

“Public Convenience and Necessity” (PCN) before being granted rights to a proposed service.

This trend continued in July 1985, when the Minister of Transport released a white paper, “Freedom to Move”. The proposals for deregulation of domestic air services contained in the paper were incorporated in the National Transportation Act, 1987, which came into effect on January 1, 1988.

Under the new Act, market entry is governed by the criteria, “Fit, Willing and Able”, thus placing the onus on intervening third parties to prove why a licence to operate a service should not be granted to the applicant.

The National Transportation Agency (NTA) issues air carrier licences for both domestic and international services and has the power to regulate international air fares and conditions of carriage. In Southern Canada, domestic air fares and conditions of carriage are no longer regulated by any government body, but on non-competitive routes, the NTA has the power, on receipt of a complaint, to disallow certain fare increases.

### 13.1.2 Rail transport

The National Transportation Act, 1987 introduced changes which concern three areas: freight rates, competition and railway lines.

**Freight rates.** Under the new Act, shippers can now negotiate confidential contracts with individual railways. Essentially, they can shop for the rates and conditions of service which best suit their needs. Both shippers and railways are allowed the capability to develop innovative rate and service arrangements.

**Competition.** Many shippers are located in an area served by just one railway and cannot benefit from the alternative rate structures unless they are allowed to access other railway lines. In the past, shippers were guaranteed the right to ‘interswitch’ freight cars from one railway to another provided it occurred within 6.4 km of the shipment’s origin or destination. Under the new Act, this limit, originally set in 1908, has been extended to 30 km. Should the shippers be located beyond this limit, they can request their local railway to move their shipment to or from the lines of a competing railway for a competitive line rate. If the parties cannot agree, the shipper can then request the agency to set a rate according to legislated guidelines.

**Railway lines.** To protect shippers and the public, railways may not abandon more than 4% of their lines each year until after 1992. The Governor-in-Council may extend the date of an abandonment indefinitely should such an abandonment

be judged to have a significant impact on a large region of Canada or on shippers with no adequate alternative transportation.

Lines are now easier to sell to an independent operator to be run as a smaller, short-line service. This will encourage the conversion of lines into more specialized, cost-effective operations.

If an unprofitable rail line has economic potential, the National Transportation Agency can order the railway to continue operations on a subsidized basis, subject to review after three years.

### 13.1.3 Road transport

Federal authority extends to all operations of extra-provincial motor carriers. These include trucking and bus companies which carry freight or passengers across a provincial boundary to another province or to another country, and their company operations within a province or territory. Each province has jurisdiction over all operations of trucking and bus companies with business only within the boundaries of that province.

The Motor Vehicle Transport Act, 1987 promotes national uniformity in market entry criteria for extra-provincial trucking, and provides for more effective safety regulation of trucking and bus services under federal jurisdiction.

The reform of the market entry test for extra-provincial trucking is occurring in two phases. On January 1, 1988, the current ‘public convenience and necessity’ test was replaced by a ‘fitness’ entry test and a ‘reverse onus’ public interest test. ‘Fit’ applicants are those who have adequate insurance coverage and comply with all applicable transportation safety regulations. The fitness test requires a satisfactory safety rating based on knowledge of, and past compliance with, transportation safety law.

Under the ‘reverse onus’ public interest test, all new, fit applicants will be granted a licence unless an opponent to the application can demonstrate that the granting of the licence would not be in the public interest. The ‘reverse onus’ public interest test is an interim measure designed to allow limited economic intervention in the entry process until the ‘fitness’ entry procedure becomes established on January 1, 1993.

### 13.1.4 Water transport

The National Transportation Act, 1987 deals with Northern Marine Resupply Services in the Mackenzie River and within the Western Arctic between Spence Bay in the East and the United States (Alaskan) border in the West. All carriers operating a fleet of ships whose total tonnage exceeds 50 tonnes require a licence to offer