

CP Rail Takes Gov't To Court

Canadian Pacific Railway is launching a federal lawsuit against regulations promising more competition for shippers. CP attorneys say the company will suffer “irreparable harm” if cabinet permits rival railways more access to the Canadian market.

In documents filed at the Federal Court of Appeal, the railway said rules detailed August 14 “are the result of political maneuverings by government as opposed to sound economic regulations”. The lawsuit targets new “interswitching rights” that compel CP to allow rival railways including U.S. carriers to transport more freight cars on its tracks.

Bill C-30 *An Act To Amend The Canada Grains Act* extends interswitching rights from the current 30 to 160 km in Western Canada: “This ensures that captive shippers – those with only one choice of railway – have fair and reasonable access to the rail system at a regulated rate,” the transport department said in an earlier regulatory notice.

CP attorneys argue increased competition will cost the railway \$13.3 million a year and “lead to congestion on the rail lines and thus negatively impact the efficiency of the rail network as a whole”.

“They are neither aimed at any intelligible purpose grounded in the Act nor based on any relevant considerations,” CP wrote in its Court application. Canadian National Rail Co. did not comment on the lawsuit though it is also affected by the interswitching rules. CN chair Claude Mongeau earlier issued a statement accusing cabinet of unfair treatment: “CN is disturbed the government has decided to punish railways.”

Agriculture Minister Gerry Ritz did not speak with reporters. Ritz’s office issued a statement vowing that cabinet “will fully defend farmers and all shippers to ensure that our economy is well served” by railways; Canadian Pacific should “embrace being part of the solution as opposed to being entrenched in the problems of the past,” the statement concluded.

Extending interswitching rights expands by five-fold the number of grain elevators in Manitoba, Saskatchewan and Alberta that are accessible to rail competition. Previously only 48 primary elevators had access to more than one railway; 261 now fall under the broader interswitching network.

“Canadian Pacific requires time to educate shippers regarding the practical aspects of regulated interswitching and to consult with other railways in order to review and develop new processes and procedure to effectively manage interswitching,” the railway told the Court; “These matters take time and effort.”

CP also accused cabinet of pushing the Canadian Transportation Agency to write the regulations to take effect in August, the start of the new crop year in Western Canada: “The Agency’s conduct raises serious concerns about its independence as a quasi-judicial tribunal and economic regulator.”

Persistent complaints of late rail deliveries and other service shortfalls by Canada’s rail “duopoly” led Parliament to pass two separate reform bills in the past two years. Legislation allows shippers to compel CP and CN to contract service agreements under threat of arbitration.

By Alex Binkley