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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 756

MARKET DOMINANCE STREAMLINED APPROACH

Notice of Proposed Rulemaking

**COMMENTS FROM THE PRIVATE RAILCAR FOOD AND BEVERAGE
ASSOCIATION (PRFBA)**

First and foremost, we would like to thank the Surface Transportation Board (Board) for the extensive work it has put into this matter and for issuing the proposed rulemaking in the matter of the “market dominance streamlined approach”.

We believe that the criteria outlined for showing a prima facie case of market dominance is reasonable with a few exceptions. The criteria include the six elements below:

- The movement has an R/VC ratio of 180% or greater;
- The movement would exceed 500 highway miles between origin and destination;
- There is no intramodal competition from other railroads; (captive shipper)
- There is no barge competition;
- The complainant has used truck for 10% or fewer of its movements subject to the rate at issue over a five-year period; and
- The complainant has no practical build-out alternative due to physical, regulatory, financial or other issues (or combination of issues)

However, we suggest three changes:

- 1) If the R/VC is more than RSAM (revenue shortfall allocation method), that should establish a prima facie case of market dominance.
- 2) The period of five years for truck use is too long, and we would recommend two years instead.

3) Eliminate the entire sixth element regarding “no practical build-out” as this is very complicated.

The Board should keep in mind that the time and cost to gather this information and prove market dominance might be counter-productive for the complainant even under this proposed approach. The costs to secure the information to satisfy the six elements might be more than the benefit of getting a reduced rate. We would propose that this process be limited to a certain time frame or number of pages so that the rail shipper is not spending an exorbitant amount of time and money proving its case.

At PRFBA, we believe that if a rail shipper is only served by one railroad, that in itself is sufficient proof that the carrier has market dominance over that shipper. However, we realize the process is much more complicated than that.

PRFBA would like to thank the STB for the proposed rulemaking of Market Dominance Streamlined Approach.

Prepared November 5th, 2019 by:

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