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Chair: Mr. Peter Schiefke



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• (1105)

[*English*]

The Chair (Mr. Peter Schiefke (Vaudreuil—Soulanges, Lib.)): I call this meeting to order.

Welcome to meeting number 114 of the House of Commons Standing Committee on Transport, Infrastructure and Communities. Pursuant to Standing Order 108(2) and the motion adopted by the committee on Tuesday, April 16, 2024, the committee is resuming its study on the state of airline competition in Canada.

Before we begin, I'd like to remind all members and other meeting participants in the room of the following important preventative measures.

To prevent disruptive and potentially harmful audio feedback incidents that can cause injuries, all in-person participants are reminded to keep their earpieces away from microphones at all times. As indicated in the communiqué from the Speaker of the House to all members on Monday, April 29, the following measures have been taken to help prevent audio feedback incidents. All earpieces have been replaced by a model that greatly reduces the probability of audio feedback. The new earpieces are black in colour, whereas the former earpieces were grey. Please use only an approved, black earpiece. By default, all unused earpieces will be unplugged at the start of the meeting. When you're not using your earpiece, please place it face down in the middle of the sticker for this purpose that you will find on the table as indicated. Please consult the cards on the table for guidelines to prevent audio feedback incidents. The room layout has been adjusted to increase the distance between microphones and reduce the chance of feedback from an ambient earpiece.

These measures are in place so that we can conduct our business without interruption and to protect the health and safety of all participants, including, of course, our interpreters. Thank you all for your co-operation.

Today's meeting is taking place in a hybrid format. In accordance with the committee's routine motion concerning connection tests for witnesses, I'd like to inform the committee that all witnesses have completed the required connection tests in advance of the meeting.

Colleagues, appearing before us today for the first hour, we have, from the Competition Bureau of Canada, Ms. Melissa Fisher, deputy commissioner, mergers directorate; and Bradley Callaghan, associate deputy commissioner, policy, planning and advocacy directorate. Welcome to you both.

We'll begin with opening remarks, and for that I will turn the floor over to you. You have five minutes, please.

Ms. Melissa Fisher (Deputy Commissioner, Mergers Directorate, Competition Bureau Canada): Good morning, Mr. Chair and members of the committee. Thank you very much for the invitation to appear before you today. My name is Melissa Fisher. I'm the deputy commissioner of the Competition Bureau's mergers directorate. Joining me today is my colleague Brad Callaghan, who is the associate deputy commissioner of the policy, planning and advocacy directorate.

[*Translation*]

The bureau is an independent law enforcement agency that protects and promotes competition for the benefit of Canadian consumers and businesses. We administer and enforce Canada's Competition Act, a law of general application that applies to every sector of the economy. We investigate and address abuses of market power, anti-competitive mergers, price fixing and deceptive marketing practices. The bureau also advocates for pro-competitive government rules and regulations.

It's important to recognize that we are enforcers, not adjudicators. The Competition Act requires us to meet several thresholds and standards, such as proving that there has been a significant harm to competition.

[*English*]

I'll also note that in the case of airline mergers there is a public interest review process that can be triggered by the Minister of Transport. When that happens, our statutory role becomes one of adviser, rather than enforcer. Our role is to identify any competition concerns relating to the merger to the Minister of Transport by way of a public report, and the minister makes the final decision on whether to recommend approval of the proposed transaction.

We've done this in three transactions in recent years—first, the First Air and Canadian North transaction in 2019, then the proposed merger between Air Canada and Air Transat in 2020, and most recently the WestJet-Sunwing merger. We believe it's important to correct the record in light of prior testimony that you have heard. The bureau did not approve these mergers. In fact, our public reports outlined the serious competition concerns that each of them raised.

We also participated in the last major review of the Canada Transportation Act, which was carried out in 2015. Our submission made a number of recommendations to government that we believe would result in lower prices, higher-quality services, and greater innovation in the transportation industry.

In light of recent events that have raised questions about the state of competition in the airline sector, the bureau has been considering the value of a more fulsome study, separate from enforcement matters that review specific transactions or behaviour. With that in mind, we have initiated the process to begin a market study of the industry. This will be our first such study under our new powers, which were granted in December 2023 through Bill C-56. This follows our most recent study of the retail grocery sector.

We intend to study the state of competition in the airline industry and how governments across Canada can improve competition for the benefit of domestic air passengers, as well as the workers and entrepreneurs who enable these services. We will be providing more details on this market study of the airline industry in the coming days when we launch a consultation on its terms of reference.

• (1110)

[*Translation*]

Before fielding your questions, I would note that the law requires the bureau to conduct investigations in private and keep the information we have confidential. This obligation may prevent us from discussing some past or current investigations.

[*English*]

I would like to thank the committee for the opportunity to appear today. We look forward to your questions.

The Chair: Thank you very much, Ms. Fisher.

We'll begin our line of questioning today with Mr. Williams.

Mr. Williams, the floor is yours. You have six minutes, sir.

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you, Mr. Chair, and thank you to the Competition Bureau for being here today as part of this very important study.

This study was kicked off because we lost an airline competitor, Lynx Air, in Canada.

We have done some pretty in-depth study on the state of the industry, and I'm glad to hear that you are going to be conducting your own study into this industry. You did mention three airline mergers approved under this government—First Air and Canadian North, Air Canada and Air Transat, and WestJet and Sunwing. In every case, you found there would be a “substantial lessening of competition” with those mergers, and in every case, the government approved the mergers over the objections of the bureau.

If our airline industry is always one merger away from a substantially uncompetitive environment, that should be setting off alarm bells at the Department of Transport. When we questioned the department on Tuesday, they seemed to think everything was fine.

What do we need to do to ensure that we listen more to what the Competition Bureau is doing and to ensure that we have more competition in the airline industry?

Ms. Melissa Fisher: I'll start off on the mergers front. Merger reviews are specific to the transaction that's before us; they're not a broader investigation into the industry. They're particular to the overlap between the two parties that are proposing to merge.

As I mentioned in my opening, the way we proceed on a merger review where the Minister of Transport has commenced a public interest review is different; our role changes from one of enforcer to one of adviser. In that sense, our role is limited to providing the Minister of Transport with our views on the competition issues, regardless of the scope of the transaction.

This is a challenge that we have now, or at least a challenge for the bureau. The way the public interest process works, regardless of whether the core competitive issues relate to transportation or not, we're making use of the same process. Recently, we provided a report to the minister with respect to Bunge's acquisition of Viterra. These are two very large global and vertically integrated agricultural businesses—

Mr. Ryan Williams: I'm so sorry, but I only have so much time.

Going back to the issue of the mergers, the Air Canada and Air Transat merger was approved, and then during COVID it was decided it was not a good time to do that.

We have a big competitor in Canada called Porter Airlines; they haven't come to this committee. We did have Flair Airlines come, and they raised some pretty substantial issues and concerns relative to anti-competitive behaviour that is ongoing.

Has the bureau heard any of these concerns raised by the government or by Flair? I know you can't comment on an ongoing investigation, but are there investigations happening in terms of anti-competitive behaviour in the industry right now?

• (1115)

Mr. Bradley Callaghan (Associate Deputy Commissioner, Policy, Planning and Advocacy Directorate, Competition Bureau Canada): Thank you for the question, Mr. Chair.

Obviously, as you said, we cannot comment on active investigations, but we certainly have investigated allegations.

You mentioned Flair Airlines, and we're aware of their testimony from the other day. We looked at the matter of allegations regarding predatory pricing, and the bureau did a significant in-depth review in this area. The matter was discontinued in 2023, but I can assure you that it was looked at very seriously.

Mr. Ryan Williams: Are there ongoing investigations right now in terms of anti-competitiveness allegations in the airline industry, whether by Flair or anyone at all?

Mr. Bradley Callaghan: That is not something we would be able to confirm to the committee, owing to the confidential nature of our work. There are some instances where we would let the public know so that we can gather information that is important, but there's nothing that we can identify for the committee at this time.

Mr. Ryan Williams: From testimony the other day, I focused on gate allocations as being something that might be an anti-competitive process or entity in terms of looking at how different airlines compete. We had some smaller airports, like Abbotsford, talk about what they do. We looked at other, big airports. When the bureau completes its study, is it also going to be looking at real estate, gate allocation, and how competitors compete on the ground, as well as in the air?

Mr. Bradley Callaghan: We really look forward to providing a little bit more detail very shortly in terms of the scope of that study and the terms of reference. When we get through our current phase, which involves consultation with the minister of ISED, we plan to publish our terms of reference, which should explain in a little bit more detail what we would plan to study.

For now, what I would say is that we're looking at the state of competition in these markets in Canada, and it will be obvious from some of the past work we have done that barriers to entry, for example, are an important part of competition.

Mr. Ryan Williams: Part of the powers that were given by Bill C-56 were also to have the minister of ISED—because you are still a part of ISED—direct studies. Has the minister asked at all for reviews or studies on the state of airline competition in Canada, yes or no?

The Chair: Give a 10-second response, please.

Mr. Bradley Callaghan: This study has been proposed by the Competition Bureau. I want to be mindful of that process and the consultation that is currently under way with our minister. This one was proposed by the Competition Bureau.

The Chair: Next, we will go to Mr. Iacono.

Mr. Iacono, the floor is yours. You have six minutes, sir.

[Translation]

Mr. Angelo Iacono (Alfred-Pellan, Lib.): Thank you, Mr. Chair.

I'd like to thank the witnesses for being with us this morning.

Ms. Fisher, can you explain to the committee what factors are considered when a company wants to offer its services in the air sector?

[English]

Ms. Melissa Fisher: If you don't mind, I'll respond in English. It's a bit technical.

In each of those three merger reviews that I mentioned in the opening, we looked at barriers to entry. It's an important part of the analysis that we do. However, on the enforcement front, we're looking specifically at barriers that relate to the actual overlaps between

the networks of the merging parties. It's a very specific investigation.

Mr. Angelo Iacono: We have noticed that the industry is subject to rules specifically on drip pricing. Does the Competition Bureau have any additional regulations for airlines, and can you explain what they are?

Mr. Bradley Callaghan: Rules regarding drip pricing are not specific to airlines. This is consistent with the Competition Act in general, although there is a bit of a different approach to mergers for the transport sector. Our rules for drip pricing are of general application. They apply to essentially all companies in the economy. These rules really go to the heart of making sure that consumers understand the products that are being offered to them and making sure that they're not misled. Drip pricing is really about making sure that consumers are being told the full amount of the price they're going to pay for the product, instead of being shown an initial price and then having additional fees added on in the rest of the purchasing process to the point that the final price is something that would have been unattainable compared to what was first advertised.

• (1120)

Mr. Angelo Iacono: Thank you.

At what point do you step in to determine whether there is adequate competition in the air sector, and what does that process look like?

Ms. Melissa Fisher: I guess there are sort of two streams to answering that question. To the extent that there is either a merger or conduct that is potentially contrary to the Competition Act, we can commence an investigation, so that's how we would look at it from the enforcement side.

Mr. Bradley Callaghan: The other part of our mandate is really about promoting competition, and that is where our market study powers fall. The purpose of doing market studies is really to get a better sense about how competition is working from a holistic perspective as compared to looking at specific conduct that might be alleged or at a specific merger that might be proposed. The outcomes of our market studies tend to be more aimed at governments, and they often include recommendations about how we can try to improve competition in Canada.

Mr. Angelo Iacono: Have you ever received any requests from any American airline company? We heard the other day from WestJet that American airlines are not interested in coming to set up shop in Canada because of X, Y and Z. Have you ever received any request on behalf of any American company that wants to come and set up shop in Canada?

Ms. Melissa Fisher: In the course of a merger investigation, one of the things we look for is potential entrants. In doing our reviews, then, we will talk to anyone who might be identified as a potential entrant.

Mr. Angelo Iacono: Then you can't let us know if you've ever received any request or interest from any American airline company.

Ms. Melissa Fisher: Unfortunately, no, we cannot.

Mr. Angelo Iacono: Okay.

[Translation]

How has the 49% foreign ownership cap affected competition and air services in Canada, particularly since Lynx Air closed down?

Mr. Bradley Callaghan: We haven't talked about competition recently. However, the most recent element of our analysis on the subject is in our 2015 report, which my colleague Ms. Fisher mentioned. In fact, it was our submission to the Canada Transportation Act review process.

[English]

There, we do look at foreign ownership restrictions as an aspect of a barrier to entry in the market. That is one of our fundamental recommendations that came out of our submission in that work, that it is a barrier to entry and ultimately something that we recommended liberalizing and negotiating with our trading partners to try to encourage more competition.

[Translation]

Mr. Angelo Iacono: In order to meet the current economic challenges, what strategy are Canada's major airlines adopting to remain competitive and viable?

Mr. Bradley Callaghan: We'll try to assess that when we do our market study.

[English]

What companies are doing generally, day to day, is something that we would be studying mostly in our enforcement mandate when we review the specific facts of a case. Our reviews of mergers, for example, are obviously based on evidence and facts, but they're looking at very specific conduct that is happening in the marketplace. I don't think we're in a position to make a general statement today in terms of a trend in the industry, but certainly it's something that we'll be thinking about if our proposed market study moves forward.

The Chair: Thank you.

[Translation]

Mr. Barsalou-Duval, you have the floor for six minutes.

Mr. Xavier Barsalou-Duval (Pierre-Boucher—Les Patriotes—Verchères, BQ): Thank you, Mr. Chair.

I'd like to thank the representatives of the Competition Bureau for being with us today.

Ms. Fisher and Mr. Callaghan, I see that you are already working on a study on the state of competition in the air sector. Had we invited you a little further down the line, we would have been able to get more information. I don't know if we'll have a chance to see you again.

The topic I wanted to come back to was raised by one of my colleagues earlier. There have been several proposals to sell or merge airlines in recent years. For example, Sunwing was acquired by WestJet and Air Canada wanted to acquire Air Transat. I think there was another case a few years ago. In both of those situations, the Competition Bureau raised serious concerns, particularly when it came to Air Canada and Air Transat. In fact, if I'm not mistaken,

even the European competition network said it wasn't a good idea, and yet the Government of Canada still approved the transactions.

What mechanisms could we put in place to ensure more oversight in terms of how the government proceeds when it makes a decision that hurts competition?

For example, could we introduce measures to help ensure greater transparency in the way the government makes its decision?

In terms of how you do your review, we have a document that's very clear, very explanatory. However, on the government side, it's harder to understand what decisions are based on.

• (1125)

[English]

Ms. Melissa Fisher: I think what you're describing is the current process, where the commissioner is providing his report to the Minister of Transport, who is also getting a report with respect to public interest issues as they relate to national transportation. The commissioner's role is limited in these kinds of circumstances to providing that report on the competition concerns. Then, to the extent that there are concerns, and the parties propose measures to address those concerns, again the commissioner is required to provide the minister with his advice as to the effectiveness of those proposed measures. In each of the mergers you referred to, we did provide the minister with our views of those measures, but that's the extent of our involvement in the process.

[Translation]

Mr. Xavier Barsalou-Duval: Okay. Thank you for that.

My next question is more specifically about access to boarding gates and time slots at airports. This issue has come up a number of times in our study so far. It happens in certain airports that have limited space.

Could the Competition Bureau step in in sticky situations? Let's suppose all the time slots and boarding gates were taken. Unfortunately, that would significantly undermine competition, a new competitor or a new business that may have trouble obtaining a time slot or access to a boarding gate.

If a legislative framework gave the bureau the power to free up certain time slots or provide access to certain boarding gates, do you think that would help competition?

Mr. Bradley Callaghan: Thank you very much for the question.

[English]

The first thing to say is that the access at airports and gates would be a part of our process to understand how competition is being affected in our cases already. In the cases that Ms. Fisher is describing, it's about understanding what kinds of barriers to entry would be part of our assessment of the process, and it would feed into recommendations that would be made to the Minister of Transport.

There is a broader set of conduct the Competition Bureau is responsible for beyond mergers. For example, if there were allegations about conduct between airlines and an airport that may be anti-competitive—in other words, a strategic behaviour to try to exclude competitors in that space or try to prevent competition—we would obviously look at those kinds of allegations and determine whether it might raise issues under other parts of our act, such as abuse of dominance.

[*Translation*]

Mr. Xavier Barsalou-Duval: I'd like to address the issue of your investigative powers in the event of allegations or when you suspect abuse of a dominant position or anti-competitive practices.

In my work as the Bloc Québécois transport critic, I've had the opportunity to speak on a very regular basis with people from the regions, regional airports and small airlines.

They almost all agreed on one thing. They told me they would often experience situations where, trying to start up a new flight service or a new route to a given destination, a big player would come in, slash the fares, and then jack them back up a few months after they had withdrawn.

They also complained that if they filed a complaint with the Competition Bureau, they unfortunately got the impression that nothing was done because it took years for a report to come out. They also told me that they had to gather up so many documents that they got discouraged. In addition, they don't have the financial means to compete unfairly for months, if not years.

Are there any solutions that would more effectively resolve the issue I've just brought up?

• (1130)

The Chair: Unfortunately, Mr. Barsalou-Duval, you don't have enough time left for the witness to respond, but you will have a chance to come back to this in the next round of questions.

[*English*]

Mr. Taylor Bachrach (Skeena—Bulkley Valley, NDP): I'm happy to give 15 seconds of my time.

The Chair: It was a very thorough question.

Mr. Taylor Bachrach: He'll give it back to me later, so it's all good.

The Chair: Okay.

Mr. Callaghan, please answer the question, and try to do it in 20 to 30 seconds, if you can.

Mr. Bradley Callaghan: Okay.

Perhaps what I can say is that one encouraging thing is the modernization of the current Competition Act. This is something the Competition Bureau has been quite public about in terms of asking for a change, and there has been very meaningful change over the last two to three years, a series of modernizations, including our abuse of dominance framework. We're certainly encouraged that with some of these modernizations and those that are still proposed and before Parliament, the Competition Bureau will be able to move as quickly as possible. We always aim to do that.

I'm not sure of the exact case you may be referring to, but obviously, we always take a good, hard look at our own work as well and try to move as quickly as we can.

The Chair: Thank you very much, Mr. Callaghan.

Mr. Bachrach, the floor is yours, sir. You have six minutes.

Mr. Taylor Bachrach: Thank you, Mr. Chair.

Thank you to our witnesses for being here and contributing to this study.

Maybe I misheard, but I think that earlier in your testimony you mentioned a previous market study you had done on the air sector. Is this upcoming study—the comprehensive one—the first market-wide study you've done, or is there a previous one?

Mr. Bradley Callaghan: To clarify, the earlier study I mentioned was more of a submission that we did to the legislative review of the Canada Transportation Act. What we are envisioning, in terms of a new market study, would aim to be a little more in-depth and also specific to the airline sector. The Canada Transportation Act review covered rail, airlines and marine as well, so it's a little broader and different from a market study.

Mr. Taylor Bachrach: Specific to the legislative review and your recommendations around the air sector, how many of those recommendations were implemented by the government?

Mr. Bradley Callaghan: I believe one of the recommendations was about foreign ownership restrictions and putting into force a proposal that was already either in regulation or legislation about going up to 49% in terms of foreign ownership restrictions. My understanding is that this has since been done. We obviously keep in mind other recommendations that we make.

I should say that we are mindful of the broader public interest considerations that the minister has. Our focus really is central to competition. We have a singular lens, which is liberating, in the sense that we are strong advocates for it, and we think there should be more priority put on this factor. Certainly, the Minister of Transport has a broader set of factors that he's considering.

Mr. Taylor Bachrach: We heard in previous testimony about different empirical approaches for measuring competitiveness in different sectors. Is there a methodology that the competition commissioner uses when assessing competition in the air sector or in any other sector?

As a follow-up to that, are there benchmarks or targets? We talk about more competition being better because it creates more affordable goods and services for consumers, but we never really talk about where we're trying to get to. Is there any defined sense of what we're trying to achieve?

• (1135)

Ms. Melissa Fisher: I'll start on the merger side, on the enforcement side. There, we're looking at the potential anti-competitive effects of a particular transaction. Generally, you're looking at whether there will be an increase in market share that exceeds 30% or 35%. That's what is set out in our guidelines, but that's specific to each market. We'd be looking at that with respect to each OD pair and looking at the market share and the concentration on each route, not a broader industry view of what competition should look like.

Mr. Taylor Bachrach: I'm particularly interested in smaller regional markets representing a rural part of Canada. We see a real lack of competition, and we see high prices as a result.

Will your upcoming market study include a focus on regional routes, regional markets and the impact on rural Canada?

Mr. Bradley Callaghan: It's certainly something we are mindful of. We've taken note of the particular features of markets, especially in northern Canada, because it's been a part of our past reviews. Particular features there include things like weather or particular equipment that may be needed to serve those areas. Transportation is also important for people to connect with broader centres and essential facilities. We're certainly mindful of it.

If I can make a plug for one other thing in terms of how we assess competition, there is a more holistic study that we did on the intensity of competition in Canada over the last 20 years. These were not competition markets but more industries using NAICS codes. We looked at aspects like the amount of concentration in some of these sectors, as well as what we call rank stability—who's in first place in the market, whether those ranks are moving around, and entry and exit—to try to get a better sense of how competition might be working.

Mr. Taylor Bachrach: I'd like to fit in one more question. Thinking about rural Canada and rural markets—and we see this in telecommunications, as well—the government's focus in terms of delivering affordability is always competition, but in really small markets, is it reasonable to expect multiple carriers to provide that competition? In rural areas, we usually see just one provider of a service, and that monopoly creates really unaffordable situations.

Are there limits to what the focus on competition can deliver for consumers in certain markets?

Mr. Bradley Callaghan: As a starting point, it's certainly where we hope the market can deliver its benefits. We trust that the market is going to bring all of those things that the member mentioned, namely, low prices and service. However, we recognize there are times when markets can fail. We're not an organization that is against regulation. What we try to advocate for is to make sure that where regulation might be necessary, we keep as much room as possible for competition to work.

The Chair: Thank you very much, Mr. Bachrach.

Thank you, Mr. Callaghan.

Next, we have Mr. Williams, for five minutes.

Mr. Ryan Williams: Thank you, Mr. Chair.

To either Ms. Fisher or Mr. Callaghan, has a merger ever been blocked in Canada, yes or no?

Ms. Melissa Fisher: No.

Mr. Ryan Williams: In all the years, we've never had a merger blocked.

I know we don't just look at airlines. We look across all industries, including telecommunications and banking. We had Ms. Jeanne Pratt at the industry committee not too long ago, who did state that after the merger of Rogers and Shaw there was no evidence seen that prices were going down.

We had WestJet and Sunwing merge. Do we have any evidence, so far, that prices are going down, or that we're seeing any benefits to that merger?

Ms. Melissa Fisher: It wouldn't be in our normal course to track the outcomes of something like that. It could be done in a.... Sometimes we do what we call *ex post* studies of remedies, looking at whether the measures that were taken to ensure that the market remained competitive were effective.

Mr. Ryan Williams: The bureau does not track after-effects. Is that something you'll be studying and looking at in the upcoming study?

Mr. Bradley Callaghan: Unfortunately, because of where we are in the process at the moment, until we complete this phase of consulting with the minister, I can't comment on whether that's something we would specifically be looking at.

• (1140)

Mr. Ryan Williams: I guess what I'll look for, then, is generality. We have had recent mergers, namely, HSBC-RBC and Rogers-Shaw.

How do mergers, in general, when you've done your studies, impact consumer prices and services?

Ms. Melissa Fisher: We have a very well-established process that we use when we identify competition concerns to ensure that we resolve those concerns. Typically, we're able to negotiate a resolution with the parties that we feel addresses the concerns through structural means, such as by divesting assets or parts of a business. That becomes an agreement that's registered with the tribunal, and it is quite effective.

Mr. Ryan Williams: You recommended a divestiture, or you would have, with Rogers-Shaw, and it ended up going to the tribunal. When you made a recommendation for Rogers-Shaw, it went to the tribunal. The tribunal then overturned your decision.

Can you comment on the effectiveness of the tribunal? Are there other nations across the world that don't have a tribunal and that give more power to the competition bureau?

Ms. Melissa Fisher: To clarify, the commissioner's role in that instance is to bring an application to the tribunal. He is not an adjudicator. We filed an application seeking to block that transaction, but, at the end of the day, it's the Competition Tribunal's decision.

Globally, there are different models in terms of how competition agencies are run. There are some competition agencies that are both the investigator and the decision-maker.

Mr. Ryan Williams: There have been some amendments to the Competition Act. The Conservative Party does support the NDP amendments that give a bit more power in terms of looking at merger remedies, bringing that 35% down to 30%, for instance.

Are these amendments really going to help the Competition Bureau look at mergers with a better lens to be able to block a merger for once in Canada?

Ms. Melissa Fisher: Those are significant amendments that have been proposed.

With respect to competition in the airline sector, there really won't be much of an effect because of the process that is currently in place under the Canada Transportation Act where we're feeding into the minister's decision.

Mr. Ryan Williams: That's right.

It is unfortunate that the minister did not feel that this was an important enough topic to be in front of committee on. We're really disappointed with that. I know a lot of members have commented on that.

In terms of going back to the industry as a whole in Canada, my colleague did mention rural Canada. There are some topics such as looking at open skies or other ways, like the 49% threshold, to maybe have one shot where a foreign investment could be put up to 49% instead of the 25% threshold.

Are there other initiatives that you've seen across the globe that we should be studying or something that you feel will add to competitiveness in the airline industry in Canada?

Mr. Bradley Callaghan: I know there has been work done by agencies similar to ours in other countries. Australia and the U.K. come to mind. I know that Australia is often thought of as something worthwhile to compare ourselves to because of distances between major centres and because of our landmass.

There may be particular features in those examples where the agency might have more of a hands-on regulatory function. For example, they might be monitoring prices on more of a day-to-day basis. I believe that, in the case of both Australia and the U.K., they responded to consultations by their transport departments in terms of how they can improve competition. One aspect that I think was central to it was about access to slots at the airports and recommendations on how they can improve those for competition.

The Chair: Thank you, Mr. Callaghan. I appreciate that.

Next we have Mr. Rogers.

Mr. Rogers, the floor is yours. You have five minutes, sir.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Thank you, Mr. Chair.

Welcome to our guests today.

We all pay close attention to problems in the air industry, particularly in rural Canada. When you fly in and out of Atlantic Canada, as I do—and Mr. Bachrach flies into rural areas in his riding as well—you realize that there are a lot of problems that we need to address. Whether it's accessibility or the cost of airline tickets and so on, it's really challenging.

In Atlantic Canada, for example, if you're flying into St. John's, it's much better in terms of accessibility, but if you're flying into Gander, Deer Lake or some of the smaller airports, it's really difficult getting a flight, first of all. Second, the cost is extremely high compared to some other flights that you would do.

Looking at these airlines, you mentioned the merger earlier. Wasn't there an issue with Air Canada and Air Transat where there was a proposed merger that got blocked?

• (1145)

Ms. Melissa Fisher: Yes, there was. They proposed to merge. The Minister of Transport commenced a public interest review. The commissioner provided a report that identified significant competition concerns on 83 routes to either sun destinations or Europe. Subsequent to that, the parties proposed certain measures to address those competition concerns. In response, the commissioner provided a letter to the minister, which is public, indicating that the proposed measures were insufficient, in his view, to address the competition concerns.

Ultimately, the European competition agency also had to look at that transaction because of the transatlantic flights. My understanding is that Air Canada was not prepared to accept the remedies that were being required by the European Commission. That was one of the reasons they stated for abandoning the transaction.

Mr. Churence Rogers: Thank you for clarifying that.

We've heard from the airline industry that they're subject to a specific set of rules. Would you be able to share with this committee what these rules are and how they apply to small, medium and larger airlines? Is it just a one-size-fits-all approach?

Ms. Melissa Fisher: I can start on the enforcement side.

Those rules are not something that we would look into unless they constituted a barrier to entry. There aren't any specific rules that are identified in our reports that would be different among carriers of different sizes.

Mr. Bradley Callaghan: To speak from the perspective of promoting competition, we tend to approach those kinds of issues in terms of whether they are having any effect on competition. It goes to the earlier point about recognizing that regulation is needed in some circumstances. How can we encourage as much competition as possible within it? We have a tool kit that we always recommend to regulators to consider whether regulations and rules are having an undue impact on competition. Is it favouring one supplier over others? Is it creating barriers to entry? Is it giving customers as much ability as possible to compare prices and what's being offered to them?

Mr. Churence Rogers: I think about the airlines that have failed: low-cost airlines, upstarts that have lasted for weeks or months, for short periods. When they fail, in the cases of some recent airlines, do they report to you as to why that happened? Do you reach out to them and ask what the issues were that prevented them from being successful in the airline industry in Canada?

Ms. Melissa Fisher: It's not something we would do in the normal course of an investigation, reaching out to them to ask them why they failed, but that kind of interaction with them is certainly something that could be part of a market study.

Mr. Churence Rogers: I just wonder whether the rules of the Competition Bureau and other rules that they have to follow have a significant impact on their success or failure.

Ms. Melissa Fisher: I don't think so. The enforcement part of the act is geared toward anti-competitive behaviour or anti-competitive mergers, so unless they fit into one of those buckets, we wouldn't be interfering with or investigating what they're doing.

The Chair: Thank you very much, Mr. Rogers.

Thank you, Ms. Fisher.

[*Translation*]

Mr. Barsalou-Duval, you have the floor for two and a half minutes.

Mr. Xavier Barsalou-Duval: Thank you, Mr. Chair.

Mr. Callaghan, I'm going to circle back to the question I asked you earlier.

A few years ago, when I dug into the regulations and the amendments to the Competition Act, I discovered that the Competition Bureau had once had the power to issue orders as a preventive measure to stop anti-competitive practices and ensure that it did not have to complete its investigation and then go before the Competition Tribunal. It could therefore prevent major harm and make a big difference.

Is that on your list of recommendations to modernize the Competition Act?

• (1150)

[*English*]

Mr. Bradley Callaghan: We did not recommend an independent power to become an adjudicator, so we are still fundamentally an enforcer of the law. We take the law as it's given to us, and ISED is the policy lead in terms of what the Competition Act looks like. We go to the Competition Tribunal as an adjudicator, or other courts if appropriate. Our institutional framework has not changed in terms of being the enforcer of the Competition Act, but getting resolutions to cases can happen if they are consensual. In other words, if we raise concerns to the parties about violations of the Competition Act or concerns that we have with a transaction, we can obviously come to a resolution, and we try to register those resolutions with the Competition Tribunal so that it has the force of law.

[*Translation*]

Mr. Xavier Barsalou-Duval: Thank you.

There's something else I'd like you to comment on. Earlier, you said that you had already submitted a list of amendments to be made to the Competition Act to enhance the impact of action taken by the Competition Tribunal or the Competition Bureau.

Would it be possible to get us that list, with whatever applies to air travel? It could be very instructive for our study.

I will be generous and return the favour by yielding the rest of my time to my colleague.

The Chair: Thank you very much, Mr. Barsalou-Duval.

[*English*]

Mr. Bachrach, the floor is yours, sir. You have two and a half minutes.

Mr. Taylor Bachrach: Thank you, Mr. Chair.

Thanks to my colleague. Is this anti-competitive behaviour? I'm not sure. We'll get the commission to look into it.

I want to ask about the abuse of dominance framework. I was also reflecting on the comments we heard from Flair about the actions of the bigger airlines. As I mentioned before, in smaller markets I think we see some similar behaviour. At least we see price wars in communities that have competition, and in other communities we don't see that kind of behaviour.

Can you talk a bit about the abuse of dominance framework, how it's defined and how it can be used to avoid that kind of behaviour?

Mr. Bradley Callaghan: Sure, I can take a crack at it.

Essentially, what we are trying to protect against is dominant firms being able to exercise more market power because of specific conduct. This has undergone a recent change from the recent modernization of the Competition Act. In a nutshell, the old framework was a requirement to prove three things: first, market power, in other words, that the firm was big; second, conduct, the practice of an anti-competitive act; and third, the effect on competition.

After the changes to the Competition Act, we can now seek a prohibition order to stop the conduct if we have the first aspect, that the firm is dominant, and then we have one of two things: either a practice that was intended to harm competition or a competitor, or an effect. We'd be able to have a broader set of remedies if we could prove all three, but that is now a change that I think opens things up a bit for a prohibition order.

Predatory pricing is a bit particular, because we're looking at low prices, and we're mindful to approach these cases carefully to make sure we are not taking away from customers' competition on the merits and the benefit of low prices. However, the theory in the case of predatory pricing is a concern that it's a short-term low pricing, below the costs of the dominant firm, with a long-term effect of raising prices above the competitive level once they've been able to exclude or discipline their competitor.

• (1155)

Mr. Taylor Bachrach: Thank you.

The Chair: Thank you very much, Mr. Callaghan and Mr. Bachrach.

Next, we have Mr. Strahl.

Mr. Strahl, the floor is yours. You have five minutes, sir.

Mr. Mark Strahl (Chilliwack—Hope, CPC): Thank you, Mr. Chair.

I'll just follow up on Mr. Bachrach's line of questioning. Has the Competition Bureau ever been asked to investigate or ever considered investigating the choices of airlines to remove themselves from a market? I guess it's about scheduling and route selection. There are concerns that when a dominant player leaves a market, obviously, competition is reduced.

You have the power to investigate mergers and make recommendations, but for companies that are already operating in the federally regulated space, do you actually have the ability to investigate their ongoing business decisions to determine whether or not they are anti-competitive? If a company leaves a market or chooses to focus on a specific region when they have been players in another market, thereby reducing competition, is that something within your purview to investigate?

Mr. Bradley Callaghan: Certainly we can investigate alleged conduct that may touch on those issues. This can happen in a variety of ways. It can come from complaints from the marketplace, but the Competition Bureau can also start investigations on its own, if we're aware of things that we may see in the news or the industry press. Certainly there is an ability to investigate those things. The outcome always depends on the evidence. We would be doing an in-depth review to try to understand what the conduct was, what happened, what the intention was of the players in play, and what the effects might be in the marketplace.

Mr. Mark Strahl: Without getting into the details, are there any active investigations of that nature currently before the Competition Bureau?

Mr. Bradley Callaghan: Mr. Chair, we cannot comment on that, just owing to the confidential nature of our work. It's a specific confidentiality provision that's written into our legislation that we apply.

Mr. Mark Strahl: Okay.

When you're evaluating competition and the impact of the actions of a company, either just in their operations or in terms of proposed mergers, are you constrained to considering only the Canadian market?

We've heard much testimony about Canadians using U.S. airports and U.S. airlines to fly similar routes, because of the cost. Are you able to examine competition, for instance, in the Fraser Valley or the Lower Mainland that would include driving across the border and flying from Bellingham or Seattle-Tacoma Airport? Do you ever consider that when doing your analysis about whether a merger or the actions of a company would impact competition?

Ms. Melissa Fisher: Yes, that was a relevant consideration in our two most recent reviews.

Just to remind you again, in a merger review we're looking at competition on specific OD pairs. In the Air Canada and the WestJet reviews, it was competition for vacation packages, not just the flight. In the context of those reviews, we looked at OD pairs and whether border airports might be substitutes for passengers. The evidence that we collected indicated that there would have to be a

large price differential before a passenger would incur the time and the added transportation costs to substitute a way to a border airport.

Mr. Mark Strahl: We heard evidence that up to seven million Canadians use the proximity to the border to travel out of U.S. airports on U.S. carriers.

This will be my final question. In terms of mergers, there's often a remedy proposed by the companies when they are proposing the merger to offset concerns about a lack of competition. What enforcement mechanisms do you actually have, or do those go into the political realm? What happens if a merger is approved by the minister and then subsequently the companies that have merged, or the new entity, go back on what they promised they would do to maintain competition?

• (1200)

Ms. Melissa Fisher: I'm not completely familiar with it, but there is a process in the CTA to seek redress when there's concern that the terms or conditions have been breached. I believe it involves going to court.

Mr. Mark Strahl: Okay.

Thank you.

The Chair: Thank you very much, Ms. Fisher. Thank you, Mr. Strahl.

Next, we have Mr. Badawey.

Mr. Badawey, the floor is yours. You have five minutes, sir.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Mr. Chairman.

I'll start off with the first question.

What are the bureau's thoughts on the claims that regulations such as APPR and the additional fees have an impact on competition or within competition?

Mr. Bradley Callaghan: There's no specific perspective that we take in terms of fees. Our view is really about how regulation may impact competition. I think there was some commentary in our 2015 submission on the Canada Transportation Act on the fees that go to those regulations.

Generally speaking, obviously, as I said earlier, our general perspective is that regulation is used only when necessary to address market failures. Certainly we recognize that there are times when it is necessary. Our goal as advocates for competition is to try to make sure that competition can work to the fullest extent possible while regulators can achieve their objectives. Typically we're not experts in terms of the other public policy interests that a regulator might be trying to address, whether it's safety or anything else.

What we try to do is work with regulators to try to understand that competing public policy objective and make recommendations on how competition can work to the fullest extent possible at the same time.

Mr. Vance Badawey: Thank you.

We are going to be embarking on a study focusing on northern communities, as well as those that are more remote. Of course, for them, the level of service is a lot less than for those that are more populated. Given Canada's unique geography and low population density, travel demand at regional airports is scarce.

Does the bureau have any thoughts on how to viably stimulate more competition in Canada and ensure connectivity for regional and more remote communities?

Mr. Bradley Callaghan: That is not something that we have studied as an issue in and of itself. As I said earlier, we have looked at some of the particular features of air travel in those communities as it relates to competition in specific cases, and there have been some, with regard to travel to Canada's north. They do have particular challenges and barriers. We're alive to them from past work, but we have not studied as an independent issue what could be done to improve competition in those areas.

Mr. Vance Badawey: Okay.

The bureau has previously advocated for loosening current rules around foreign ownership of airlines to allow for 100% ownership to compete against Canadian carriers. Are there any international examples of this succeeding that you can point to? Does the bureau see this increased domestic competition as sustainable in the long term? Another part of that is, has the bureau considered any potential economic implications should a national carrier fail as a result?

Mr. Bradley Callaghan: On the last part of the member's question, I don't think that is something we have studied in detail.

Our submission to the CTA review in 2015 does look at a few comparators internationally. This can be checked, but New Zealand comes to mind as one where I believe there was more openness to foreign ownership.

Our perspective is that competition is central to driving lower prices, more choice and productivity in our economy. It comes from the perspective of having competition as the central part of our mandate. As I said earlier, this is weighed against other public policy factors by ministers, such as the Minister of Transport. We think it's something very important, and we know we're not alone. This is something that has been mentioned as early as in the 2008 "Compete to Win" report by Red Wilson and that panel, that Canada has not placed sufficient importance on competition in terms of competing public policy objectives. That's why we're a strong advocate to try to improve its importance.

• (1205)

Mr. Vance Badawey: To get a bit more granular based on those comments, does the bureau have any recommendations with respect to reciprocal cabotage? This is to stimulate competition, obviously. Is the bureau aware of any foreign airlines that wish to operate in Canada? Would it foresee foreign airlines operating between regional Canadian destinations? What would be the impact on Cana-

dian carriers and employment of Canadians if that were to occur? What impact could there be on regional connectivity?

Ms. Melissa Fisher: I'll start in terms of our specific investigations.

Unfortunately, to the extent that a U.S. carrier has expressed to us their interest or desire to enter, that is not something we can share due to our confidentiality obligations.

The Chair: Make it just a quick 10-second follow-up, Mr. Callaghan.

Mr. Bradley Callaghan: There's more reading that can be done in our submission to the CTA, but we did support cabotage and more openness to a foreign carrier being able to fly on Canada-to-Canada routes. I'm not an airline expert, so I want to make sure we're on the same page. Yes, we did explain in that report that we were supportive of that.

The Chair: Thank you very much, Mr. Badawey.

That concludes the first half of our meeting today.

I'd like to thank our witnesses for appearing today.

We will suspend for five minutes in order to allow the audiovisual team to set up for our subsequent witnesses.

This meeting is suspended.

• (1205)

(Pause)

• (1210)

The Chair: I call this meeting back to order.

Colleagues, appearing before us for the second half of today's meeting we have Dr. Barry Prentice, professor at the Transport Institute of the University of Manitoba, by video conference. Welcome to you.

From the Public Interest Advocacy Centre, we have Mr. John Lawford, executive director and general counsel, as well as Myka Kollmann, articling student. Welcome to you both.

We'll begin with opening remarks. For that, I'll turn it over to our two witnesses who are appearing in person.

The floor is yours. You have five minutes.

Mr. John Lawford (Executive Director and General Counsel, Public Interest Advocacy Centre): Thank you, Chair.

Chair and honourable members, my name is John Lawford. I'm the executive director and general counsel at the Public Interest Advocacy Centre. With me today is PIAC's articling student Myka Kollmann.

I will start by quoting a PIAC report on airline competition in Canada: "Today, in Canada, it is difficult to choose what is likely to be less inefficient: a regulated duopoly or an unregulated one." Just so you know, those words were written in 1989—*plus ça change*.

There was and is currently a problem with concentration in the Canadian market, but this market is now also segmented into regional route markets. WestJet claims to have returned to its roots as a low-cost carrier and has retreated to a hub in western Canada, while allowing Air Canada mostly free rein in eastern Canada. While this appears to leave room for regionally based competition, or even national or regional ultra-low-cost carrier entry in either the WestJet or the Air Canada zone of influence, we see that the ULCCs are failing.

The pandemic has upset all the airlines' apple carts. Only now are we seeing the staffing, routes, passenger demand and financing start to return to 2019 levels. However, it is the structural and regulatory elements of the Canadian market that determined the effects of such events as the pandemic and before, such as the 737 Max groundings in 2019.

The market structure remains one dominated by Air Canada as a national airline; WestJet, once again a large regional, although with Sunwing vacation routes now; a central Canada regional, Porter, with national aspirations; and one international vacation carrier, Air Transat, which is only here because the EU, not the minister, said it should not be sold to Air Canada. ULCCs are entering and exiting within two to three years despite planned nationwide operations. The latest three are failing, are refinancing, or have failed.

Why is that? Barriers to entry are too high in Canada. No support is given to entrants. The predictable defensive strategies available to major airlines, such as route-matching and predatory pricing, were not something that competition law, until now, could police effectively. All mergers have been approved by the Minister of Transport, leading to concentration. At a higher level, there is no home for airline competition regulation, no stated government air policy in general, and no statement of how such policy goals as small-market service and cost, consumer choice, pricing reductions, service quality and safety, etc. could be met by competition.

However, new tools are available to the sector. They include improvements to the Competition Act and studies on competition, including that announced today and those from other countries, in particular Australia.

Myka.

• (1215)

Ms. Myka Kollmann (Articling Student, Public Interest Advocacy Centre): In this policy vacuum, therefore, we propose six radical changes—three to help nascent competition and competitors, and three to frame the conversation about regulation and competition and provide some dim hope for a future competitive market.

First, the Government of Canada should support competitive entry with a lending bank of 10 government-owned aircraft of various sizes leased at cost, available only to competitors and upon such conditions as serving certain routes at certain frequencies and with exit barriers.

Second, airports should reserve time and gate slots for new entrants.

Third, there should be enforcement of abuse of dominance rules on route-matching and price-cutting, and price floors should be set for incumbents with entry conditions and exit conditions.

Fourth, the approval of airline merger reviews should be flipped. The transport minister can advise, but the Competition Bureau or the Competition Tribunal should decide.

Fifth, Transport Canada should develop specific air competition policy, not the present vague air marketplace framework, in consultation with the Competition Bureau.

Finally, the Competition Bureau should do a market study on airline travel within Canada. We are pleased that they have just announced that today.

Mr. John Lawford: Considering such radical thinking will hopefully help fix the sector and help us avoid seeing you again in 35 years to say the same things once again.

Thank you very much. We look forward to your questions.

The Chair: Thank you both for those opening remarks.

We'll now turn the floor over to Dr. Prentice for his opening remarks.

Dr. Prentice, the floor is yours. You have five minutes, sir.

Dr. Barry Prentice (Professor, Transport Institute, University of Manitoba, As an Individual): Thank you.

The structure-conduct-performance framework is a useful paradigm for considering the state of competition in the airline industry. Structure refers to the number of players, the similarity of product, and the cost of entry and exit.

Domestic competition in Canada is limited to four scheduled passenger airlines, excluding Arctic and remote communities. Air Canada and WestJet, which are full-service airlines, account for over 80% of the market. They operate airport hubs to serve domestic, transborder and international passenger services as well as cargo services. The two smaller airlines, Flair and Porter, operate point-to-point services with niche strategies. Flair positions itself as a discount carrier, while Porter offers non-price benefits and caters more to a business market.

For many consumers, air travel has become a commodity. All companies use the same planes, with minimal differences in non-price attributes of service. The geography of the market also matters. The narrow, linear shape of the Canadian market means that all competitors fly the same parallel routes across the country, leaving scant room for differentiation.

Entry and exit costs depend on the industry's ratio of fixed to variable costs. A high proportion of fixed costs favours industry concentration; however, some costs can be made semi-variable, such as leasing aircraft and subcontracting labour like baggage handling. The largest variable cost is fuel. Entry costs involve setting up a reservation system, labour contracts, renting airport space and maintenance operations. Industry exit is easier, but these are sunk costs.

Large airlines experience economies of scale and size. The more origin-destination pairs in their network, the bigger their customer base. Size also enables airlines to form hub-and-spoke networks. Larger aircraft, which are more profitable, can be deployed from hub locations where they benefit from the S-curve. The S-curve observation is that, as airlines increase flights at an airport, they receive a disproportionate share of passengers. Economies of size also apply to the cost of operations, such as hangars, maintenance and overhead expenses.

The conduct of firms is generally opaque because regulations exist to curb anti-competitive behaviour such as price-fixing, misrepresentation and abuse of a dominant position. In an oligopolistic market, however, tacit collusion is possible. The major players can react to each other's moves with an eye to sharing the market and maximizing their profits.

Until the 1980s, air conduct was subject to strict price and route regulation, with the goals of stability and consumer protection. Deregulation of the airlines was based on the theory of contestable markets. Essentially, this theory holds that the participants in a market with few rivals could conduct themselves in a competitive manner if the threat of new entrants was sufficient to cause them to focus on sales rather than profits.

The history of Canadian airlines since deregulation has supported the reliance on contestable market theory. The number of new entrants entering and exiting has kept the market competitive. For example, the big airlines set up discount subsidiaries to meet the challenge posed by new entrants by matching their fares and routes.

The performance of the airlines is measured by their profitability and efficiency. Profitability is easier to assess for publicly traded companies than efficiency. In general, investors have viewed the profitability of scheduled air carriers as less attractive than most

publicly traded companies. Nonetheless, the major airlines have been relatively stable, with mergers rather than bankruptcies being the predominant outcome.

Whether air service in Canada is as efficient as it could be is clouded by protectionism. Domestic competition is constrained by cabotage restrictions that prohibit foreign airlines from operating within the Canadian market. Also, foreign ownership controls restrict access to international investment capital that could lead to more efficient scale and fleet renewal.

Although ticket prices are rising, so are costs for labour, equipment and fuel that could impact competition. All airlines have experienced higher wage settlement demands as workers try to catch up with inflation. The worldwide demand for air pilots has caused wage increases well above the rate of inflation. The threatened strike by WestJet's aircraft maintenance fraternal organization is the latest example of this.

Rising interest rates add to the cost base of this capital-intensive industry. The low exchange rate value of the Canadian dollar also matters, because most aircraft and parts are imported. Oil prices are currently low, but fuel prices will rise with carbon taxes and the adoption of sustainable aviation fuels.

- (1220)

Finally, the losses incurred during the pandemic are unlikely to be extinguished already.

The impact of ticket prices on demand for air travel in Canada is also affected by fees and charges that are outside the domain of the airlines. The Canadian airports have raised fees to deal with debts that were incurred during the pandemic. The Government of Canada continues to extract rent payments from the airports and user fees for security that ultimately are all paid by the consumer.

The weak economy, and the possibility that it may dip into a recession, does not bode well for passenger demand. Air travel is more a luxury than a necessity for most leisure passengers. Business travel has also been cut by the pandemic experience and a shift to virtual meetings, although some revival may be occurring.

Since deregulation, airline competition in Canada has resulted in two large scheduled carriers and the entry and exit of a series of smaller carriers. The recent loss of a very small airline, Lynx, does not mean that further contraction is inevitable, but instability is the price of efficiency—

The Chair: Dr. Prentice, my apologies for cutting you off, but I am going to have to ask you to wrap up your opening remarks, if you could, please, sir.

Dr. Barry Prentice: Will do.

Applying the structure-conduct-performance lens to airline competition in Canada suggests that the status quo is providing reasonable outcomes for most consumers, notwithstanding service cuts in some smaller centres.

The ability of new entrants to challenge the dominant players is the basis for the relaxed level of economic regulation in Canada. The presence of smaller carriers forces the larger players to act in a more competitive manner. Whether these smaller carriers can remain economically viable is an open question, but it is important that government policy continues to make it possible for challengers to contest the market.

Thank you very much.

The Chair: Thank you very much, Dr. Prentice.

We'll begin our line of questioning with Dr. Lewis.

Dr. Lewis, the floor is yours. You have six minutes, please.

Ms. Leslyn Lewis (Haldimand—Norfolk, CPC): Thank you, Chair.

I'm going to take this opportunity to move a time-sensitive motion before we continue with the line of questioning today on this very important issue.

I've put the motion on notice as of Friday, May 3.

The motion is as follows:

Given that,

(a) Sustainable Development Technology Canada, a one billion dollar taxpayer fund, is under investigation by the Auditor General of Canada and the Conflict of Interest and Ethics Commissioner;

(b) A former director of the fund, Andrée-Lise Méthot, helped to send multiple companies in which she has a financial interest millions of dollars, and despite this the government appointed her as a director to the Canada Infrastructure Bank.

The committee hear testimony from the following witnesses for no less than two hours each: the Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs, Dominic LeBlanc; the Chief Executive Officer of Canada Infrastructure Bank, Ehren Cory; officials from the Senior Personnel Secretariat in the Privy Council Office; Founder and Managing Partner of Cycle Capital, Andrée-Lise Méthot.

Mr. Chair, I'm raising this motion today because, once again, the ability of this government to make ethical and sound decisions is in serious doubt. The sustainable development technology fund is embroiled in a scandal in which the fund is under investigation for funnelling millions of taxpayer dollars to companies that its director had a financial interest in. One of the directors, who is implicated in this, is Ms. Andrée-Lise Méthot. Her companies received \$42 million from SDTC while she was on their board. This director is also involved in providing companies she's connected to with special COVID payments. Despite these serious conflicts of interest and ethical issues, Ms. Méthot was recently appointed to the Canada Infrastructure Bank board.

As the committee charged with providing oversight of the Canada Infrastructure Bank, it is extremely important that we get to the bottom of this issue, in which the director herself admitted she had conflicts of interest. Canadians need to have trust in their federal and democratic institutions. To this end, we need to hear from Minister LeBlanc, who appointed her. We also need to hear from the officials in the Privy Council Office, and we're proposing that we also hear directly from the CIB and Ms. Méthot herself.

I hope this motion will receive the support of all parties around the table.

Thank you, Mr. Chair.

● (1225)

The Chair: Thank you very much, Dr. Lewis.

Mr. Badawey, I have you on the speakers list.

Mr. Vance Badawey: Thank you, Mr. Chair.

Mr. Chair, we have witnesses here today who I'm sure have travelled some distance to get here, and we have issues we're dealing with in respect of the study we're entertaining, so I would ask that we put a motion forward to adjourn debate on this and that we entertain this at the next meeting. I would also advise that the clerk make appropriate arrangements to deal with it at the next meeting so that we will not waste the time of anybody who may travel to give testimony for the study we're going to be moving forward with.

Thank you, Mr. Chairman.

The Chair: Thank you very much, Mr. Badawey.

That is a dilatory motion. Therefore, we'll go directly to a vote.

(Motion agreed to: yeas 6; nays 5)

The Chair: Dr. Lewis, I'll turn the floor back over to you so you can proceed with your line of questioning to our witnesses.

● (1230)

Ms. Leslyn Lewis: I'm going to cede my time to my colleague Mr. Williams.

Mr. Ryan Williams: Thanks, Mr. Chairman.

How many minutes do I have left?

The Chair: You have five minutes and 54 seconds.

Mr. Ryan Williams: Fantastic.

Mr. Lawford and Ms. Kollmann, thank you for coming to committee today. It's nice to have you here. You mentioned quite a few good ideas in your opening statement.

I want to start with the state of airline competition in Canada. We are here because Lynx Air, an ultra-low-cost carrier, a competitor, has gone under. We still have Flair, though. The Flair CEO was here a couple of weeks ago. I'm not sure if you caught the testimony. He did mention some anti-competitive behaviour happening in Canada, which is very concerning. It is threatening his business and that airline, which is competing on some major routes.

Can you comment on the state of anti-competitive behaviour in Canada and how that's threatening airline competition, particularly for new entrants into the markets?

Mr. John Lawford: I'll start.

We thought Flair had previously complained, and the Competition Bureau confirmed it today, with respect to route-matching and price-cutting, which is the usual method for an established incumbent to try to break a new player. The specific allegations were about routes. I believe there was one from Edmonton, and that has been dropped.

Our concern with that type of behaviour is that the Competition Bureau has reacted in a slow way. We're hopeful that the new changes to the Competition Act will allow either the Competition Bureau or a party to go directly to the tribunal with a quicker application in the nature of a prohibition, but we don't yet know if that's going to work. One of the concerns we have is that airlines maybe don't do this themselves for other reasons, but there is anti-competitive behaviour going on. It's hopefully going to be one of the outcomes of the Competition Bureau that the bureau will take that seriously and start doing that.

Mr. Ryan Williams: Part of the transport minister's role is to ensure that there is healthy competition in Canada, especially in the airline sector. Has the government dropped the ball in terms of competition in Canada? Do we have competition in Canada?

Mr. John Lawford: From a consumer point of view, it's very discouraging. The mergers aspect, which has been spoken about, is very depressing because, in the United States, mergers are blocked with fairly high regularity. In the United States, there was just the Spirit Airlines merger. That's run into trouble, and that's typical of their activity there. We just don't seem to have either the act or the will to carry that out, and that helps.

In terms of other changes, we've heard a lot from Canadians about how they don't have enough choice, especially in smaller communities, and I think that's due in part to the lack of competition.

Mr. Ryan Williams: In terms of mergers, are you aware that Canada has never blocked a merger?

Mr. John Lawford: Oh yes, we're well aware, because we work in telecom.

Some hon. members: Oh, oh!

Mr. Ryan Williams: On the latest three mergers that we mentioned earlier—First Air and Canadian North, Air Canada and Air Transat, WestJet and Sunwing—how have those affected competition in airlines in Canada? The Air Canada-Air Transat merger was approved but never went through because of COVID. How would those mergers affect competition?

Mr. John Lawford: For the record, PIAC opposed both the Sunwing and the Air Transat-Air Canada mergers. My understanding is that the European Union blocked the Air Canada-Air Transat merger, and probably COVID didn't help the business environment.

It is discouraging to hear the Competition Bureau say that this is anti-competitive and then hear the minister say that there are other considerations, which are never really specified in enough detail, to have a merger go through.

We're trying to change that dynamic with our recommendation to take it out of the hands of the Minister of Transport. In the United States, the transport minister doesn't approve mergers. The Department of Justice does.

Mr. Ryan Williams: We had some smaller airports come to the table. I think that's really important. Canada is very rural. We have only 94 urban centres, and there are 3,700 rural municipalities in Canada, so we need our smaller airports to step up.

Abbotsford is really neat, because it is within the vicinity of a Vancouver airport destination. We look at jurisdictions like Tokyo. They do shares, where some airports will do regional and some will do long haul. There are different ideas that can help the rurals grow in order to provide the gates and perhaps the routes, which is something that we really struggle with.

How do we grow our rural airport system, and what do we do to create competition in that aspect while growing the competition in the urban airport centres?

• (1235)

Mr. John Lawford: For the ULCCs, I think they can be very helpful to open up routes to smaller airports, but they have to be supported in some fashion beyond just the competition protection. That's why we suggested a lending library of planes. It could be something else.

Also, regional powers like Porter and—well, I'm running out of examples—WestJet could be asked to do more in their regions, and an air policy from Transport would help in that regard.

Mr. Ryan Williams: Thank you.

We also talked about the gate allocation. Other jurisdictions seem to look at common-use gates. That seems to be something that works very well in New York and other high-frequency airports. You land at Pearson now, and there are gates that are dominated only by Air Canada. I call it "Air Canada alley".

How do we produce more competition with the slot allocations for gates to ensure there's more competition for Porter, Flair and other airlines that want to compete?

The Chair: You have 10 seconds, please, Mr. Lawford.

Mr. John Lawford: The present rules are, I believe, that the incumbents get first shot back at it. We want to maybe take a look at that and, as we said in our recommendations, at putting some aside for new entrants so that they're there as a first stop, and then the incumbents get to get them if the ULCCs won't take them.

The Chair: Thank you very much, Mr. Lawford.

Thank you, Mr. Williams.

Next up, we have Mr. Fillmore.

I'll take this opportunity to welcome Mr. Fillmore to our committee on behalf of all members.

Mr. Fillmore, it's good to have you here. The floor is yours. You have six minutes, sir.

Mr. Andy Fillmore (Halifax, Lib.): Thank you very much, Mr. Chair.

I'm glad to be back. I was an associate member some years ago, and I'm glad to be back with the committee again today.

First of all, thank you to the witnesses for sharing your time and knowledge with us today.

I'd like to begin with Dr. Prentice, if I could.

Dr. Prentice, I would love to ask you about the future of airships in Canada. Perhaps we can have you back another time to talk about that. I'm fascinated by your work there. Today, I'll stick to the script of the study that we're interested in.

Everyone around the table knows that the transportation industry in Canada, the airline industry in Canada, is a critical component of the Canadian economy, of course, but we seem to be in a cycle in Canada that lacks true competition, with the smaller airlines being bought out or failing. What would you say are the key takeaways? What are the lessons to be learned from all this? As you think about and respond to that, we're looking for recommendations here, of course, so framing it with recommendations in mind would be helpful.

Thank you very much.

Dr. Barry Prentice: Thank you very much.

It's difficult, because you have to ask the question of what competition is possible within a market. Again, we have a very narrow, linear market for most of the air travel. Most of the air travel is between the major centres—the nine or 29 major airports.

Also, you have the same sort of service offered, except one has more frequency. Consumers are going to look for that, because they want to get home at the time they want to get home. Some connect over to international services. You also have to consider that the international market has international carriers as well as our domestic carriers, so there's more competition on those international markets than just WestJet and Air Canada. Of course, they have a feeder system leading to those markets. There's also a question of how many foreign airlines fly into which markets.

Right now we're in a situation where there's a great shortage of pilots, and the actual amount of competition we have is constrained by that. To some degree, then, some of the services that might go to

smaller communities are not happening just because there's nobody to fly the airplanes. That's an issue in its own right.

I'm not sure if I'm answering your question fully enough, and certainly I would love to talk about airships.

One of the issues we're talking about here that I can speak to is that there is airline competition only in southern Canada. If we start looking at the north, there really is no competition, and it's very hard to have competition because of the thinness of the markets and the cost of actually operating in those markets. Therefore, another form of transport to help assist in that would make a big difference.

● (1240)

Mr. Andy Fillmore: Okay, thank you.

I know some of your research is related to the movement of goods and not just people. Supply chains are on all of our minds these days. I wonder if you have any reflections on the impact of the existing rules, especially those around competition, on our ability to move goods around the country on the supply chain. Is there a link between supply chain challenges and competitiveness in the airline industry?

Dr. Barry Prentice: I don't really think so. First of all, you have dedicated cargo movers, like Cargojet, as well as the big airlines moving in belly space. Most of the air cargo is moved by the couriers: UPS, FedEx, Lynx and Purolator, and of course Cargojet.

Cargo moves pretty well, then. The big airlines are now into this. WestJet and Air Canada both have cargo services now, so they're operating that as well. I don't hear anybody ever complaining about air cargo.

Mr. Andy Fillmore: Okay. Thank you, Dr. Prentice.

I would like to move to our friends at PIAC.

You mentioned, in your opening comments, that there are barriers to entry for competitors. You gave, I think, five or six recommendations to deal with those barriers, but I didn't hear a clear articulation of the barriers. I think there's about a minute and a half left. I wonder if you could give us a rundown of what you see as the barriers.

Mr. John Lawford: Sure.

Actually, I'm going to cheat a bit and use the Competition Bureau's 2015 submission to the OECD.

The first one was the change of foreign ownership, which has been done. The second one was “Lack of feed traffic at both ends of your routes”. The third one was “Lack of an effective frequent flyer program”, which no one has spoken about so far. Then there’s “Lack of business class airport lounges”; “Lack of an established brand”; “Costs of leasing or purchasing aircraft”, which is a huge one we did address; “Costs of hiring flight crew”; “Obtaining access to airport facilities”, especially gates and lots of other hardware; “Costs of committing to a schedule in order to establish a reputation for reliability”; “Advertising, travel agent familiarization costs”, etc.; “Regulatory requirements...under the Transportation Act”; and “Scarcity of attractive time slots at key airports”. That one we tried to address as well.

That’s the Competition Bureau’s list. We say that, but I’d like to see what they would find if they did a new market study.

Mr. Andy Fillmore: Okay.

Mr. Chair, is there a moment left, or are we at the end?

The Chair: You have 30 seconds, sir.

Mr. Andy Fillmore: Just quickly, what do you think accounts for the success, popularity and busyness of WestJet and Air Canada, given the reputational harm that’s come about lately?

Mr. John Lawford: It’s a lack of other choice. Also, to be honest, both have rationalized—if I can put it in a nice way—their operations to the east and west of the country, which makes them more money and is more convenient for them but may not be for Canadians. Again, there’s no choice. You basically have a duopoly market for many routes in Canada, and so we live with what we have.

The Chair: Thank you very much, Mr. Lawford.

Mr. Andy Fillmore: Thank you very much to the witnesses.

The Chair: Thank you, Mr. Fillmore.

[*Translation*]

Mr. Barsalou-Duval, you have the floor for six minutes.

Mr. Xavier Barsalou-Duval: Thank you, Mr. Chair.

I’d like to thank the witnesses for being with us today. I greatly appreciated their opening remarks, and I look forward to learning more about this, particularly the six recommendations proposed by the representatives of the Public Interest Advocacy Centre. That was music to my ears, and I hope the committee will unanimously agree with the recommendations.

Mr. Lawford, I want to have a closer look at some of your recommendations. There’s one that talks about access to boarding gates and time slots for new entrants to the air travel sector.

What mechanism do you think would resolve this issue? Should it be mandatory? You may have mentioned it in your opening remarks, but I didn’t quite understand what you said.

I said earlier that the Competition Bureau could make it mandatory. Something like this could perhaps be automated at airports.

Are there other more appropriate mechanisms for doing that?

Mr. John Lawford: There are a number of mechanisms in place at airports, as well as at Transport Canada and within the airlines.

[*English*]

How the slots are allocated, I believe, is mostly right now a matter of negotiation between the airports and the airlines. The minister, with Bill C-52, is only going to get the power to ask what’s going on. Involving Transport Canada more in that negotiation would probably assist.

A rationalization of where competition law can say something about those arrangements is going to help. I see the Competition Bureau taking baby steps towards inserting itself in the airline industry’s regulation from a competition point of view, and, hopefully, it will eventually be four parties talking about such things as slots.

However, for the moment it’s really only two. Because it’s a dominant carrier and an established airline, as I said, it goes on the “use it or lose it” rule. If Air Canada wants it back, and it has been using it, it gets it back.

• (1245)

[*Translation*]

Mr. Xavier Barsalou-Duval: That brings me to the point I wanted to make.

Right now, the airports decide who gets time slots and boarding gates.

If I understand correctly, it’s on a first-come, first-served basis. In other words, as long as a carrier is there and takes the spot, they get to keep it. The problem is, if a carrier is already occupying 60% or 70% of the space and says they want the next available space, it’s hard to deny them if they are a big customer.

Mr. John Lawford: If we want to have a new carrier, why not put aside 10% of the boarding gates every year for new entrants?

Mr. Xavier Barsalou-Duval: Thank you for your answers.

Like a number of other witnesses, you also mentioned that the government had approved almost all proposed mergers and acquisitions.

You’re suggesting that mergers and acquisitions now be dealt with at arm’s length from the government. The Competition Bureau’s decision would therefore be final, and there would be no recourse.

Would there be recourse in exceptional circumstances?

Mr. John Lawford: It’s still possible to appeal the tribunal’s decision to the Federal Court of Appeal. This recourse will be in place for people who don’t agree with the decision. Actually, we’re trying to take this power away from the minister.

Mr. Xavier Barsalou-Duval: The minister's power doesn't seem to have served Canadians well, at least if we look at recent history.

Mr. John Lawford: That's not yet been the case, no.

Mr. Xavier Barsalou-Duval: In any event, the minister doesn't seem to have wielded his power.

How much time do I have left, Mr. Chair?

The Chair: You have one minute and 40 seconds.

Mr. Xavier Barsalou-Duval: I will now turn to another witness, Mr. Prentice.

Mr. Prentice, I don't know if you've been following the committee's proceedings, but at our last meeting, Gábor Lukács, the president of Air Passenger Rights, told us that it would be worthwhile to have a more robust data collection system, similar to that of the United States, to give us more information and better inform decision makers and legislators.

I'd like to know if you agree with that and if it's a good way to do things.

[English]

Dr. Barry Prentice: I'm sorry. I'm not receiving the simultaneous translation, so I can't answer your question.

[Translation]

Mr. Xavier Barsalou-Duval: In that case, perhaps I could ask Mr. Lawford the question to save some time.

The Chair: Just a moment, Mr. Barsalou-Duval. We're going to check whether it's working well or whether it's because of a delay.

[English]

Mr. Prentice, are you able to hear me when I'm speaking in French with the translation?

Dr. Barry Prentice: I can hear you now in English but not in French.

[Translation]

The Chair: When I speak French, there's no interpretation.

Is that right?

[English]

Dr. Barry Prentice: I'm just hearing the French. I'm not hearing the translation.

The Chair: We're going to stop the clock, Dr. Prentice. We're just going to make sure that we can get translation for Mr. Barsalou-Duval.

I just spoke with the clerk. We're going to suspend for two minutes to rectify the situation, and then we'll come right back. The meeting is suspended.

• (1245) _____ (Pause) _____

• (1250)

The Chair: I call this meeting back to order. According to the clerk, we have rectified the audiovisual translation issues, so we'll continue with our line of questioning.

[Translation]

Once again, I am turning over the floor to Mr. Barsalou-Duval.

Mr. Barsalou-Duval, you have one and a half minutes left.

Mr. Xavier Barsalou-Duval: Thank you, Mr. Chair.

Mr. Prentice, at the last committee meeting, we heard from Gábor Lukács of Air Passenger Rights. One of his recommendations was that the federal government implement a more robust data collection system on what is happening in the air travel sector, a system similar to what's done in the United States. Enhanced data collection could inform decision makers on the state of competition.

Do you think this data could be useful to everyone?

[English]

Dr. Barry Prentice: I'm always in favour of more information. I think it helps consumers make more decisions. The only thing that sometimes holds it up is the issue of whether it is divulging competitive issues between the airlines themselves, but I don't see how that would be a problem here.

[Translation]

Mr. Xavier Barsalou-Duval: Thank you very much.

The Chair: Next we have Mr. Bachrach.

[English]

Mr. Bachrach, the floor is yours. You have six minutes, please.

Mr. Taylor Bachrach: Thank you, Mr. Chair.

Mr. Lawford, it's good to have you back.

Thank you to our other witness, Dr. Prentice, as well.

My colleague Mr. Badawey touched on this. We've heard the recommendation that Canada allow the entry of foreign airlines in order to provide more competition in the air sector. I'm just curious about the unintended consequences of that. I'm assuming that there are much larger American airlines out there that would have some advantage. How do we avoid a situation where we look 10 years down the road and see that the entire air sector in Canada is dominated by foreign carriers that have their bases of operations outside the country?

• (1255)

Mr. John Lawford: That's obviously our concern, as well. I think that Canadians, along with successive governments, have all wanted to have the sovereignty and the control of the domestic airline industry with Canadian players, allowing limited landing rights for international flights from international carriers, obviously, but no cabotage, as was mentioned, and with foreign ownership limits in order to have control by Canadians so that they listen to the regulator or regulators.

We tend to agree with that, and it has to be studied very carefully. Obviously, if we did go with cabotage or more foreign entry, larger routes would be used, and smaller routes would likely be ignored, leaving us with a situation where.... Would the government, for example, have to subsidize all travel in the north or from the south to the north? I don't think Canadians would agree with that, but it should be studied in detail if we are going to go down that route.

Mr. Taylor Bachrach: Mr. Lawford, you heard the testimony earlier about the north and rural regions and the cost of air travel. I'm wondering what your views are on how we provide critical transportation service for communities where the size of the market doesn't really allow for competition.

Mr. John Lawford: We're back to the perpetual question of whether there are certain routes that have to be subsidized, because you're going to have one player who will then charge monopoly prices, or whether that should be regulated in the sense that it is the only carrier allowed in there and then the prices are regulated in return. That's going back to the 1980s. That's one way. Otherwise, a subsidy to customers, to airports or to airlines.... You can, as I believe one of the previous witnesses said, try to tender a reverse auction to get the lowest price. These are all ideas.

I agree, though, that the present cost, convenience and service in the north and to some rural and remote parts of Canada are somewhat shameful. That is holding back industry and people's social and economic life. We need to do more, because there are not a lot of other choices, such as rail or driving 16 hours to get to where you need to go.

Mr. Taylor Bachrach: We've heard from the airports that they would like to see government move away from the user-pay model and invest in the air sector and invest in air sector infrastructure as a public good.

I've raised questions about investment in the air sector versus other transportation sectors. We've lost bus service in our country. Our passenger rail system not only is a shadow of its former self but also doesn't stack up to what other countries are offering.

I'm curious if moving away from the user-pay model and investing more public money in, for instance, airports can deliver competition and lower prices for consumers. Do we see any evidence of that?

Mr. John Lawford: There have been some interesting developments on airports. Australia has a private model, private financing. It's something that should be looked at.

We said 35 years ago that airports should be privatized, believe it or not. It could be done with public money as well. The present PPP structures for larger airports have their problems and don't seem to be keeping up with the infrastructure needed and the building that's needed for the increase in air travel that we need in Canada.

As for other supports, I think sneaking in some direct taxpayer support of the airline industry is appropriate. It does benefit all Canadians. Whether you travel on a plane or not, it doesn't matter. Your doctor probably does, and your food probably comes in that way. There are all sorts of other benefits economically to having air connection across the country.

Mr. Taylor Bachrach: Yes, I think that's very clear, especially given there are communities that rely heavily on air transport.

Air travel is also a very difficult sector to decarbonize. There have been all sorts of claims made about sustainable aviation fuel, but I think there remains a huge gap between what is required in terms of production and supply and what is available on the market today. At the same time, more and more people are flying.

How do we allocate effort across the transportation sector to ensure not only that people have affordable transportation options but also that we're meeting emissions reduction targets and decarbonizing transportation?

• (1300)

Mr. John Lawford: I note that in Australia they're doing a couple of studies, and one of the large pillars of that is how to meet the other goals in an environmentally responsible fashion.

Our recommendation is that Transport should go back and do an air policy for Canada. It would be an opportunity to make sure that's in there. At the moment, that's not really a consideration and not in competition law. That's another place to try to centre that a bit more.

Mr. Taylor Bachrach: Thank you very much.

The Chair: Thank you very much, Mr. Bachrach.

On behalf of all members, I want to thank our witnesses for appearing before us today and contributing their testimony.

With that, this meeting is adjourned.

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