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More rules not needed, CN, CP tell Ottawa

Scott Deveau, **Financial Post** · Wednesday, Nov. 10, 2010

Canada's largest railways are urging Ottawa to forego further regulation of their industry, allowing them to continue their own solutions to the service deficiencies identified by a federal panel earlier this year.

But those who rely on Canadian National Railway Co. and Canadian Pacific Railway Ltd. to move their goods are calling for the immediate enactment of new laws and penalties to ensure they improve performance.

The proposals come in response to an interim report filed by the Rail Freight Service Review panel last month that recommended, among other things, that lawmakers give the country's largest railways until 2013 to improve the quality of service before further regulation.

Two of the three members on the panel recommended Ottawa get to work immediately on drafting the legislation that would be ready to be enacted if the railways failed to improve their service in two years' time.

The final member dissented, saying it would act as a disincentive for shippers to reach a commercial solution.

Both CN and CP have recognized they risk further regulation. Both railways have been working to improve the quality of service they are providing since the review was launched, striking various service guarantees with their customers, from shippers to terminal operators.

The railways argued in their submissions that these sort of commercial solutions were the right way to address the service deficiencies, not further regulation.

They also took issue with the panel's finding that Canadian railways enjoyed "market power" over their customers because of their competition in some markets.

The panel found that this market power led to imbalance in their commercial relations with customers, reduced competition and led to poor service in some cases. CN said this ran counter to one consulting paper filed with the panel that found significant service differences for customers who lacked an alternative form of transportation to move their goods. The railway's statement that service is poor because of a lack of competition is a contradiction with [a consulting paper filed with the panel that] there is no service differentiation whether a customer has access to competition or not," Claude Mongeau, CN chief executive, said in the railway's submission.

He said the panel was also preoccupied with the rail component of the supply chain, ignoring the impact other modes of transport on the level of service provided.

CP, in particular, took issue with the panel's recommendation that a federally appointed arbitrator be brought in to resolve disputes between the railways and their shippers, calling it an "impractical recommendation" and that this, along with further regulation, would impinge upon the industry's competitiveness.

Michael Murphy, CP executive vice-president of governmental relations, said even if market power was identified, it does not necessarily require further regulation.

"Market power has been found by the Competition Bureau to exist in a wide range of industries, but this has only

increased regulation," he wrote.

But several of the railways' customers, including the Canadian Wheat Board, disagreed.

"The CWB concurs that regulations concerning rail service should immediately be prepared," the board said in its

"However, we believe that these and an independent dispute resolution process should be accessible to shippers r
November 2011."

The Canadian Industrial Transportation Association, which represents 140 of the country's largest shippers, said f
against the rails were needed.

"The chronic service problems faced by shippers leads to direct extra production costs, lost productivity, and lost
potential for lost sales," CITA said in its submission.

The Freight Service Review panel is expected to submit its final report to Ottawa by the end of the year.

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