a single railway to access a competing railway’s network at a regulated rate, provided there is an interchange point within a specified distance of their facility.

Originally intended to reduce the need for redundant rail lines in urban areas, interswitching also plays a role in promoting competition by giving shippers more transportation options, especially in markets where direct rail competition is limited.



We note that the Agency’s [regulatory costing model](#) mentions “commercially fair and reasonable” as a factor to consider as well as the Federal Court of Appeal (FCA) ruling regarding the use of commercial market factors.¹

In light of these considerations, and consistent with the purpose of the *Competition Act*,² the Bureau advocates a framework that covers railways’ costs while also seeking to protect shippers from uncompetitive pricing. Uncompetitive pricing can occur when there is a lack of effective competition or market-based constraints on price. For example, rates set without regard for the railway’s market power or limited alternatives for shippers may appear commercially reasonable but can still be uncompetitive and create additional cost barriers for shippers. Rate setting should primarily rely on **cost-based estimates**, with commercial market rates used **only as secondary checks**, if used at all, given the rail sector’s tendency toward uncompetitive pricing.

If the Agency finds it necessary to do so, it could use commercial market factors primarily as a **reasonableness check** against cost-based rates.³ When cost-based rates are above commercial rates, this may signal issues with the costing process and warrant careful review. When cost-based rates are consistent with competitive benchmark rates, this may further support the costing process.

Competitive benchmarks may **not always be available** or may be **difficult to determine**. Even shippers with multiple options may not benefit from full competition, for example if some options are capacity constrained or if carriers do not engage in vigorous competition. Reviewing commercial rates could prompt the Agency to reassess and, if needed, adjust its costing studies and methodologies, or it could provide additional confidence in its costing studies.

In conclusion, our view is that if the Agency were to use commercial rates, its methodology should include it as a **reasonableness check** on its cost-based studies. If commercial rates raise concerns with the cost-based studies, then these studies should be reviewed and revised if they are found to contain errors.

¹ The requirement set under [2025 FCA 184 \(CanLII\) | Canadian National Railway Company v. Canada \(Transportation Agency\) | CanLII](#).

² Part 1.1 of the *Competition Act* includes the objectives to maintain and encourage competition in Canada to promote efficiency and adaptability, provide equitable opportunities to businesses, and provide consumers with competitive prices and choices.

³ This is similar to the approach taken by regulators in the United States such as the Federal Energy Regulatory Commission or the Federal Communications Commission.



Additional data to consider

If the Agency decides to collect commercial rate data, we offer the following suggestions, emphasizing that the CTA should carefully consider collecting additional data in its determination.

The Agency should consider gathering comprehensive information on relevant **supply** and **demand factors** influencing these rates.⁴ Understanding how rates are set and the context in which they occur is essential for effective benchmarking. Commercial rates are most informative when they reflect comparable supplier costs and shipper demand conditions within a competitive market environment. Even when cost and demand factors differ, commercial rates can still offer valuable insights provided those differences are properly accounted for in the analysis.

In making its determination, the Agency should also consider whether the expected benefits of collecting and analyzing the additional data will outweigh the expected costs.

- **Ensuring appropriate benchmarks**

In choosing its benchmarks for cost-based rates, the Agency should avoid using **uncompetitive** or **selectively chosen** (“cherry-picked”) rates that may be high for reasons unrelated to normal market conditions. For example, if benchmarks are based on rates for “comparable traffic” that are themselves set in captive markets with little or no competition, regulated rates could simply reflect monopoly or duopoly pricing, rather than competitive outcomes. While such rates may serve as a check, they are not suitable as a replacement for cost-based benchmarks.

- **Competitive comparable data⁵**

When identifying comparable competitive rates, it should reflect **market conditions where competition is present** and **meaningful** rather than simply considering the number of

⁴ Transportation economics literature recognizes that commercial freight rates are influenced by underlying supply and demand conditions, including for example traffic density on rail corridors, the characteristics of the commodities transported, and the presence of intermodal competition from alternative modes of transport. See [The Functions of Transport Supply and Demand | The Geography of Transport Systems](#) that argues that realized transport demand and pricing outcomes are constrained by existing transport supply and traffic volumes, which directly applies to rail corridor density and capacity utilization, [Florida Department of Transport Analysis of Freight Movement Mode Choice Factors](#) where it explicitly identifies commodity characteristics as affecting freight demand, mode choice between rail and truck, and competitive conditions, B.E. Prentice, (2024). “Intermodal Competition: Cargo Airships versus Long-Haul Trucking for Perishable Commodities.” *Journal of Transportation Technologies*, argues that when alternative modes are available, they act as substitutes and constrain pricing.

⁵ For example, see Wilson and Wolak’s paper, where they argue that Railways should provide data on actual rates charged in corridors served by two or more railways and that those should be the market-based benchmarks. This same benchmark should be used for interswitching ([Price Benchmark Regulation of Multiproduct Firms: An Application to the Rail Industry | The Journal of Law and Economics: Vol 65, No S1](#)).



railways. When making comparisons, the focus should be on situations where genuine competitive alternatives exist. Rates from non-competitive markets, such as where only a single railway operates, do not serve as objective benchmarks.

- **Capital investment data**⁶

We note that rate-setting should primarily rely on regulatory costing, with commercial rates considered only as a secondary reference. If concerns are raised about the impact of interswitching rates on investment or competitiveness, such as in [CN's letter](#) to the CTA, it would be helpful for these to be supported by objective evidence from ordinary course of business records.

The Agency can consider requesting information showing how interswitching rates have influenced investment decisions or financial outcomes such as ordinary course of business investment records, to ensure decisions are fair and grounded in facts.

Balancing investment incentives and competition safeguards

A balanced regulatory approach ensures that railways can **recover their costs** and **maintain the capacity to invest** in economically viable infrastructure while also ensuring that **shippers are protected** from the risks of uncompetitive pricing in the face of market power. When rates reflect both the financial requirements of carriers and the need for fair, accessible services, the result is a more stable and efficient rail system. This balance supports the long-term health of Canada's rail sector by encouraging ongoing investment, modernization, and service coverage.

At the same time, it is equally important to **guard against the potential abuse of market power** that can arise in the rail industry, particularly in situations where options for shippers are limited. Establishing rates that are cost-based and fair supports a competitive environment where all stakeholders, railways and shippers alike, have their interests protected.

We are here to help

The Bureau is Canada's competition expert, committed to advancing the benefits of competition within the rail sector and across the broader economy. We have proposed

⁶ For example, the US STB collects data and adopts Revenue Adequacy Determinations which are annual assessments conducted by the STB to determine if Class I freight railroads are generating sufficient revenue to cover their costs and earn a reasonable return on investment. ([Surface Transportation Board](#)) ([Freight Rail & Revenue Adequacy | AAR](#)). While this data does not set interswitching rates directly, the STB is directed by statute to enact policies that allow railways to earn "adequate revenue" (return on net investment is higher than cost of capital).



competition factors for a framework that meets statutory commercial market requirements and ensures interswitching remains an effective competition solution. Policymakers are in a unique position to promote competitive rail policies, and the Bureau offers both tools and expertise to support this effort.

By integrating competition analysis into rail policy development and regulatory reviews, you can strengthen market outcomes while achieving essential transportation objectives. We welcome ongoing engagement and invite you to contact us to discuss specific rail policy proposals or any of the recommendations provided in this submission.

We are here to help ensure Canada's rail system works efficiently and competitively for the benefit of all Canadians.