

What You Need to Know About the Definition of “Adequate and Suitable” Service

Myth - The Canadian Transportation Act (the Act) already says railways must provide “adequate and suitable” service. It therefore provides all of the protection shippers require.

No. While the Act does require that railways provide “adequate and suitable” service to shippers, there is no clear definition of what constitutes “adequate and suitable”. As a result of the lack of clarity, shippers have been reluctant to rely on these requirements in the Act to launch level of service complaints. Defining “adequate and suitable” in each individual case consumes significant time and resources. The end result is a very inconsistent interpretation of the terms.

To ensure that railways, shippers and other partners have a clear and consistent understanding of the Act’s requirements, the Act should be amended to include a definition of “adequate and suitable” that is shipper-demand driven, and would therefore require the railways to deploy the proper resources needed to meet demand for rail service.

*Strengthen the statutory service obligations within the CTA so that the level of service provided by the railway must meet the rail transportation requirements of the shipper. Currently, section 169.37(b) of the CTA requires an arbitrator to have regard to the service that the shipper requires for the purposes of service level agreement arbitration. The service that the shipper requires should also be the focus of the level of service obligations set out in sections 113 to 115 of the CTA. **Recommendation from the Coalition of Rail Shippers***

Myth - The definition of “adequate and suitable” should consider the impacts of the service demanded by one shipper on the rest of the rail network.

No. It has been wrongly recommended that the definition of “adequate and suitable” service be expanded to recognize shippers and their collective needs, in the context of the optimal performance of the freight rail system. This will add extra complexity into the measurement of “adequate and suitable” accommodation, and will make it a less meaningful protection for shippers.

Allowing the railways to measure service against the entire rail network will allow them to shift resources away from captive shippers to serve higher value clients, or clients with alternatives for shipping their products. Furthermore, given the railway companies control the size and capacity of “the network”, it’s anticipated they would actively remove assets and crews. Then, when a shipper isn’t properly serviced, the railways would argue that doing so would negatively impact the network. The definition must ensure that the railways are required to maintain a level of service that can provide adequate and suitable accommodation to meet market demand.

Myth - The regulatory environment must be set up to ensure railway profitability. Controlling costs should be the only consideration in decisions to rationalize assets and resources in play.

No. According to the Act, the railways must ensure they maintain enough assets (i.e. locomotives, railcars, crews) to meet the needs of shippers. While railways have certain flexibilities in how they allocate resources, the Act should ensure their monopoly position is balanced against the requirement that their supply of rail capacity meets shippers’ demand.

To allow a railway company to invoke the limited size of its fleet as a defence for an alleged breach of its level of service obligations would amount to allowing the railway company to refuse to transport traffic, or to hold off providing service until it finds it convenient to do so. This would be contrary to the intent of paragraph 113(1)(c) and subsection 113(2) of the CTA.

CTA Letter of Decision – Louis Dreyfus Level of Service Complaint against CN

Grain shippers' requests relating to the definition of “adequate and suitable” accommodation

Make it clear:

The Canadian Transportation Act should include a clear definition. The WGEA recommends a more specific definition of “adequate and suitable accommodation” within Section 115 of the Canada Transportation Act, as follows;

“115 (2) For the purposes of section 113 and 114, a railway company shall fulfill its service obligations in a manner that meets the rail transportation needs of the shipper.”

This recommendation is shared by other shippers and will ensure that the Agency has a clear and objective measure to use when hearing Level of Service complaints.

Make it explicit:

The Government, working with the Canadian Transportation Agency, should ensure that the regulations, guidance documents and decisions all reflect the clear intent of this definition to ensure a level of service that is demand-driven. This will allow for easier negotiations between grain shippers and railways as all parties are aware of the expectation of service.

Make it effective:

Railways must be required to maintain the capacity to meet the needs of shippers. As indicated in the CTA decision on the Louis Dreyfus Level of Service complaint, railways are able to make business decisions with regards to asset acquisition and utilization. However, as a result of their obligations under the Act, they cannot do so at the expense of shippers.

Ensuring that “adequate and suitable” is measured against shipper demand, not railway supply, will mean that the railways can no longer use reduced assets as a justification for reduced service.