



House of Commons  
CANADA

## Standing Committee on Transport

---

TRAN • NUMBER 025 • 1st SESSION • 38th PARLIAMENT

---

EVIDENCE

**Wednesday, May 4, 2005**

—  
**Chair**

**The Honourable Roger Gallaway**

All parliamentary publications are available on the  
"Parliamentary Internet Parlementaire" at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Transport

Wednesday, May 4, 2005

• (1535)

[English]

**The Chair (Hon. Roger Gallaway (Sarnia—Lambton, Lib.)):** I will call the meeting to order. We apologize to our witnesses for the five-minute delay at the start.

We have with us today, from the Competition Bureau, Sheridan Scott and David McAllister. Ms. Scott is Commissioner of Competition, and I believe she is going to speak.

As you know, Ms. Scott, we only have half an hour. So if you can keep your comments to about ten minutes, that would be helpful. If you want to proceed, please do so.

**Ms. Sheridan Scott (Commissioner of Competition, Competition Bureau):** Excellent. Thank you very much, Mr. Gallaway.

Let me begin by thanking the committee for inviting us here today. As you mentioned, I am accompanied by David McAllister, major case director in our mergers branch. Dave has extensive experience dealing with bureau-related airline matters.

We welcome this opportunity to provide a Competition Bureau perspective on the important issue of air liberalization. For many years now the bureau has been a staunch advocate of allowing competition and market forces to play a greater role in Canada's airline industry.

[Translation]

I will talk to you today about the three major points included in our written statement. My remarks will focus on three main areas: some background on the Bureau's role in the airline sector; our view of the state of competition in the industry since the merger of Air Canada and Canadian Airlines in 2000; and, finally, our response to the questions raised in the Minister of Transport's 2004 reference paper on airline market liberalization.

[English]

First, on the bureau's role, as Commissioner of Competition and head of the Competition Bureau, I am responsible for administering and enforcing the Competition Act in all sectors of the Canadian economy, including the airline sector. One of our main roles is to review mergers. The bureau was heavily involved in the review of Air Canada's acquisition of Canadian Airlines in 1999-2000. We negotiated a series of enforceable undertakings with Air Canada to address competition concerns arising primarily in the domestic market. We have also been active in enforcing airline-specific provisions that were introduced into the Competition Act to address

concerns about potential abuse by Air Canada of its dominant market position.

Last year we undertook a review of the state of competition in the industry. We concluded that the special provisions of the Competition Act relating to airlines could be repealed, provided that the general abuse of dominance provisions of the act were strengthened to provide for administrative monetary penalties, as recommended by the industry committee. Bill C-19 would accomplish this objective and introduce other important changes into the act. The bill is currently with the industry committee.

[Translation]

In September 2004, we issued an open letter to the airline industry setting out our enforcement policy. In light of the jurisprudence established by the Competition Tribunal in the Air Canada case, this policy clarified the types of conduct by a dominant carrier that could trigger enforcement action by the Bureau.

Enforcement in the sector remains a priority for the Bureau. We investigate all complaints where there is factual evidence of anti-competitive conduct. Now turning to the state of competition in the airline industry as it has evolved since the time of the merger. The acquisition of Canadian Airlines by Air Canada in 2000 dramatically reduced the level of competition in Canada's domestic airline markets.

The merger resulted in a single competitor having a revenue market share in excess of 90 per cent and eliminated competition that had previously existed between Air Canada and Canadian on the largest 200 domestic city pair routes.

• (1540)

[English]

In the five years since the merger, the competitive landscape has changed considerably. Air Canada has emerged from a major restructuring under bankruptcy protection. Important entry by low-cost carriers has occurred, with WestJet emerging as a strong national competitor. There has also been exit from the industry.

According to data reviewed by the bureau, total seat capacity in 2004 for major Canadian carriers is about 14% below the level that existed at the time of the merger. The main cause of this decline has been a major reduction in Air Canada's seat capacity by almost the same amount as the capacity previously provided by Canadian. While they have been expanding their presence in the market, carriers such as WestJet and CanJet have not replaced all this capacity.

Air Canada's market share has dropped from approximately 75% in 2000 to 55%, based on available seat capacity. Its market share based on revenue, which we consider a better indicator, also declined from 90% at the time of the merger, but continues to be high, in excess of 70% in 2003, the most recent year for which we have data.

During the same period, WestJet's share of the market has continuously increased. The company's estimated revenue shares increased from under 5% in 1999 to just over 20% by 2003. Combined, Air Canada and WestJet accounted for over 85% of all domestic traffic in 2004. Smaller carriers have moved onto some but not all of the routes no longer served by Air Canada.

Generally speaking, pricing within the domestic market has been more competitive, particularly on major routes, with greater availability of discounted tickets with fewer travel and purchase restrictions.

[Translation]

Air Canada's acquisition of Canadian had more limited competitive implications for transborder air travel due to the 1995 air agreement between Canada and the U.S. which removed most of the restrictions against either Canadian or U.S. carriers serving transborder routes. However, the 1995 agreement, was and continues to limit competition in important respects.

[English]

On international services, the acquisition of Canadian by Air Canada eliminated competition that existed between the carriers on the limited number of important routes they both served. This competition has not been replaced. However, the principal barrier to competition on international routes was and continues to be Canada's bilateral air agreements with other countries.

Turning now to our views on the Minister of Transport's reference questions, and with respect to the domestic market, the bureau continues to support the eventual removal of all restrictions on the ownership and control of Canadian air carriers. We recognize that the elimination of all ownership restrictions may not be feasible under current bilateral agreements. Accordingly, as a first step, the bureau supports increasing the limit on foreign ownership of voting shares in Canadian air carriers from the current 25% to 49%.

The airline industry is capital-intensive. New entrants, as well as established players, would benefit from greater access to foreign capital that liberalized ownership rules would facilitate.

The bureau reiterates its support for allowing rights of establishment to permit foreign-owned, Canada-only carriers. Rights of establishment would allow foreign carriers to draw upon their knowledge and expertise to establish new operations in Canada.

The bureau also supports reciprocal cabotage. Permitting foreign air carriers to provide services between points in Canada has the potential to further promote competition on routes within Canada.

On transborder issues, there is no doubt that the current air services agreement between Canada and the U.S. has resulted in important benefits for Canadian consumers and businesses. It has led to substantial growth in transborder services. Canada's tourism industry has benefited, trade has been facilitated, and shippers and travellers have greater choice and lower costs. Canadian air carriers have benefited as well, with Air Canada continuing as the largest transborder air carrier. WestJet recently commenced service into the U.S., becoming the first low-cost carrier to offer transborder services.

The bureau supports negotiations to further liberalize Canada's air agreement with the U.S. as a way to further improve transborder service. In our view, the ultimate goal of such negotiations should be the establishment of a single aviation market with the U.S., similar to what exists within Europe. In short, the case for free trade in airline services within North America is no different than for other sectors of the economy.

At a minimum, negotiations should seek to establish a U.S.-style open skies agreement. This would result in reciprocal granting of fifth freedom traffic rights, the removal of all pricing and other restrictions on sixth freedom carrier service, and the mutual granting of cargo, co-terminalization and seventh freedom cargo traffic rights.

• (1545)

[Translation]

As regards the international market, the Bureau believes opportunities for negotiation of international agreements creating more open competition should be pursued on a priority basis and be subject to the minimum number of restrictions possible.

With respect to international travel, as is currently the case with domestic air travel, there should be no distinction between the granting authority for charter versus schedule service. Rather, it should be left to market forces and the demands and preferences of air service users to determine which type of service or combinations of services should be provided.

Regardless of whether passenger or cargo services are involved, bilateral or multilateral air negotiations should serve, first and foremost, the interests of passengers and businesses relying on aviation services.

[English]

In conclusion, Mr. Chair, we hope the committee will recognize in its report the benefits of competition and the importance to Canada of moving forward with a process to modernize and open up our regulatory regime.

Thank you for the opportunity to share our views with you. We look forward to your questions.

I'm in just under ten minutes.

**The Chair:** Yes, you are. I was timing you.

You will have questions, and we will start with Mr. Gouk.

**Mr. Jim Gouk (British Columbia Southern Interior, CPC):** Thank you, Mr. Chairman.

First of all, when we talk about reciprocal cabotage, are we talking wide-open reciprocal, where our basically two carriers could go down there and fly wherever they want, and all the American carriers could come up here and fly where they want? Or are we talking a more specific exchange—gate for gate, route for route?

**Ms. Sheridan Scott:** When we talk about cabotage, we're really talking in the longer term. This is kind of our blue skies wish list, if I can call it that, rather than the open skies wish list, which I'd like to talk to you a little bit about.

So yes, that's where we see it ultimately going. That would be our long-term objective.

**Mr. Jim Gouk:** With regard to cargo—going beyond co-terminalization, and making it wide open for them—are you aware, in suggesting this, that according to all the information we've received thus far, there is more competition in Canada right now than there is in the United States? And we have lower prices in Canada than we have in the United States.

The Canadian carriers do not want this. They're not looking to go in and have that full access in the United States because of the infrastructure that's in place for the American carriers. So how would we gain a benefit in Canada by opening that up?

**Ms. Sheridan Scott:** It's our view that a competitive model is the model that kicks out the best results for Canadian consumers in terms of lower prices, greater choice, and service innovation. So our predisposition is towards competition, not limiting competition. If we can increase the opportunities to compete, if we can have lower prices, if we can have more choice, we see those as good things.

**Mr. Jim Gouk:** You mentioned Jetsgo, I think. Certainly they've been in the news a lot lately. The allegation we're hearing, with considerable information to back it up, is that Jetsgo was selling tickets that they had no real potential to carry. They were selling them cheap, selling them below the cost of providing that transportation.

Now, that tends to drag other airlines down. It drags the price down. In terms of competition, normally it's when there's predatory pricing by someone, but this is a case where somebody is coming up on the bottom, doing it almost in reverse.

Is that something the Competition Bureau looks at or has any power to investigate?

• (1550)

**Ms. Sheridan Scott:** Our focus is on predatory pricing, as you indicate. Whenever you have a competitive market, you're going to have lots of pricing action. That's good for consumers, generally speaking. Our focus is to ensure that there is a competitive

marketplace, that these sorts of low prices are not introduced with a view to eliminating the competition.

That's how we would look at it if a complaint were brought forward to us. Is this a series of acts by a carrier that is aimed at eliminating the competition? Is it a dominant carrier in the industry? Those are the sorts of questions we ask.

Dave, do you have anything to add to that?

**Mr. David McAllister (Major Case Director and Strategic Policy Advisor, Competition Bureau):** Thank you.

As the commissioner said, under the Competition Act there's a three-part test to look at predatory pricing. First, is the particular carrier dominant in a relevant market? Secondly, is their selling a practice of anti-competitive acts? In the final analysis, will it result in a substantial lessening of competition? Will competitors be driven out of the market such that the persons engaged in this predatory conduct would be able to raise prices sometime in the future? Those are the sorts of things we look at.

In terms of these sorts of very low fares, the economic analysis we would do would obviously focus on average fares, because there's a huge range of fares offered on any given flight by a carrier. We would look at whether or not the load factors—the number of passengers carried and the average fare—were sufficient to cover the cost, but subject to that framework and whether or not this was likely to lead to a lessening of competition.

**Mr. Jim Gouk:** In my home area in the interior of British Columbia, Air Canada services a number of airports. There are airports that are more or less equidistant from Vancouver, and they had very similar prices. WestJet came along and started providing service in certain airports—they don't provide it in all airports, for a variety of technical reasons—and they provided it at a much lower cost than Air Canada was. Air Canada's price immediately dropped to match that, but it continues at the old price in all the other ones where there is no competition.

Does the board look at that, and what type of action would they potentially take on something like that?

**Ms. Sheridan Scott:** That's precisely why we're here before you today saying that we think there should be further liberalization, that we believe there is a potential for competition on some of those routes where WestJet has chosen not to go.

Clearly, when Air Canada continues to serve that route they're in a monopoly situation. They will charge a higher rate; the margins will be greater on those routes. We believe that would be a route that would be attractive to a new entrant that was coming into the country. It could be a foreign carrier that's coming into the gateway and then continues beyond and chooses to serve that route that is now being served on a monopoly basis.

**Mr. Jim Gouk:** There was one complaint that was brought before us some time ago. It was early on in the expansion of WestJet, when they said they started looking at areas where they thought there was capacity left, and that was what they were looking for. One of them, I believe, was between Ottawa—it could have been Toronto—and Fredericton. Air Canada was flying there, as well as to a number of other Atlantic Canada locations from the same departure point. With WestJet's low-cost model, the fare was one-third of what was being charged on these other routes. Air Canada did not serve that airport. All of a sudden Air Canada is on that route, matching the WestJet price, still charging three times as much for other airports of similar distance in the same region.

I understand they filed a complaint, but I never did hear the results of it. Do you recall that at all?

**Ms. Sheridan Scott:** It was before my time. I think Dave may know.

**Mr. David McAllister:** Yes, I do. I'm almost positive what you're referring to was in April 2000 when WestJet started their service from Hamilton to Moncton, and Air Canada responded. Indeed there was a complaint. There was a full investigation, and there was an application filed to the Competition Tribunal.

The case was heard in two phases as to whether or not Air Canada had operated flights on those routes below cost. At the end of the first phase, the tribunal agreed with the commissioner's case that indeed Air Canada had operated below cost. However, in view of the time that had gone by, it was recognized that WestJet had become an established player in that market, notwithstanding these pricing allegations.

So we did a review of the case and determined that it wasn't necessary to proceed with further litigation at the tribunal to seek a remedy based on what had happened. But it was investigated, there was a hearing, and there was a ruling regarding the pricing.

•(1555)

**Mr. Jim Gouk:** I have just one last thing for clarification, very small.

At one point you referred to doing away with all ownership restrictions, which perked my ears up. A little further down you talked about raising ownership from 25% to 49%. To me that seems to conflict.

Could you just clarify that when you say removal of all ownership restrictions, you didn't mean they should go higher than 49%?

**Ms. Sheridan Scott:** We were talking about an evolution, a number of steps one would go through.

Right now, if you look at the situation in Canada and compare it to other countries, you see we have third and fourth freedoms in our agreement with the United States, you have multiple carriers that are allowed, pricing freedom. We would propose that one move at a first stage to have comparability with the 67 other countries that have signed agreements with the United States. That is, we would add the fifth freedom, co-terminalization, and cargo seventh freedom. That would put us on an equal footing with the 67 other countries the U.S. has signed agreements with. That would be the first stage, open skies plus. Then we see moving to a blue sky scenario, if I can call it that, where one would move to 49% ownership, and then ultimately to

removal of all the restrictions so we can have full and open competition in the marketplace.

We understand that these are evolutionary things. You can't get all the way to the end immediately, and this would have to take place over some time.

**The Chair:** Thank you.

Madam St-Hilaire.

[*Translation*]

**Ms. Caroline St-Hilaire (Longueuil—Pierre-Boucher, BQ):** Thank you both for your presentation today.

I read the following in your report:

There does not appear to be any compelling economic reason why the air transportation sector should continue to have such restrictions.

I know that you are from the Competition Bureau and that you see things from a competition perspective. Since we started hearing testimony on this issue, we have heard from employees as well as small communities. Regional services and service in French are two of my concerns.

I do not know if you have conducted any studies on these issues, but from a competition standpoint, how can we guarantee competitive regional services while ensuring acceptable employee conditions and adequate service in French?

**Ms. Sheridan Scott:** It is impossible to guarantee everything. We have several possible choices. We can decide to adopt a regulatory system, or we can rely on market forces. We can also compare both outcomes.

I am here as an advocate for competition. And yet, over the course of my career, I worked 10 years for the CRTC, a regulatory agency, and 10 years for Bell Canada, a regulated company.

Having compared the results of competition-driven and regulatory systems, I think that for the majority of people, a model based on market forces is preferable because it better meets the public's needs.

When the airline industry was regulated, there was no price flexibility: everybody paid the same price. Tickets were much more expensive. We did not have the choice that we do now; we certainly did not have all the business models in today's market.

Thanks to market forces, there is far more flexibility. For example, if you look at photographs taken in airports during the 1950s, the men are wearing ties and the women are well dressed because it was very special. It was very expensive to fly and travel. Nowadays, when you go to the airport, you see children, grand-parents and all sorts of people who are now able to travel a lot more.

Overall, we believe that the current situation favours people better than the old regulatory model. It does however mean that we are not able to control everything, that is certain. Nevertheless, the current system better meets the needs of the Canadian public. And this is why we are in favour of any shift towards a competition rather than regulation-driven model.

**Ms. Caroline St-Hilaire:** When you take a look of what is happening currently you get the feeling that airlines are having a rough time more or less everywhere, whether it be in Quebec, Canada or the United States.

How can “Open skies” increase competition and reduce ticket prices for consumers?

•(1600)

**Ms. Sheridan Scott:** The same answer once again applies here. Competition is not a very easy thing; it's competition in the marketplace. That means that there will be winners and losers. All the same, we believe that the results are better than they are under a regulatory framework.

It is being said that things are not going too well in the world, and that is true of several industries. Competition makes life hard for businesses because they always have to come up with something special, something innovative, new services. The needs of the market must be met.

We are studying the way the aviation market is changing and developing and we believe that we need to increasingly shift towards competition because it will lead to more services, innovation and better prices. We should be encouraging more competition and not less.

**Ms. Caroline St-Hilaire:** Completely unfettered?

**Ms. Sheridan Scott:** Eventually, yes. As I said earlier, things are changing. We are not suggesting that all restrictions be lifted at once, however we do believe that a commitment should be made to move in this direction.

You can see what is happening the world over. There is not a single country that has decided that going back to a regulated system would be better. World-wide, countries opted for a competitive rather than regulatory system, believing that such a system would benefit the public at large.

[English]

**The Chair:** Ms. Desjarlais.

**Mrs. Bev Desjarlais (Churchill, NDP):** You mentioned in your opening statements about the three benefits of the competition. I didn't get them all down. One was lower price, one was greater choice. I'm wondering if it would be possible for you to make available to the committee the review or studies that you've done listing the number of Canadian communities the airlines all flew into in the timeframe you were talking about—I think you said since 1995. If you could list—I would imagine that you would have such a study—the number of communities that were flown into, the number of airlines that went in there, the number of flights that went in, and the type of service that went in in 1995 as compared to right now—those same communities, airlines, flights, and the type of service.... So if you have that and if you could make it available to the committee, I think it would be really beneficial for us to see the tremendous advantages of the competition.

**Ms. Sheridan Scott:** We certainly have some information we can share with you, and you'll see there have been a lot of changes in the airline industry. There will be areas where people do not have direct flights any more, and they used to have direct flights.

**Mrs. Bev Desjarlais:** You have the information I'm requesting that will say the number of communities. Specifically, I would expect it would be for all of Canada, because I couldn't imagine that one would only look at certain areas of Canada, that one wouldn't just look at Halifax and Vancouver and Toronto.

I imagine your mandate would not just be competition for the sake of competition, but competition that benefits all Canadians.

**Ms. Sheridan Scott:** Absolutely, and we're looking at competition providing a better model in general, not for everybody and every individual, but we think it results in a better model.

I'm sure we have that information we could provide to you, yes.

**Mrs. Bev Desjarlais:** Specifically, what was available in 1995 to every community in Canada as far as airlines, flights, type of service, and what's available now in all those same communities?

**Ms. Sheridan Scott:** I'm just finding out what information we have, so just—

**Mr. David McAllister:** I think the commissioner is going to refer you to some graphic evidence we've brought along today regarding the open skies agreement between Canada and the U.S., but—

**Mrs. Bev Desjarlais:** Can you tell me if you have the information I've specifically asked for? You do have that information available?

**Mr. David McAllister:** What we do have is information that goes back, at least as far as the Air Canada and Canadian merger, which shows that the increment—

**Mrs. Bev Desjarlais:** I want you to use 1995. You said it was better since 1995, so I'm assuming you've got the facts. Just show me that it's better since 1995.

**Mr. David McAllister:** Yes, that's right. In 1995 the data we have is regarding the transborder market, which was the open skies agreement with the U.S.

**Mrs. Bev Desjarlais:** So you're not talking domestic service for all of Canada, you're just talking the transborder service?

**Ms. Sheridan Scott:** No, we have information we can give you, since the merger, that would show service in Canada, and then we're also talking about what has happened since 1995, to the States, because this is the opportunity for Canadians to travel, but also—

**Mrs. Bev Desjarlais:** Could you read me your opening comments, again? Did you say “to the States”, or did you not say “competition”, or something, has improved service in your opening comments?

**Ms. Sheridan Scott:** I'll go back and check if you want.

We're talking generally, not in each and every circumstance. I mean, we shouldn't imagine that competition means you're going to have better service absolutely everywhere in the country, on the same terms and conditions. That's not how the competitive marketplace works, and I'm not suggesting that. We're just saying we believe there are advantages that are brought through a competitive model that are better than a regulated model.

•(1605)

**Mrs. Bev Desjarlais:** For everybody, or just for certain areas of Canada?

**Ms. Sheridan Scott:** It will be different depending on the situation.

**Mrs. Bev Desjarlais:** Would it be better for all of Canada, or would it be better for certain areas of Canada, ignoring the rest?

**Ms. Sheridan Scott:** It will be better in certain areas than in other areas.

**Mrs. Bev Desjarlais:** That's what I'm thinking.

**The Chair:** Thank you.

Mr. Bonin.

**Mr. Raymond Bonin (Nickel Belt, Lib.):** Thank you, Mr. Chair.

I get a bit weary when governments get too involved in business. When we talk about the merger, we did such a good job that we put the dominant carrier into bankruptcy.

I almost see this as more about control of the dominant carrier rather than protection of competition for the consumer. The example I will give is the smaller carriers, knowing they're going bankrupt, charge a dollar for a one-way flight. I'm asking how you would react if the dominant carrier charged one dollar, on a one-way flight, to compete with the smaller one?

I don't see it as a bad thing to have a dominant carrier. A country needs an airline. But I think it's more about control on the dominant carrier, and it's under the image of being competition protection.

There are a lot of problems with that. A lot of Canadians lost a lot of money on Air Canada shares because of decisions of the government.

My question is about the dollar fare. How would you have reacted if Air Canada had charged one dollar, one-way, Toronto to Sudbury?

**Ms. Sheridan Scott:** As I indicated earlier, if Air Canada were in a dominant position, we'd look at whether they were engaged in a series of anti-competitive acts, and if the purpose of the anti-competitive acts would eliminate competition or discipline competitors or exclude competitors, then we would take action to bring that before the Competition Tribunal and have a cease-and-desist order issued.

**Mr. Raymond Bonin:** But if the small carriers collectively destroy the dominant carrier, how do we react? Are we protecting only the small carrier, or are we protecting all carriers?

**Ms. Sheridan Scott:** We are addressing companies that have market power. When people don't have market power then we don't believe there is going to be a negative impact on the competitive marketplace. That's our role, to ensure the continued functioning of the competitive marketplace, because we believe that's what produces the best results for the most people.

**Mr. Raymond Bonin:** How does it benefit the consumer if we weaken the dominant carrier? Because that's what we do, in essence, if the intent of the competition regulations is to control the dominant carrier.

**Ms. Sheridan Scott:** The intent is not to control the dominant carrier under the Competition Act; it's to look at when it engages in behaviour that's going to eliminate a competitor.

**Mr. Raymond Bonin:** When Jetsgo charges one dollar, they say that's fair competition. If Air Canada charges one dollar one-way, that's not fair competition.

**Ms. Sheridan Scott:** True. What we would look at is whether Air Canada is engaged in a series of acts aimed at eliminating a competitor. And as Dave was explaining earlier, we wouldn't just look at the one-dollar fare; we would look at average fares, and there would be an extensive analysis that would be done of the behaviour.

**Mr. Raymond Bonin:** But Air Canada maintains a schedule, and that's what brings the price up. So it's not a fair comparison to compare the dominant carrier, which maintains a schedule for the business people, and the smaller carriers, who don't maintain a schedule, who take the best routes and are protected because we say it's not a serious contravention to the Competition Act because they're so small.

If we're going to have a Competition Act that protects carriers, I say we should be conscious of the dominant carrier because it's important to have one. I think in the past we have been very hard on the dominant carriers, to their detriment, and Canadians have lost money because of it.

**The Chair:** If you want to respond to that, Ms. Scott, you may, but you don't have to.

**Ms. Sheridan Scott:** Well, I think I've explained how the legislation works. It's not a question of protecting or not protecting. It's a question of encouraging competition in the marketplace. The act is there to encourage competition, and it's when someone breaks the rules of fair competition that we're empowered to act.

**Mr. Raymond Bonin:** The only reason I bring it up here is I think the government decisions in the past on mergers were wrong, and if they were based on recommendations by the Competition Bureau, along with other bureaucrats, well, I say to you, be careful of the recommendations you make to the government, because they may believe you.

• (1610)

**The Chair:** Okay, we'll take that as an observation.

We thank you, Ms. Scott and Mr. McAllister, for coming. I hope it was a painless half hour for you. We appreciate your presence. Thank you very much.

After a false start the other day, we welcome back the Air Canada Pilots Association.

Mr. Wilson, will you be doing the speaking? If you want to proceed, please do so.

**Capt Kent Wilson (President, Air Canada Pilots Association):** Thank you, and good afternoon to the committee.

As an introduction, I'm Captain Kent Wilson with Air Canada, representing the Air Canada Pilots Association, or ACPA. I'm a senior captain flying wide-body aircraft internationally, and have been in service with Air Canada for 32 years.

On my right is Captain Andy Wilson, secretary treasurer with ACPA and a senior member with the company. On my far right is Captain Dave Coles, another senior captain with the company and a long-serving member with ACPA at the executive level.



Ladies and gentlemen of the committee, the Air Canada Pilots Association welcomes this opportunity to present its views on the minister's proposals and other proposals for the liberalization of air transport services in Canada, the U.S.A., transborder, and international markets, otherwise known as open skies.

ACPA is the largest pilots' union in Canada. We represent over 3,000 airlines pilots working for Air Canada today. We see ourselves as uniquely qualified to comment on the potential impact of open skies. We fly millions of passengers to a wide variety of destinations, Canadian, American, and international, while maintaining an excellent safety record.

We come here before you today, hopefully, as your advocate. I'd like you to know that ACPA is very solution-oriented. We don't come here today to put a lot of problems on your doorstep, saying "solve them", and we don't come here recriminating about what a poor record you've had in the past. We hope, rather, that you would see us as your asset. When we develop our policy on open skies, we hope that it reflects the best interest of the airline pilot profession, Air Canada, its workforce, the general airline industry, and the travelling public.

When we developed our solution or our proposal for the open skies, we looked at it with what we call our three principles. The three principles can be seen accordingly as filters through which we would like the Scott committee to contemplate their recommendations for further liberalization.

By the way, I would consider it a great success if this were the only section that you remembered from our entire presentation, because it's that important.

The first principle is flight safety standards, and I would say that for us this is one of the fundamental reasons why we exist. ACPA is a guardian of this principle. Within the airline industry we consistently seek to advance and maintain the highest standards of flight safety.

And when I talk about flight safety I don't just mean from the pilot's point of view. It's in the highest standards of maintenance of our aircraft and equipment, the highest standards preserved for training of pilots, and the preservation of occupational health and safety legislation.

Accordingly, in any contemplation you make on open skies, we would urge you to view the statutory, regulatory, negotiated safety standards in a way that has to be preserved. Monday, when we were here the first time, I heard a small discussion or debate going on about the merits of the rules. It was centred on whether the American rules were better than the Canadian rules. I was really anxious to jump in right there, but of course I couldn't. But I took note of it, and I'd like to tell you, it's not just whether one set of rules is better than another. Really what is at the heart of this and what it's all about is how effectively you can control those rules, how you can maintain those standards.

For example, if Sage Brush Airlines were to come to Canada and start flying here on the basis of right of establishment, would you be satisfied that they are living up to the standards of safety? For example, currently Transport Canada is implementing SMS, the safety management systems, and some people see this as somewhat

of a downloading of safety to the companies themselves, kind of an honour system.

• (1615)

Yes, they give a document to Transport Canada, and yes, they say they're agreeing to all of this and they're going to live by all of this, but, really, will they? How assured are you that they will?

We have had many incidents and many examples that shocked us. We look at the airline incident and ask how it could have happened. What about the rules? Well, it's simple. When the pressure of the bottom line starts to interfere with the maintenance of rules, we all know the sorry result.

The second principle we put forward is collective bargaining rights—in other words, our collective agreement. We say that the protection of collective bargaining rights and respect for relevant labour legislation regulation must be observed. In addition to safety-related provisions, ACPA's members' interests are protected by the scope provision in our collective agreement, and the right—and this is very important—to continue to negotiate these rights in the future. We would not like to see any changes in the issues of open skies that would violate that principle.

Our third principle is airline industry stability, and wow, have we ever seen instability as of late. The airline industry, in our view, must be restabilized, especially following the upheaval we have seen in the last four years. We believe that open, unfettered, uncontrolled freedom of open cabotage and right of establishment sets a landscape for our industry similar to the wild west.

We belong to other international groups—other pilot groups—and one of them is the Star Alliance. That's the commercial agreement that Air Canada has with all the other international airlines. It's a commercial agreement because there's revenue sharing, code sharing, and that type of thing. At the last convention we went to, we heard about the situation in Europe, because a lot of those pilot associations give direct reports on what they're seeing in this type of endeavour—other templates of open skies. We hear about—this also came up on Monday—aircraft being registered in countries of convenience. In other words, they talked about the maritime model, the tramp steamer that was somehow registered in Panama and Liberia. That seems to be the major one.

We have reports, given to us by associations, that enumerate various examples of this happening. One of them is Ryanair, based in Ireland. You realize that the whole exercise in the European Union is one of deregulation: deregulate labour laws, deregulate education, freedom of movement of capital, etc. But currently, the EU is made up of the haves and the have-nots, in spite of their standards. So we see Ryanair establishing bases in Slovenia and Bulgaria and Albania. And they set up official pilot bases with five or six pilots. Of course, they use that establishment and register those aircraft to whipsaw the home country. But more importantly, they escape a lot of the regulations of their home country. We see it happening today.

In the United States, unfettered open skies has been a disaster. We see the overcapacity situation. I would remind you, members of this committee, that within our national economy, most industries you look at manage supply—manage the supply in agriculture, manage the supply of graduate doctors and lawyers, and even manage the supply of city cabs in most metropolitan cities. It's to keep the whole industry from going into self-destruct mode, and for what purpose? To drive the consumer society, because people really like that \$14 fare to L.A. and back.

Those are the three principles.

• (1620)

On the issues of open skies, the issues themselves you'll see in our brief, and I'm not going to go into all of them. I'll just name them for you, and you can read them in our brief for yourselves. We talk about cabotage, fifth freedom rights, modified sixth freedom rights, cargo seventh freedom rights, cargo co-terminalization, right of establishment, and foreign ownership rule changes. I'm only going to add a quick comment on two of them, cabotage and the right of establishment.

ACPA is opposed to any form of open cabotage because cabotage highlights the most prominent form of violation of the three principles I just spoke about. Right of establishment is just the granddaddy opening of cabotage. We see this as the greatest threat, an open door to cabotage to follow. I hope one of you asks about the right of establishment, because I know my colleague Captain Wilson would like to elaborate further on this for you, and I'm very much hoping one of you will ask him.

On proposals that we have in our brief for the committee recommendation or consideration, again I talked about how we want to be your asset. We want to be your resource, your eyes and ears to the various templates of open skies around the world.

In keeping with that, we talked to you about ACPA participation in the bilateral negotiations—in other words, the negotiations that may follow your recommendations. I've talked about the fact that ACPA has a unique interest and ability to make a contribution. Accordingly, we propose that the Canadian government allow ACPA representation on any delegation that may be tasked with negotiating the Canada-U.S. bilateral negotiations. We've had precedent for this. And we will also note that the airline pilots association in the United States does have membership on these negotiations, and we believe Canada should do the same, and we believe that ACPA can most effectively do this for you.

In addition, we would like to be included in the Canadian delegation that observes the U.S. and the EU bilateral negotiations. Canada currently has observer status in these negotiations. We would like to be a part of that.

In summary, again our main message is that we recommend that the committee consider any proposal for the liberalization of open skies in these broader contexts—in other words, the three filters we talked about.

And finally, I'm going to repeat what the minister said at the recent convention that was held in Ottawa on open skies. I love this, and I wish I had thought of this. He called it “open skies with open eyes”.

We're asking you, the committee, to let ACPA help to keep your eyes open.

Thank you.

• (1625)

**The Chair:** Thank you, Captain Wilson.

We'll proceed to some questions.

Mr. Gouk, would you like to start?

**Mr. Jim Gouk:** Thank you.

I'll probably open the door for you with regard to the right of establishment, but more particularly on cabotage.

You're the Air Canada Pilots Association. We've had Air Canada come before us, and on other occasions we've heard your illustrious leader Robert Milton saying they're much in favour of cabotage. So I wonder if you could first of all reconcile that conflict. Secondly, when we talk in terms of cabotage, do you think that the area people should be looking at is wide open for both sides, as opposed to a specific percentage type of cabotage?

**Capt Kent Wilson:** Thank you for the question. I'll answer the first part first. In terms of Robert Milton, I would be the last one to ever associate him with anything that would harm the airline industry, or us.

High executives of not only the airline industries but also of various large companies tend to be a very migrating breed of people. They move from one place to the other, and it seems to me that too often they become associated with the quick dollar. What's in it for me? How quickly can we get the price of the stock up so that I can exercise my options and get the hell out of here?

If Robert Milton, in his wisdom, thinks that cabotage in one form or another is beneficial, I would entertain the notion that it may be only beneficial in the short run, and really he's not looking at what landscape he's really advocating in the longer term.

**The Chair:** Excuse me. I only want to advise colleagues that it's a 30-minute bell. There has apparently been a collapse of debate. It will be 4:54, according to my clock here.

**Capt Kent Wilson:** I'll pass your question on the right of establishment to my colleague, Captain Wilson.

**Capt Andy Wilson (Secretary Treasurer, Air Canada Pilots Association):** Good afternoon.

We first heard of the right of establishment at the open skies convention about two months ago, and it all sounded very benign. Everybody likes rights, and establishment sounds very established. It's a somewhat opaque term. It really is simply a variation on cabotage.

First of all, it would effectively bypass all of the foreign ownership rules. We're worried about whether it should be 25%. We've heard a recommendation from the Competition Bureau that 49% might be a good interim step, at least from their point of view. Once you have right of establishment, of course, you have Canadian corporations that are neither owned nor controlled by Canadians at all. It's immediately the whole kit and caboodle.

We also hear that we shouldn't worry about right of establishment because the local carrier, even if it's owned by another United States carrier, will be subject to local Canadian labour law. So what's the big problem?

Well, it's a really big problem. Under Canadian labour law, the work done by an employer is governed by the collective agreement. An employer can't escape that collective agreement simply by forming a subsidiary. If they try to do that, the CIRB will step in and say that it's contrary to Canadian labour policy. It will declare that the parent and the subsidiary are a single employer and will subject the subsidiary to the same rules as the parent. That's how Canadian labour law works. It's the only way that the rights, such as they are under Canadian labour law, can be maintained.

This is a cornerstone of Canadian labour policy that would be circumvented by the right of establishment. The CIRB would have no jurisdiction over this two-headed monster because the U.S. subsidiary would now be subject to U.S. labour law. The resulting whipsaw would impair the bargaining rights of Canadians and lead to another race to the bottom.

Even if supposedly the established carrier would only be allowed to act domestically in a country it's established in, it doesn't make a big difference. A Canadian carrier could establish a big hub across the border and fly with the parent company down there. Instead of going through Toronto, for example, all that flying would go through some other hub, and it would be flown by the American arm. This would be contrary to Canadian labour law if that subsidiary was operating out of Vancouver or Calgary or any place else.

Right of establishment would completely circumvent Canadian labour law. The result is that jobs, taxes, and benefits of the economy would be exported to the lowest bidder. Don't be fooled by the terminology. Right of establishment is not only cabotage in disguise, it's cabotage on steroids.

• (1630)

**The Acting Chair (Mr. Raymond Bonin):** Thank you.

Monsieur Carrier.

[Translation]

**Mr. Robert Carrier (Alfred-Pellan, BQ):** Hello, gentlemen.

I found your comments interesting.

I am concerned about the security issue that you raised. You gave the example of a foreign company's aircraft. You are not convinced that all pilots flying in Canadian airspace have the appropriate skills. It would seem, indeed, that foreign airline pilots do not think to be subject to any form of monitoring whatsoever.

The air space liberalization plan would apply mainly to American companies. Still, do you think that American airline pilots flying over Canadian territory would pose a security threat?

[English]

**Capt Kent Wilson:** Merci.

Pardon, Monsieur. We had our French language specialist with us on Monday, but he couldn't be with us today, so I would ask for your indulgence.

Thank you for the question.

It's one thing to fly over the country. The relatively easy part of a pilot's day-to-day job is to check in with every air traffic control along the way at 39,000 feet. We do it all the time. We fly over very primitive and very advanced countries around the world.

Of course, the main skill is operating low to the ground within the terminal regions. If we could not verify that those pilots had the proper training, etc., it would show very easily. I think that would be the main concern.

I hope I've correctly answered your question.

[Translation]

**Mr. Robert Carrier:** You mentioned approach, landing and take-off manoeuvres that cause security problems when they are executed by foreign pilots. But there must be regulations on the qualifications that pilots have to have. Foreign airlines fly their planes into Canadian airports. So we must have assurances that the pilots of those planes are qualified. You seem to be saying that there is no control over the professional qualifications of those pilots.

[English]

**Capt Andy Wilson:** Are you speaking of the licensing of the pilots?

[Translation]

**Mr. Robert Carrier:** You are concerned about the qualifications of non-Canadian pilots, but does that mean that the situation right now is potentially dangerous or raises questions?

[English]

**Capt Andy Wilson:** I don't think Captain Wilson was speaking to a concern about the qualifications or skill of pilots from another country. His concern, as I understand it, and our concern is that when airlines are operating on a minimum financial margin, they don't devote the financial resources to ensuring proper safety. That's the issue. We've heard from a senior person in the transport ministry that at Jetsgo their chief pilot, who was charged with safety, was also flying a full-time schedule as a pilot. They've passed all the rules but they don't have the resources to actually implement them.

That's the concern with respect to thin profit margins. Safety costs money. Everybody will pay lip service to safety, but the bottom line is that safety costs money, and if you don't have any money, the margins aren't eliminated, they are thinned; they are reduced. That is the concern.

• (1635)

**Capt Kent Wilson:** And the other concern is, with this kind of wild west landscape of the aviation industry, the Canadian government does not have the resources to even check on it. All these little outfits operating on a short-term, profit-driven basis come into the country and make money, and you may not have any idea whatsoever of the qualifications they have been given. That's the danger of this open "come on in and do it" type of approach. That's our concern.

[Translation]

**Ms. Caroline St-Hilaire:** You are aware that Air Canada's record with respect to providing service in French is not a very good one. Mr. Goneau is not here, but perhaps you can answer my question.

Year over year, the number of complaints that you receive is increasing. How can we ensure that there are not more problems with the other airlines, when even a Canadian airline finds it difficult to follow the rules? What is your view on this?

[English]

**Capt Kent Wilson:** Is the question on the use of the French language in the industry?

[Translation]

**Ms. Caroline St-Hilaire:** In the industry, yes, but especially regarding services to customers and employees. The stories that we hear about what goes on makes us think that things are not always easy.

I do not mean to embarrass you.

[English]

**Capt David Coles (External Affairs Committee, Air Canada Pilots Association):** We fully support there being bilingual cabin attendants and bilingual sales agents; everything should be done bilingually. But we think what Air Canada is required to do should be part of a level playing field across the country. Every airline that operates within Canada should offer those services.

**Capt Kent Wilson:** In other words, it's not a level playing field. If Air Canada is under the legislation, they all should be. We support that.

**Mrs. Bev Desjarlais:** Has your association looked into whether or not, if there were a sort of open skies policy and a sort of whole, open process within the industry, it would open up transportation services in general to a NAFTA-type agreement and whether or not it would be acceptable then for you to have scope clauses in your contract here but not necessarily be able to enforce them elsewhere? That is, if Air Canada moved an operation over, you wouldn't be able to enforce them. I'm just curious from that side.

There are the language laws as well. If we were to put in place bilingual requirements for all airlines, would we be able to impose those on carriers that were coming from other countries and flying within Canada?

The other question is on whether or not you have any incidents or specific regulations that say Ryanair would be skirting, outside their own country.... I know you've indicated they are doing this. Now, are

there specific regulations you know they're getting away from, ones that apply in Ireland but that they're not putting in place because they're located elsewhere?

**Captain Andy Wilson:** As to the second question, Ryanair is not a member of the Associations of Star Alliance Pilots. Our information is anecdotal only on that subject.

As to the first question, whether we could get the United States to agree to reciprocal labour laws, that's probably a better question for the ILO. I know they've been involved in an uphill battle and have had little success. I suspect we would have the same experience.

**Mrs. Bev Desjarlais:** Thank you.

**The Chair:** Mr. Karygiannis.

• (1640)

**Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.):** I have a couple of questions; we're running short of time.

I want to thank you for coming.

You mentioned something about safety and flags of convenience, and you gave some examples about Albania. Can you elaborate a little bit on that, please?

**Capt Kent Wilson:** What Andy, my colleague, just said was that we don't have any direct evidence in this. I described the process of our international conventions, of which a great part is hearing reports from the other airlines on the situations they see in Europe. So firstly, we do not have any direct evidence of any of this. It is hearsay, I suppose; we're hearing reports that Ryanair is establishing registrations of their fleet in other countries in the EU and are using those rules because the rules are not unified. There may be an attempt to unify the rules within the European Union, but they have not done so yet, so they will use the more lax local rules to more or less whipsaw others that may have more stringent rules in the home country.

**The Chair:** With that, we thank you very much. We thank you for returning today, particularly.

This meeting is now going to adjourn, notwithstanding the fact that we were going to go later today. There's a vote in about ten minutes and there will be a further vote at a quarter to six.

We now stand adjourned.







**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliamentary Internet Parlementaire at the following address:  
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**