

**SURFACE TRANSPORTATION BOARD PROPOSES REMOVING PRODUCT AND  
GEOGRAPHIC COMPETITION AS FACTORS IN MARKET DOMINANCE  
DETERMINATIONS**

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**SURFACE TRANSPORTATION BOARD PROPOSES  
REMOVING PRODUCT AND GEOGRAPHIC COMPETITION  
AS FACTORS IN MARKET DOMINANCE DETERMINATIONS**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has proposed removing product and geographic competition as factors in market dominance determinations.

Under the law, the Board can entertain a challenge to the reasonableness of a rail rate only if it first finds that the rail carrier has market dominance over the traffic to which the rate applies, that is, that there is no effective competition for that traffic. In making that determination, the Board has traditionally considered four forms of competition that may effectively constrain the carrier's pricing: *intramodal competition* (whether the shipper could obtain the transportation service that it needs from other railroads); *intermodal competition* (whether the shipper could obtain service by another transportation mode); *product competition* (whether the shipper can use a suitable substitute product that can be acquired without relying on the services of the same carrier); and *geographic competition* (whether the shipper can obtain the product it needs from a different source and/or by shipping its goods to a different destination using another carrier).

In its decision in Review of Rail Access and Competition Issues, STB Ex Parte No. 575 (STB served Apr. 17, 1998), which was issued after the Board conducted two days of informational hearings to examine issues of rail access and competition in today's railroad industry, the Board addressed the complaints of shippers dependent on rail service that, as a result of consolidation in the industry, their competitive options have not been expanded, and that available remedies are burdensome, costly, and unresponsive. It initiated actions on several fronts: as to certain issues, it directed the various interested parties to meet and seek private resolution, while, as to others, it indicated its intent to provide relief administratively. See "Surface Transportation Board News" release No. 98-25, issued on April 17, 1998.

One such issue that the Board indicated it would pursue administratively was market dominance. Pointing to shipper complaints about the complexity and burden of litigating issues of product and geographic competition, issues that shippers charge have transformed the threshold market dominance phase of a rail rate complaint into a full-blown antitrust-style case of its own, the Board noted that it would move toward eliminating product and geographic competition from the market dominance analysis. Accordingly, in its decision issued today, the Board followed through on its expressed intent by formally initiating a rulemaking proceeding.

Under the procedural schedule adopted in the decision, notices of intent to participate are due on May 12, 1998; comments on the proposal are due May 29, 1998; and replies are due June 29, 1998.

The Board's decision was issued today in Ex Parte No. 627, Market Dominance Determinations--Product and Geographic Competition. The decision is available on the Board's website at [www.stb.dot.gov](http://www.stb.dot.gov).

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