FINAL OFFER ARBITRATION - DOES IT PROVIDE SHIPPERS WITH MORE COMPETITIVE RATES?

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I. Introduction

In the pre-deregulation era, one of the great challenges was to find a balance between measures that would foster competition on the one hand and regulate exploitation of market power on the other. To achieve this balance, the Minister of Transport made a number of proposals in his July 1985 paper *Freedom to Move - a framework for transportation reform.* Examples of these proposals are legalization of confidential contracting, elimination of collective rate making, measures to assist captive shippers and mechanisms to resolve disputes. Regarding the latter, he proposed to include it into the prevailing law making it less adversarial, more effective, more efficient, more accessible and less expensive to use. Twenty-five years after its inclusion, it has been one of the most successful provisions.

In this paper, the final offer arbitration provision is examined. Section II examines the concept and objective of final offer arbitration. Section III examines the final offer arbitration provision and the amendments to it, the use of the final offer arbitration provision and issues of special interest in the application of this provision. Sections IV and V examines the underlying theory behind this provision and various views on this provision as a source of more competitive rates. Finally, a few concluding remarks are made.

II. The Concept and Objectives of Final Offer Arbitration

Final offer arbitration is a mechanism to resolve disputes. Dispute resolution mechanisms are of special interest in rail freight transportation in Canada. To this end, *Freedom to Move* proposed a family of problem-solving mechanisms such as mediation, final offer arbitration and a streamlined appeal mechanism. Before these mechanisms were introduced, the prevailing law provided only one method of dealing with complaints from shippers, carriers or the public: an investigation by the Railway Transport Committee, which may include a public hearing whether the public interest has been harmed.

* *The views expressed here are those of the authors and are not purported to be those of the Commissioner or the Competition Bureau, Industry Canada.*

a) The Concept of Final Offer Arbitration

The historic origin of non-judicial arbitration is not known, however, records point to its use first in Egypt and later to the increase in its popularity in Greece and Rome. The first recorded judicial decision relating to arbitration was in England in 1610 and the first law on this subject was in 1697, the *Arbitration Act 1697*. In the 20th century, many countries began to promote the use of arbitration and today it is even available over the internet through Online Dispute Resolution.

According to Wikipedia, "By far the most important international instrument on arbitration law is the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Some other relevant international instruments are: The Geneva Protocol of 1923; The Geneva Convention of 1927; The European Convention of 1961; The Washington Convention of 1965 (governing settlement of international investment disputes); The UNCITRAL Model Law (providing a model for a national law of arbitration); and The UNCITRAL Arbitration Rules (providing a set of rules for an ad hoc arbitration)."[1]

The types of arbitration procedures that have been developed in North America are: Judicial Arbitration: High-low Arbitration or Bracketed Arbitration; Non-Binding Arbitration; Final Offer Arbitration (FOA) or Pendulum Arbitration or Baseball Arbitration (or either-or or flip-flop) with a variation known as Night Baseball Arbitration. The latter's (i.e., FOA) origin has been credited to Carl M. Stevens in 1966 but it has also been pointed out that some FOA arrangements existed in the Victorian and Edwardian period with the first example cited in the Nottingham hosiery industry in 1860.

FOA first made is appearance in Canada in the *National Transportation Act, 1987* but is not formally defined. The words suggest a solution to a problem that is final on offers which are arrived at through a decision of an impartial party. However, the words take on a more specific meaning under the description contained in the legislation. It allows a shipper who is dissatisfied with the rate or rates charged or proposed to be charged or any condition associated with the movement of goods to submit the matter in writing to the Canadian Transportation Agency for a FOA.

b) The Objectives of Final Offer Arbitration

The objectives of final offer arbitration have not been explicitly stated in the Act. Nevertheless, policy statements and other publications on the subject suggest the following: a) the expansion of the mediating role; b) the creation of a process that is less adversarial, more effective, efficient, accessible and less expensive to use; c) the resolution of private or narrow interests - i.e., rate

disputes or conditions associated with the movement of goods, this would exclude matters of public interest or general matters such as level of service, etc.; d) the formalization of the process - by enshrining it in legislation; e) the benefit of competition where other competitive access provisions or provisions providing competitive alternatives are not available to shippers; and f) the fostering of competitive commercial negotiation i.e., the use of FOA as a threat.[2] There are also other objectives associated with this form of dispute resolution in comparison to others such as: an incentive for both parties to moderate their positions; a resolution to an impasse, etc.

In sum, final offer arbitration is one of the more recent forms of dispute resolution. It was introduced in the *National Transportation Act* in 1987 so as to make dispute resolution a less adversarial, more effective, more efficient, easily accessible and less expensive form of mediation. There may also be other objectives for its introduction into the legislative framework.

III. The Final Offer Arbitration Provision

a) The Final Offer Arbitration Provision in the *National Transportation Act 1987* and Subsequent Amendments

National Transportation Act 1987 : The FOA provision was first introduced in sections 48-57 of the *National Transportation Act, 1987*. In 1996, 2000 and 2008 the Act was amended. In 1996, the sections were re-numbered as 161-169.

The provision requires a submission by the shipper which is served on the carrier. The submission shall contain certain information such as: the final offer of the shipper; the last offer received from the carrier; an agreement to pay the arbitrator the fee as specified; and the selected arbitrator (who is chosen from a list of arbitrators s. 169).

If no arbitrator is chosen or the chosen one is unavailable, the Agency will appoint the arbitrator (s. 162). There are procedures in the absence of an agreement, procedures in general and procedures for the exchange of information and responses to interrogatories (s. 163(1-4)).

The arbitrator, after considering the information submitted by the parties, must select the final offer of the shipper or the final offer of the carrier (s. 165 (1)) having regard, among other things, to whether there is available to the shipper an alternative, effective, adequate and competitive means of transporting the goods (s. 164 (2)). The decision of the arbitrator must be rendered within 60 days of the submission (s. 165(2)(b)) and applies for a period of one year

unless otherwise agreed (s. 165(2)(c)) and is final and binding (s. 165(6)). The arbitrator's decision will be implemented without delay in a public tariff, unless the parties agree to implement it within a confidential contract (s. 162(3)). No reasons are required in the decision of the arbitrator (s. 165 (4)). However, reasons may be requested by the parties within thirty days after the decision, which the arbitrator shall provide in writing (s. 165(5)).

At the request of a party, matters relating to the arbitration will be kept confidential (s. 167) and the parties may request the Agency or the arbitrator to terminate the proceedings even before the arbitrator renders a decision on the final offer arbitration (s. 168).

The commercial harm test (s. 27(2)) does not apply to the FOA provision and the FOA provision does not apply to confidential contracts -unless the parties to it agree (s. 127(2)), competitive line rates (s. 141), containers and trailers on flat cars (s. 159(1)(b)).

1996 Amendments: The major amendment in 1996 was an extension of the scope of the FOA provision. From this year, it would be applicable to three important commodities or services: western grain (by deletion of s. 47(b)(i) of the previous Act); northern marine re-supply (s. 159(c)); and commuter rail and passenger rail service (s. 160). Other amendments include deletion of a request for an investigation if the matter is submitted for a FOA (deletion of s. 57 of the previous Act); and extension of the time limits to 15 days from 5 days where arbitration is precluded (s. 163 (3)) and to 90 days from 60 days for the arbitrators decision from the date of receipt of the submission of the FOA.

2000 Amendments: To improve the FOA provision that shippers considered popular, Bill C-34 was introduced in 2000. The major amendments that resulted from this bill were to make the FOA provision more accessible to shippers by reducing the time in which an FOA could be obtained. It provides for a summary process for disputes of less than $750,000 (s. 164.1), for final offers filed simultaneously ten days after a submission (s. 161.1) (previously the carriers final offer was filed 10 days after that of the shipper) and for a decision after 30 days (s. 165 (2)(b)) instead of 60 days. The amendments also provide for a three person arbitration process, one chosen by the shipper and one by the carrier. The amendments also make it clear that the FOA is not a proceeding before the Agency.

2008 Amendments: In 2008, further refinements were made through Bill C-8 (formerly Bill C-26 and Bill C-44). The FOA specifically provides for joint

offers by several shippers s. 169.2 (1). In other words, groups of shippers can join in one proceeding and submit one offer for arbitration. However, the shippers have to show that an attempt has been made to mediate the issue before the application. It is believed that allowing multiple shippers with a common complaint to join in one proceeding would not only reduce costs to individual shippers but would also strengthen shippers' leverage in negotiations with the railways. Its effectiveness is likely to be constrained by the requirement that the FOA shall be common to all the shippers and the shippers shall make a joint offer in respect of the matter, whose terms are to apply to all of the shippers (s. 169.2(2)).

b) The Use of the Final Offer Arbitration Provision

1988-1996: From January 1, 1988 to June 1996, there were nine FOA applications. Of these applications, the Agency decided two. The Agency states "...Final Offer Arbitration is, to date, the most utilized dispute resolution provision of the new Act. The increased use of this provision may, in part, be due to the repeal of the public interest provision and/or the fact that final offer arbitration is not subject to the section 27 test."[3]

1996-2007: From July 1, 1996 to December 31, 2005, the Agency received 26 notices from shippers of their attention to submit their disputes to FOA. About half of these were withdrawn or settled before arbitration. In 2006, five cases were referred to an independent arbitrator for settlement and in 2007 three cases were referred.

The products and the number of times the FOA has been applied until March 1998 are:

- coal and other mineral products - 7
- sulphur - 1
- forest products (lumber) - 2
- general merchandise - 2
- grain products (flour) - 1

Data beyond this period have not been published.

c) Issues in Final Offer Arbitration Applications of Particular Interest

Non-Compensatory Rates: The first issue that arose was whether the rate offered by the shipper in an FOA could be non-compensatory. "The Federal Court ruled that the arbitrator was not bound to have regard to the noncompensatory provision of the NTA 1987, but that the principles of procedural fairness had been breached."[4] In the FOA submission where this issue arose, the Federal Court set aside the decision of the arbitrator and the matter was remitted to the arbitrator to consider supplementary information and

then to confirm or vary his decision.

Confidential Contract and FOA: A second issue was whether the FOA provision is applicable where there is a confidential contract. On this matter, "The Federal Court ruled that the FOA provisions are available when there is no confidential contract or when the confidential contact is silent or indefinite as to a term or condition of its execution."[5] In other words, the FOA is applicable only when there is no confidential contract, except where a term or condition in it is absent or indefinite.

Confidential Contract and Rates: A third issue is whether rates in past confidential contracts can be disclosed to an arbitrator? And whether FOA rates can be incorporated in a confidential contract? Regarding the first question, the Agency noted that there are no barriers in the legislation which prevent a shipper from negotiating matters contained in an expired contract in its FOA submission. Regarding the second question, the Agency indicated that it could be incorporated in a confidential contract if both parties consented. Further, if a carrier did not wish to have the arbitrator's decision contained in a confidential contract then the rates and conditions associated with the movement would have to be published in a public tariff.

International Rates: A fourth issue is does an FOA cover international rates or rates to US points? The FOA applies to goods within the jurisdiction of the CTA and the FOA can contain rates for domestic traffic as well as rates for other traffic. The former would be considered for an FOA. As the Agency concluded in one case "...the FOA was limited to those offers containing rates, terms and conditions for the movement of goods within Canada. If a shipper does not provide a mechanism that permits a carrier to determine the Canadian-only portion of the traffic and movements in question, the carrier does not know what to reply to and the statutory FOA is not triggered."[6] In other words, the FOA applies to rates within the CTA's jurisdiction.

Traffic Over Provincial Lines: A fifth issue is does an FOA cover traffic over provincial lines which is part of the service package from origin to destination? Yes, if the carrier offers a single through rate and a service package from origin to destination. The Agency found that if the burden of determining the portion of rates associated with federal and provincial movement was imposed upon the shipper it would denude the FOA provisions the desired effect in determining shipper/carrier rate disputes. This implies that if the service is broken down into two separate packages, federal and provincial and only the former is part of the offer, then the provincial package is not subject to the FOA as the CTA only applies to federally regulated railways. In other words,

for a single package covering traffic over both federal and provincial lines, the FOA applies.

Traffic Ownership: A sixth issue is does the FOA apply only to submissions by a shipper and to traffic owned by the shipper? The submissions must be by a 'shipper', as defined in section 6 of the Act. Further, the shipper must be the owner of the goods or traffic or have control of the traffic. In one case, "...the Agency found nothing to indicate that the shipper filling, the FOA submission was not the owner of the goods produced or that the shipper had relinquished control of the traffic."[7]

Infrastructure and Charges for Use: A seventh issue is does a FOA cover infrastructure and charges for use of it? It does not. The Agency determined "...that the FOA request to obtain rebates on operating charges and on shared infrastructure use charges provided for in an agreement between the parties is not a matter that can be referred to arbitration."[8]

Storage of Goods: A eighth issue is does the FOA cover 'storage of goods'? This issue arose because the words 'storage of goods' does not fall within the meaning of the words 'carriage of goods' or 'movement of goods' as defined in sections 159(1)(b) or s. 161(1) of the Act. The Agency determined that in this case (#16) 'storage of goods' was covered under the FOA. First, it was Parliament's intention to make the FOA available to resolve disputes between shippers and carriers that involve, include or are closely related to the carriage of goods. If this was not so, narrower language would have been used. Second, while the language in paragraph 159(1)(b) is broad, section 161(1) constrains it to rates for the movement of goods. Third, in this case storage has always been part of the overall railway service package for the movement of goods. Finally, separation of the two services would lead to discontinuity between negotiation and FOA, a result not intended by Parliament, according to the Court of Appeal in the *Moffat* case.

IV. Theory Behind the Final Offer Arbitration Provision

a) Theory

Final Offer Arbitration:

The theory behind the FOA dispute procedure is that it provides an incentive for both parties to moderate their positions to such an extent that third party intervention is not required. It is specifically designed to be an impasse deterrent.[9] As discussed by Singh (1986), there are at least two effects that are expected to arise from compulsory arbitration: the "chilling effect", in which the expectation of compulsory arbitration lowers (or "chills") the

incentive to make concessions; and the "narcotic effect", where using compulsory arbitration once increases the incentive to use it again.

Singh (1986) also discusses a model of arbitrator behaviour known as the "splits the difference equally" model. In this model, it is assumed that the arbitrator needs to make a decision on a simple issue, and that the bargaining parties can guess the "fair" settlement. The offers of the parties will therefore be based on the assumption that a higher offer by either side will raise the probability that the lower offer will be accepted by the arbitrator. Hence, the parties will set their bids closer to the fair settlement, leading the arbitrator to reach the "right" decision by splitting the difference equally. Singh (1986) notes that although this model has been widely criticized, it is still very influential, and is also used as the starting point in the development of mathematical models of arbitrator behaviour.

In response to the drawbacks of the FOA theory, alternative mechanisms have been developed. One of these alternative mechanisms, proposed by Zeng (2003), is known as Amended Final-Offer Arbitration (AFOA). In this model, as in the FOA models, more extreme offers are less likely to be accepted by the arbitrator. However, contrary to FOA models, the award amount is not a binary decision between the two sides' bids. Instead, the award to the winner is determined by the deviation of the opponent's bid from the arbitrator's value. Thus, a more extreme offer is also more likely to lead to a higher penalty for this offer, motivating the bargaining parties to make less extreme offers.

Deck, Farmer, and Zeng (2005) experimentally compare the theoretical and behavioural properties of FOA and AFOA, and find the following: "First, as is predicted by theory, AFOA generates offers in arbitration that tend to converge. Using a uniform distribution or a binary distribution for arbitrator's preferences, subjects' offers converge to the midpoint of that distribution. This finding is in contrast to FOA which is predicted by theory to produce offers at the endpoint of the distribution; experimentally, the offers do not conform to theory by diverging to the endpoints, but instead they are spread across the distribution. Thus, not only is AFOA successful in generating converging offers where FOA is not, it also produces more predictable results that correspond to the theoretical predictions."[10]

Extension of FOA to Multiple shippers or shipping Groups:
The underlying idea in extending FOA to multiple or group shippers is that it would not only reduce costs but would also strengthen shippers' leverage in

negotiations with the railways.[11]

Theory on joint purchasing does not enable one to predict the economic results on an a *priori basis* as one has to consider the effect of two diametrically opposing forces: increased buying power and increased efficiency as a result of a single joint FOA.[12] If one conceives of the situation as a simple bilateral monopoly (since the seller is a monopolist) involving negotiation over price and quantity, the result depends on the strength of the seller vs. the buyer or eagerness to settle. "If the seller completely dominates the bargaining process, it will extract all of the profits ... In contrast, if the buyer completely dominates the bargaining process, it will extract all the profit by driving the price down ..."[13] These are the two extremes. The later situation is unlikely to occur given the market power of the railways, the possibility that they may be other purchasers or transportation services for different commodities from the same location to different destinations, etc.

In sum, there is a reasonable degree of theory on which the FOA provision and the recent amendment to extend the provision to shipper groups is based. However, recent developments in theory suggest that a new form of FOA, AFOA is superior to it. As stated "AFOA shows tremendous promise for encouraging settlement, generating predictable bargaining outcomes and increasing efficiency."[14]

V. Views on the FOA Provision and FOA in Other Jurisdictions

a) Views on the FOA Provision as a Source of More Competitive Rates

Shippers: Shippers in general have viewed this provision favourably since it was introduced in the NTA, 1987. In 1988, the NTA reported "Over half the rail users surveyed reported that competitive access and dispute resolution provisions had an effect on their negotiations with the railways." A sample of few comments by Luscar Ltd., the Canadian Fertilizer Institute and the Western Canadian Shippers' Coalition are indicated. Luscar Ltd. states that FOA "has encouraged captive shippers and railways to bargain and negotiate more than they would have otherwise."[15] The Canadian Fertilizer Institute states "In our view Final Offer Arbitration (FOA), is the single most important provision in the CTA."[16] The Western Canadian Shippers' Coalition in its submission to the CTARP states "The only remedy contained in the CTA, which our members are currently able to rely upon in conducting negotiations with CN and CP is Final Offer Arbitration (FOA)."[17]

Railways: Canadian Pacific Railway (CPR) in its submission to CTARP states "The FOA procedure favours the shipper. ... The existence of FOA has been

highly effective as a negotiating tool for shippers in seeking lower rates from CPR. Shippers, in CPR's experience, have no hesitation in referring to FOA, either directly or indirectly, as a recourse if they do not get what they want."[18] Canadian National's submission to CTARP states "From Canadian National's perspective, FOA is problematic. It is not applied uniformly and constitutes an inappropriate intrusion in the marketplace. ... Shippers using Final Offer Arbitration assume virtually no risk."[19]

NTARC: In 1993, the NTARC stated "As in the case of CLRs, the FOA issue was addressed in a number of submissions and inspired debate, although few shippers have used the provision. We are of the opinion that FOA can be very useful as a competitive tool, but ... we believe modifications are necessary." [20] It accordingly made four recommendations.

Canada Transportation Agency: In 1997, the Agency stated that "...Final Offer Arbitration is, to date, the most utilized dispute resolution provision of the new Act."[21] In 1999, the Agency reported that despite problems associated with the FOA, its use continues to rise.

Competition Bureau: The Bureau was of the opinion that since the passage of the CTA, FOA has become the only effective tool available to captive shippers to provide relief from a monopoly rail carrier (with the exception of regulated interswitching). Changes introduced to the FOA process in Bill C-34 should further increase its effectiveness. The FOA process is effective because it is timely (30-day or 60-day processes), commercial as opposed to regulatory (i.e. it is not a proceeding before the Agency), and is unencumbered by statutory tests or barriers to relief. It is important that the current FOA process continue in its present form and additional tests should be avoided. It therefore recommended that the FOA provision remain intact as it currently stands.[22]

Provincial Governments: Views of a few provincial governments are indicated. The Government of Alberta in its brief states "In the course of the CTA Review, a number of shipper organizations have indicated that, within the current legislation, the Final Offer Arbitration (FOA) process has been the single most important provision for them. Shippers see FOA as an effective mechanism for securing more competitive rates without regulatory intervention, and they do not want to see additional barriers."[23] The Government of Manitoba in its submission to CTARP believes "that the process of the Final Offer Arbitration with the reforms introduced in July 2000 provide shippers with an effective tool to resolve disputes with carriers over rates or conditions of service... Manitoba regards FOA as an important

safeguard to prevent abuse under differential pricing where a carrier dominates a market."[24] Other provincial governments expressed similar views on the FOA to the CTAR Panel.

CTAR: The CTAR Panel states that despite the broader application of the FOA provision, "FOA has been used most often by rail shippers. The Panel believes that the FOA provisions have two important hallmarks of effective economic regulation ... the Panel is satisfied that the FOA provisions, including the new simplified process for lower-value disputes, adequately address the problem of carrier dominance and potential abuse in a way that is fair to both shippers and carriers. Rail shippers have found FOA effective in obtaining relief, and the process is generally working well and as intended."[25]

StraightAhead: The Minister in his Report *StraightAhead A Vision for Transportation in Canada* states "The existing final offer arbitration provisions work well and the government proposes to retain them with some minor amendments."[26] The amendments were: consideration of captivity for disputes under $750,000; submission by groups, application of the FOA to incidental charges and services; and application of the FOA to other persons subject to railway charges such as terminal operators.

b) *Do Other Jurisdictions have Arbitration in Transportation Resolution Disputes and is it FOA?*
USA: The US railways, the primary competitor to Canadian railways, also has rate arbitration. Such proceedings are triggered if the following tests are met: First, the revenue/cost threshold is exceeded. Second, there is no competition from trucking or other railways. Third, the stand-alone cost is exceeded. In the absence of the requirement to select the view of one or the other of the two parties, the arbitration procedure in the US cannot be described as a final offer arbitration. It is worthwhile noting however that a bill entitled the *Railroad Competition Act of 2005* mentions Final Offer Arbitration in one of its provisions as shippers showed a great deal of interest in introducing competition into the railroad industry.

Australia: Mechanisms to resolve disputes relating to railway access are provided for in Australia, if the parties are unable to reach agreement within the negotiation period. An arbitrated decision is binding on both parties, except when the access seeker decides not to obtain access under the arbitrated terms. Details of the process are contained in Section 25 of the Railways (Access) Code 2000. Since the arbitrator is not constrained to select the view

of either one of the parties, it does not appear to be final offer arbitration.

In sum, shippers, provincial governments and reports by other bodies have indicated that the FOA is effective in providing shippers with more competitive rates. The two major railways while agreeing, prefer a more commercial oriented or market oriented approach to dispute resolution. USA and Australia also make available to shippers arbitration as a method of resolving railway rate or access disputes.

V. Concluding Remarks

To find a balance between measures that would foster competition on the one hand and regulate undesirable practices and abuse of market power on the other, the *National Transportation Act, 1987* introduced a number of changes to the existing legislation. One of those dealt with dispute resolution - *Final Offer Arbitration.*

Since then, a number of amendments were made to this provision in 1996, 2000 and 2008 as a result of recommendations by the NTARC, the Estey Report, the Working Group and the CTAR Panel so as to make it more workable as it was viewed by shippers as one of the most important provisions in the CTA in obtaining a more competitive rate.

The FOA is one of the new types of arbitration procedures that had its origin in 1966 in the USA. In Canada it was first introduced in 1987 in transportation and is believed to be the only industry in which it exists in law in Canada. At the start of 2006, thirty-five applications were made to the Agency for an FOA and most of these were settled or withdrawn before arbitration.

The FOA to-date has received favourable comments in Canada in most reports and commentaries on the subject. Unfortunately, the complexity and cost of the FOA noted by the CTAR Panel and the belief by the railways that it favours the shippers are likely to reduce its effectiveness.

Finally, it should be pointed out that while a reasonable degree of theory exists on which the FOA is based, recent theory indicates that an alternative form of FOA, amended final offer arbitration (AFOA) is superior to FOA. It outperforms standard FOA in several ways. As stated by certain game theorists "AFOA shows tremendous promise for encouraging settlement, generating predictable bargaining outcomes and increasing efficiency."[26] By generating converging offers it could possibly provide a more equitable and reasonable solution to dispute resolution. This could also provide an explanation why most FOA applications were withdrawn before the dispute

was arbitrated. If this is so, this development should be considered in any future amendments to this provision so as to make it more consistent with recent developments in economic theory.

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Endnotes

1. Wikipedia.
2. See government publications, eg. 1-3 in bibliography, Agency fliers and publications.
3. CTA Annual Report 1997, p. 9.
4. See Final Offer Arbitration, Issues Determined During Final Offer Arbitration, CTA, www.cta-otc.gc.ca Also see Decisions on Final Offer Arbitrations.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. See David Metcalf and Simon Milner, *Final Offer Arbitration in Great Britain: Style and impact, National Institute Economic Review No. 142, 1992.*
10. See Reference 10 in Bibliography, pp. 16-17.
11. See Reference 7 in Bibliography.
12. The effect of the former means that the price will be determined by the intersection of the marginal factor cost rather than the supply curve. As a result, both price and the quantity of transportation services bought are lower. The effect of the latter shifts the value marginal product curve (VMP) outwards resulting in increased services bought and higher prices. While the above applies to a situation where sellers of transportation services are competitive, the present situation would be better described as a situation where the seller is a monopolist.
13. Blair, Roger D., and Jeffrey L. Harrison, *Monopsony,* Princeton University Press, 1993, p. 161.
14. *Id.*
15. Scott, Glen J., Canada's Need for Open Access, Competitive Rail Transportation: A Captive Shipper's Perspective, Competition and Access in the Rail Industry, September 15-16, 2000, Saskatoon, Saskatchewan.
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