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Reply to the Attention of *François E.J. Tougas*
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Date *August 31, 2026*

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Canadian Transportation Agency
60 Laval Street, Unit 01
Gatineau, Québec
J8X 3G9

Re: 2025-26 Interswitching Consultation (LET-R-34-2025)

We are pleased to submit the responses of the FAIR Rail Coalition ("**FAIR**") to the Agency's consultation on commercial market factors to be considered in determining fair and reasonable Interswitching rates (the "**Consultation**") announced on November 10, 2025 in Agency Determination LET-R-34-2025.[1] As authorized by Agency Decision LET-R-42-2026, this submission responds to the second round of submissions posted to the Agency's website in early July, 2026 in connection with the Consultation.[2]

Throughout these submissions, we use the following definitions:[3]

- "**2025 FCA Decision**" means the decision of the Federal Court of Appeal in *Canadian National Railway Company v. Canadian Transportation Agency* (2025 FCA 184) dated October 9, 2025[4]
- "**Bureau**" means the Competition Bureau of Canada
- "**Bureau Round 1 Submission**": the letter dated March 6, 2026 from the Bureau to the Agency in this Consultation
- "**Bureau Round 2 Submission**": the letter dated June 19, 2026 from the Bureau to the Agency in this Consultation
- "**CN Round 2 Submission**": the letter dated June 19, 2026 from CN to the Agency in this Consultation
- "**CPKC Round 2 Submission**": the letter dated June 19, 2026 from CPKC to the Agency in this Consultation
- **"FAIR Round 1 Submission"**: the letter dated March 6, 2026 from McMillan LLP to the Agency on behalf of FAIR

[1] Available at: https://otc-cta.gc.ca/eng/ruling/let-r-34-2025
[2] Available at: https://otc-cta.gc.ca/eng/consultation/consultation-on-commercial-market-factors-to-be-considered-in-determining-fair-and-reasonable-interswitching-rates
[3] Capitalized terms not defined herein have the meaning given to such terms in the FAIR Round 1 Submission.
[4] Available at: https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/521706/index.do

- **"FAIR Round 2 Submission**": the letter dated June 19, 2026 from McMillan LLP to the Agency on behalf of FAIR
- **"RIS"**: regulated Interswitching in accordance with sections 127 – 128.1 of the Act and the Railway Interswitching Regulations
- "**Soboleva Round 2 Report**": the report prepared by Dr. Nadia Soboleva, Ph.D., dated June 19, 2026 that CN submitted as Appendix A to the CN Round 2 Submission
- **"UIS"**: unregulated switching

CN Round 2 Submission

Legality of Competing Approaches

1. The Act mandates the Agency to consider railway costs in setting RIS rates.[5] Completely replacing the Agency's current approach with an approach based solely on "benchmarks" derived from UIS rates, as advocated by CN[6] and Dr. Soboleva,[7] is contrary to the Act and the purpose of RIS.

2. The 2025 FCA Decision found that the Agency must "consider" commercial market factors but explicitly stated that, after that consideration, the Agency may well decide to give no weight at all to some or all such factors.[8] The submissions of FAIR and the Bureau are consistent with, rather than contradictory to, the 2025 FCA Decision. Both identify the considerations that should drive the Agency's assessment of what weight to give to UIS rates.

Relevant Markets

3. The Soboleva Round 2 Report mischaracterizes the FAIR Round 1 Submission's position on market definition. The FAIR Round 1 Submission argued that the Agency's determination of RIS rates must start with a coherent and rigorous definition of both the product market and the geographic market.[9]

4. The Soboleva Round 2 Report argues that FAIR's proposed product market definition of "freight transportation services" is too broad.[10] Whether or not there is a coherent and

[5] Act, subsection 127.1(3) and 127.1(2)(a).
[6] CN Round 2 Submission at page 5.
[7] Soboleva Round 2 Report at paragraphs 11 – 15.
[8] 2025 FCA Decision, paragraph 40: "This does not mean that the Agency will always have to give significant weight to commercial market factors. Far from it. The assessment of weight is entirely for the Agency to decide on the evidence in each case, relying upon its industry appreciation, regulatory experience, and transportation expertise. As well, in some cases, the Agency may find the evidence concerning the commercial market factors to be unhelpful or deserving of little or no weight."
[9] FAIR Round 1 Submission, paragraphs 10-12.
[10] Soboleva Round 2 Report, paragraph 51.

compelling rationale for a more granular product market definition, it is inescapable that the more product markets the Agency establishes, the greater the administrative burden on the Agency, which all parties agree is undesirable.

5. More importantly, the Soboleva Round 2 Report mischaracterizes the geographic market submissions of the FAIR Round 1 Submission when it alleges that FAIR proposed analyzing rates by reference to “the full line-haul movement from shipper origin to ultimate destination.”[11] To the contrary, FAIR advanced a geographic market definition, for the purpose of assessing UIS rates, consisting of the relevant origin-destination pair for the movement to which UIS rates apply; that is, the relevant interchange and the origin or destination facility, to or from which the traffic is interswitched (not the ultimate destination of the traffic).

6. Similarly, nothing in the FAIR Round 1 Submission advocates “setting a separate interswitching rate for each origin-destination pair or interchange location”, which Dr. Soboleva dismisses as “wholly impractical”.[12] What FAIR did was argue is that the competitiveness of UIS rates used as a benchmark for RIS rates must be assessed by reference to the corridor between the origin or destination of the unregulated movement and the relevant interchange.

7. The Agency should disregard the criticisms at paragraphs 45 through 50 of the Soboleva Round 2 Report of positions no one advanced.

Effective Competition

8. Both the Bureau and FAIR submit that UIS rates cannot serve as an appropriate benchmark unless they are established in a market characterized by meaningful or effective competition.[13] Neither relies on an “abstract concept of ‘perfectly competitive prices’ … in hypothetical markets” as suggested by the Soboleva Round 2 Report.[14]

9. The fact that UIS may allow a shipper access to two or more railways for some or all of the long haul at the duopoly rate does not mean there is meaningful or effective competition for the interswitching movement. Dr. Soboleva’s claim that her methodology “does exactly what the academic study cited by the Bureau recommends”[15] is false, since her methodology completely sidesteps the question of whether the only relevant corridor – between ultimate

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[11] Soboleva Round 2 Report, paragraph 45.
[12] Soboleva Round 2 Report, paragraph 50.
[13] Bureau Round 1 Submission, page 3, Bureau Round 2 Submission, page 2, FAIR Round 1 Submission, paragraphs 14-16, FAIR Round 2 Submission, paragraphs 1-2, 4(b), 19.
[14] Soboleva Round 2 Report, paragraph 32.
[15] Soboleva Round 2 Report, paragraph 30.

origin or destination and interchange – is at a minimum served by more than one carrier to at least achieve the possibility of a duopoly rate, if not meaningful or effective competition.

10. Even where two or more carriers serve that corridor, it is highly questionable whether those carriers would compete on rates for the short (<30 km) movement to and from the interchange. Railways' engaged in competition for line-haul traffic, to which both CN and Dr. Soboleva refer, are more likely to set a competitor's access fee with a view to retaining the long haul on their own network. That market dynamic is diametrically opposed to the purpose of RIS.

Purpose of RIS

11. Dr. Soboleva incorrectly characterizes the "ultimate objective" of RIS as ensuring "that access is provided and foreclosure does not occur." [16]

12. The Agency has captured the objective of RIS in various decisions, including Decision No. 62-R-2021:

> "…. greater shipper access to interswitching options creates competitive tension and therefore incentives for railway companies to arrange their operations efficiently to provide good service at reasonable prices."[17]
>
> [underlining added]

> And:
>
> "Railway companies can dissuade a shipper from availing itself of interswitching options by offering lower rates and/or equal or better service than the competing carrier. In other words, CN can largely avoid what it views as a circuitous movement by making its service offering more appealing than CP's. … This would very much meet the intended purpose of the interswitching provisions, which is to potentially give shippers better rates and service than they would receive were they captive to only one railway company."[18]
>
> [underlining added]

13. Interswitching can only create the "competitive tension" to which the Agency referred in Decision No. 62-R-2021 if it gives rise to a credible risk that the rail carrier with direct access to the shipper's facility may lose the long haul to a competitor. Whether that risk is credible depends on the configuration of the second carrier's network – whether it can provide access

[16] Soboleva Round 2 Report, paragraph 32.
[17] Decision No. 62-R-2021 (https://otc-cta.gc.ca/eng/ruling/62-r-2021), paragraph 41. Also, see footnote 22 below and paragraphs 4 through 7 and Schedule A of the Fair Round 1 Submission.
[18] Decision No. 62-R-2021, paragraph 64.

to the other end of the long-haul – and on the fee the second carrier must pay in order to provide the shipper with a viable alternative routing.

14. Neither CN nor Dr. Soboleva addresses this issue, which is crucial to achieving the objective of RIS. By focusing solely on the issue of foreclosure, Dr. Soboleva misses the relevant question: do the "commercial rates" on which she relies create or allow for the kind of competitive tension the Agency had in mind? Put another way, has CN (or CPKC for that matter) provided evidence to satisfy the Agency that those "commercial rates" are set at levels that facilitate or incent competition between the two rail carriers at the interchange for the long haul? FAIR submits that the answer is a clear and unequivocal "no".

CPKC Round 2 Submission

Treatment of Empty Cars

15. Paragraphs 47 through 53 of the CPKC Round 2 Submission address issues that are currently before the Federal Court of Appeal relating to the eligibility of empty railcar movements not immediately preceded by a loaded movement for RIS rates, which eligibility Determination R-2026-41 confirmed.[19] CPKC had every opportunity to raise – but chose not to advance – those issues before the Agency in its 2024 RIS consultation leading up to that Agency Determination. Should the Agency be inclined to treat these paragraphs as a request for reconsideration of that Agency Determination, FAIR requests an opportunity to respond to CPKC's arguments more fully.

16. In paragraph 52 of the CPKC Round 2 Submission, CPKC bemoans a lack of information regarding empty car movements that leave the railway performing the interswitch without visibility into whether that movement is free (*i.e.*, the empty leg associated with a loaded movement) or whether it is part of a longer movement for the shipper being performed by the linehaul railway. Overcoming this alleged lack of visibility is entirely within the control of the railways. The railway company dictates the scope of information a shipper must provide in connection with shipping instructions for an empty car in their respective tariffs.[20] In addition, the railway companies, rather than shippers, control the flow of information between railways regarding the traffic they interchange. CPKC offers no explanation why the alleged visibility issue is insurmountable and cannot be resolved between railways, since at least one of them has the necessary information. Moreover, neither CN nor CPKC appears to have any

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[19] Determination No. R-2026-41 (https://otc-cta.gc.ca/eng/ruling/r-2026-41).
[20] For example, see Schedule A, which contains excerpts of the section of CN Tariff CN 9000 entitled "Documentation" and CPKC Tariff 1, Item 12000 (Shipping Instructions). An empty car released as revenue freight moving on its own wheels rather than as the empty leg of a "cyclical interswitching movement" will have a distinctive Standard Transportation Commodity Code clearly identifying it as such.

difficulty invoicing shippers for empty car movements to or from an interchange within RIS limits at unregulated rates when those movements are not preceded by a loaded movement. They have advanced no reason why they are incapable of issuing invoices at the applicable RIS rates when they can do so at unregulated rates for the same movement.

Alleged Vague Allegations of Anticompetitive Conduct

17. The CPKC Round 2 Submission alleges the FAIR Round 1 Submission made "vague allegations of anticompetitive conduct by railways".[21] CPKC's complaint is groundless; no such allegation is found in the paragraphs CPKC cites. Moreover, that RIS is intended as a regulatory countermeasure to the market power of CN and CPKC in relation to captive shippers is abundantly clear from its legislative history and from Federal Court of Appeal decisions considering the remedy.[22] Indiscriminate reliance on benchmarks based on UIS rates without ensuring that those rates were established in markets characterized by effective competition, rather than by the very imbalance in market power RIS is intended to counteract, undermines the legislative purpose of the RIS remedy. No specific evidence of anticompetitive conduct or abuse of market power is necessary to support that conclusion.

For the reasons above and in FAIR's previous submissions, FAIR submits that the Agency should give no weight to UIS rates. Please do not hesitate to contact us if we can be of further assistance.

Yours truly,

François Tougas

cc: Canadian Canola Growers Association
Forest Products Association of Canada
Mining Association of Canada
Canadian Pulse and Special Crops Trade Association
Western Canadian Shippers Coalition
Western Grain Elevator Association

cc: Lucia Stuhldreier, Ryan Gallagher, McMillan LLP

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[21] CPKC Round 2 Submission, at paragraph 46.
[22] See, for example, the comments by David Kilgour, then Parliamentary Secretary to the Minister of Transport, when discussing the adoption of the *National Transportation Act, 1986*, reproduced in paragraph 36 of Agency Decision No. 62-R-2021 (https://otc-cta.gc.ca/eng/ruling/62-r-2021), and *Canadian Pacific Railway Company* v. *Canexus Chemicals Canada* (2015 FCA 283), at paragraph 139. Also, see footnote 17 above.

Schedule A – Excerpts of CN Tariff 9000 and CPKC Tariff 1

CN Shipping Regulations and Optional Services

CN 9000

Carload

CN 9000-AK (S2) effective August 1, 2026

Documentation

The bill of lading allows CN to legally pick up the shipment for transportation. Providing us with accurate and complete information about your shipments helps us provide on-time delivery, seamless transborder shipping and the assurance that your shipments meet safety and legal requirements. It all begins with the Bill of Lading, using our CN One tools, or EDI. Using these tools, the information relating to your shipment is entered in our system once and only once, virtually eliminating the chance of error or delay due to incorrect documentation. It allows us to comply with the relevant laws, helps to streamline the release of your shipment, its routing – even billing. You want reliability and we work hard to provide it. Accurate and complete Bill of Lading information is the first step.

Please register for CN One at www.cn.ca/register.

Bill of Lading Information Requirements

To release your shipment and to ensure that it is pulled without delay, please provide any necessary information and/or documents relating to dimensional shipments, customs, or the transportation of dangerous goods/hazardous materials that – due to the nature of the shipment – are required in addition to the information noted below.

Every shipment requires this information:

- Railcar initial and number
- Shipper's name, full civic address and postal code or zip code
- Consignee's name, full civic address and postal code or zip code
- Care of party (when using a third-party unloader), full civic address and postal code or zip code
- Payor of freight, full civic address and postal code or zip code
- Origin, destination and route
- Country code for shipments originating overseas
- Load or empty status
- Commodity description, including the 7-digit STCC
- Net weight and unit of measure
- Weight terms (e.g., kg or tons)
- Total number of pieces and package type
- Where applicable, concentrate gondola railcar's cover number
- Western Canada grain shipments also require an order reference number
- Permit number for embargoes

Dangerous goods/hazardous materials/shipments also require:

- UN number
- Class number
- Packing group
- 24-hour telephone number
- Emergency Response Assistance Plan (ERAP) number (to/from Canada)
- ERAP phone number (to/from Canada)

Transborder shipments require additional information:

- Customs broker, city, and province/state
- Country of origin
- Invoice value and currency (if in bond)
- Actual shipper/exporter name and full address
- Actual consignee/importer name and full address
- All seal numbers (as affixed to railcars)

Partners in Responsible Care®

- Transborder and dangerous goods/hazardous materials shipment information must meet all U.S. and Canada regulatory requirements to be considered complete. Please consult the applicable government departments to ensure compliance.

Additional requirements for transborder shipments can be found at www.cn.ca/customs

CN offers a licensed customs brokerage service through its wholly owned subsidiary, CN Customs Brokerage, that positions you to grow your business without worrying about customs clearance. You do not have to be a CN transportation customer to use CN Custom's Brokerage's services, they clear customs for any load, any mode. Additional information is available at the following link: https://experience.cn.ca/customs-brokerage

CPKC

Rules Tariff

1

Revision 2026.1
Issued April 1, 2026
Effective May 1, 2026

While it is the Customer's responsibility to ensure a safe facility and proper loading, unloading and release of equipment, CPKC's Damage Prevention Team [damage.prevention@cpkcr.com] can assist in planning for the safe movement of shipments and has loading guides available [www.cpkcr.com/en/customer-resources/shipping-guides-resources/Damage-Prevention]. Customers must comply with the Safety Handbook [www.cpkcr.com/en/safety/customer-safety].

Item 11500 **Pipeline Management**

It is the Customer's responsibility to work with supply chain members in real time to manage the flow of railcars, ensuring that the receiving facility is able to accept all traffic upon arrival at destination. Regarding the Customer's ability to request assistance from CPKC:

- When issues occur on CPKC, the Customer may approach CPKC in real time to mitigate congestion, asset use fees or further delay. Supplemental services, including diversion, special switch or staging at origin, may be available options.
- Where CPKC is an upstream carrier and railcars remain within CPKC control, services such as diversion or staging at origin may be available in real time to help manage the overall pipeline.
- When delays occur for reasons attributable to CPKC as the terminating carrier, asset use relief may apply per Tariff 2.
- The *Log-An-Issue* tool in Customer Station is available to initiate requests.

Item 12000 **Shipping Instructions**

Shipment instructions in a Bill of Lading authorize CPKC to move shipments. It is the Customer's responsibility to ensure that shipment instructions are received prior to (but not more than 7 days before) a shipment being tendered to the railway. By submitting a Bill of Lading, Customers are agreeing to the rates, terms and conditions of the shipping authority (confidential contract or tariff) that governs the movement of the shipment. CPKC will not pick-up a shipment without a complete Bill of Lading in place. Shipments without a complete Bill of Lading at the time of service will be left behind, which may result in shipment delays and additional tariff charges. Bills of Lading must be accurate, complete and may be submitted electronically through Customer Station or via EDI. The components required for a complete Bill of Lading are summarized in Table B below:

Table B: Components required for a complete Bill of Lading

All Shipments	Cross-border Shipments	Hazardous Commodities
Equipment details (initials, number, size, type, etc.)	Customs broker	Commodity UN Number
Payer of Freight (i.e., billable party)	Ship From / Ultimate Consignee full name & address	Commodity Class Number
Shipper's legal name and full address	Importer full name & address	Commodity Packing Group
Consignee's legal name and full address	Country of origin	24-hour telephone contact number
Any other parties to the shipment (e.g., care of)	Invoice value and currency	Emergency response plan # and phone number
Origin, destination and route	Harmonized Code(s)	Other required commodity or region-specific info
Equipment load or empty status	To **CANADA**	
Commodity description and all STCCs in shipment	Canadian Customs broker	
All seal numbers affixed to secure equipment	Ocean bond number if originating at Canadian port	
Net weight and unit of measure (e.g., kg, tons)	To **UNITED STATES**	
Total # of pieces and package type	US Customs broker	
Authority (i.e., confidential contract # or tariff #)	IT or T&E Bond for traffic not clearing at the border	
	UNITED STATES exports to **CANADA** or **MEXICO**	
	Internal Transaction Number (ITN) or Exclusion code	
	FIRMS code for bonded shipments	
	To **MEXICO**	
	US freight forwarder	
	Mexican Customs broker	
	Carta Porte codes	
	From **MEXICO**	
	US Customs broker for US imports	
	IT & T&E Bond for traffic clearing inland or transiting	