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Transportation News Digest

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1.0 Introduction

The years 2005 and 2006 have been memorable for the transportation sector. The Conservative Party was elected to power in 2006 and on February 6, the Honourable Lawrence Cannon, a MP from Pontiac, Quebec, was sworn in as the new federal minister of transport, infrastructure and communities. The four major sub sectors of transport (air, water, railway and highway) began to recover from the economic downturn that occurred at around the time of the terrorist attacks of September 2001 on the United States of America and the crisis in the Middle East. This recovery, however, brought with it new issues that needed attention.

(b) Air Transportation

2.1 The State of the Industry - The Airlines

In 2005 and 2006, the structure of the airlines changed dramatically with the exit of Jetsgo. The fortunes of the two major airlines initially went in opposite directions but continued to improve through 2006. Air Canada emerged from bankruptcy protection in 2005 and achieved record load factors by the end of 2006. As part of its new strategy, it began simplifying its domestic air fare structure into five categories, entered into an agreement to buy more efficient aircraft, implemented a fuel management program, began offering new business passes and offered services to new destinations. Its parent, ACE Aviation Holdings Inc., began spinning off its operations, Aeroplan, Jazz and Air Canada, in the form of income trusts and in 2007 it planned to sell Air Canada Technical Services as a separate company. WestJet, Air Canada's key rival, began to earn profits after its first quarter loss in 2005 and thereafter continued its stellar performance of the past. It marked its tenth anniversary in 2006 with a triple play of success (i.e., increased load factors, available seat miles and revenue passenger miles) in May 2006 and announced a record load factor for 2006. The improved fortunes of the major carriers also attracted a new entrant, Porter Airlines, in October 2006.

2.2 Issues - Airport Rents

On January 1, 2005, Crown rents went up by 6.5% much to the disappointment of the industry. Industry representatives made representation to the government to reduce airport rents indicating that "Competitive airports are vital to attracting investment, promoting tourism and stimulating growth ..." Relief arrived on May 9, 2005, when Transport of Minister at that time (Jean-C. Lapierre) announced that the Government of Canada will adopt a new rent policy for federally-owned airports.[1] This would result in rent relief of \$8 billion over the course of the existing airport rent leases. Later in the month, the House of Commons Standing Committee on Transport released an Interim Report on Air Liberalization and the Canadian Airport System. This report indicated that the recent changes to airport rents are "unacceptable" and won't provide the immediate relief the industry needs. "We believe that this falls far short of what is required to bring airport and airline costs down." The report made six recommendations on the Canadian Airports System.[2] The Air Transport Association of Canada (ATAC) welcomed the interim report.[3] In mid-November 2005, Toronto's Pearson International Airport claimed that Ottawa's rent policy is unfair forcing them to raise fees it charges airlines. It claimed that the relief provided them in the short run amounts to 6% compared to 60% to 70% provided to airports such as Ottawa and Calgary. The then Minister after considering the matter decided not to provide any further rent relief. ATAC expressed profound disappointment with this decision.

2.3 Air Liberalization

On November 11, 2005, the first big step towards a more continental approach to the aviation industry was achieved between Canada and the US. This initiative began with the Jean-C. Lapierre's speech in late 2004, his meeting with the US Secretary of Transportation in early 2005 and Transport Canada's Consultation Document in May 2005. The 1995 Agreement was extended to an Open Skies Agreement. Under the amended agreement, air carriers of both countries will be able to: "· pick up passenger and/or all-cargo traffic in the other partner's territory and carry it to a third country as part of a service to or from their home territory; · operate stand-alone all-cargo services between the other partner's territory and third countries; and · offer the lowest prices for services between the other partner's territory and a third country." The earlier agreement fell short of a full Open Skies Agreement in that it provided virtually no rights for airlines to fly beyond the other country and severely limited express cargo services. The major airlines, Canadian airports and the Canadian Airports Council welcomed the news. The momentum towards further liberalization continued when the Honourable Lawrence Cannon announced a new international air transportation policy called *Blue Sky* on November 27, 2006. This policy will create opportunities for travellers, businesses and the air industry and encourage the development of new markets, new services and greater competition. For travellers, this means more choices in terms of destinations, flights and routes. Under the new policy, the focus will be to pursue the negotiation of open skies type agreements when it is in Canada's overall interest.[4] The Air Transport Association of Canada welcomed the new policy and Canadian Airports Council heralded the benefit to travellers, shippers and communities that the policy will bring.[5]

2.4 Fuel Costs

Fuel costs reached record levels in the fall of 2005, in part triggered by Hurricane Katrina. The airlines implemented several measures to deal with soaring fuel costs. The measures included fuel management programs, plans to replace older aircraft with more efficient aircraft and raised fares by introducing fuel surcharges. Even tour operators reacted adversely by implementing fuel surcharges. Vice-President of Air Transport Association of Canada recommended that Ottawa abandon its excise tax on jet fuel, the second biggest cost of an airline after labour. This recommendation was similar to a recommendation made by the House of Commons Standing Committee on Transportation which called for reducing the excise tax by half for a minimum of two years. By the end of 2006, the bad memories of rising fuel costs began to fade into the background as the price of fuel fell back to the levels before Hurricane Katrina.

2.5 Three Transport Bills Introduced

On April 27, 2006, Bill C-6 *An Act to amend the Aeronautics Act and to make consequential amendments to other Acts* was introduced in the House of Commons to provide Transport Canada with more leverage to maintain and enhance the safety of Canada's aviation system. The proposed amendments to the *Aeronautics Act*, reflect new strategies being implemented to regulate aviation safety, including an increase in penalties that may be imposed under the act. The key amendments would also allow individuals and operators to confidentially report, on a voluntary basis, less safety-critical regulatory violations.

On June 15, 2006, the Honourable Lawrence Cannon tabled in the House of Commons (Bill C-20) *An Act respecting airports, airport authorities and other airport operators and amending the*

Transportation Appeal Tribunal of Canada Act. The bill provides an accountability framework for Canada's largest airports, as well as a modern corporate governance regime for the airport authorities. It includes a new declaration of Canadian airports policy and sets out the roles and obligations of the Minister and the affected airport operators. It will initially affect the 28 largest airports and later the medium sized airports. It also includes a fee-setting regime for affected airports, with basic charging principles and notice requirements for setting aeronautical and passenger fees together with avenues for public response. In addition, it provides the federal government with authority to audit the business affairs of airport authorities and to give direction on matters such as equitable access measures, allocation of slots to airlines, and compliance with environmental requirements.[6]

On October 18, 2006, *Bill C-29: An Act to Amend the Air Canada Public Participation Act* was tabled in the House of Commons. It amends the existing legislation to ensure that Air Canada's successor corporations are subject to official language requirements. The bill requires ACE Aviation Holdings Inc., the parent company that now controls Air Canada and its subsidiaries, to retain its head offices in Montréal. It substantially restates the context of the former Bill C-47.

(c) **Water Transportation**

3.1 The State of the Industry - The Ports

Movement of containers through major ports confirmed various newspaper reports of the dramatic increase in the volume of external trade. For the Port of Montreal, the number of containers moved increased by 2.3% to 1,254,560 in 2005 and by 3.4% to 1,192,568 to the end of November 2006. The Montreal Port Authority reported that its first six months of 2006 represented the best semester since the early 1980's. For the Port of Vancouver, the number of containers moved increased by 6% to 1,767,379 in 2005 and by 25% to 2,207,730 in 2006. Imports increased by 29% compared to the 21% increase in exports in 2006. For the Port of Halifax, the number of containers moved increased by approximately 4.7% in 2005 but was slightly slipped by a few percentage points in 2006 compared to 2005. The acquisition of CP Ships by Ship Acquisition Inc., an indirect wholly-owned subsidiary of TUI AG, for \$2.3 billion was one of the major structural changes in the industry.

3.2 Issues - Infrastructure

The increased volume of external trade, which is expected to continue over the next five years, highlighted problems of congestion, inadequacy of infrastructure and lack of investment. The severe winter weather added to the problems. There were delays by railways and problems at the terminals.

Vancouver's Deltaport declared *force majeure* (i.e., we are operating but because of conditions beyond our control we don't take liability for any delays). As a solution to the immediate short run problems, there was diversion of traffic to other ports, attempts by the railway to increase the supply of railcars, and agreement by some ocean carriers to cut import cargoes by 25% to clear the backlog.

The long run solution focused on how to increase investment to deal with the infrastructure inadequacy. The borrowing limit of the Vancouver Port Authority was increased to \$510 million from \$225 million. The then Minister of Transport planned to propose investment legislation in the Spring of 2006. The federal government, provincial government and Canadian National Railways announced a funding package for Prince Rupert. In addition, the Vancouver Port Authority and Canadian Pacific Railway announced on April 21, 2005 that they signed a cooperation agreement to work together on joint capacity development to enhance Asia-Pacific trade. On October 11, 2006,

the Government of Canada launched the new Asia-Pacific Gateway and Corridor Initiative announcing concrete measures and long-term direction to strengthen Canada's competitive position in international commerce. The \$591 initiative is an integrated set of investment and policy measures that will enhance the efficiency and exploitation of the Gateway and Corridor [i.e., infrastructure from Winnipeg to Vancouver (via Regina-Calgary) and Prince Rupert (via Saskatoon-Edmonton) including British Columbia Lower Mainland and Prince Rupert ports, road and rail connections]. It is vital to the success of the Port of Vancouver and Canada as a gateway to Asia. The announcement of the plan by the Honourable Prime Minister Stephen Harper was applauded and welcomed by the Vancouver Port Authority and WESTAC.[7]

3.3 Conference Exemption

Since the European Commission called for an abolition of the exemption that covers liner conferences on December 14, 2005, the question of how such abolition will affect other countries arose. The Director of the European Competition Directorate indicated that she has held talks with some countries and plans to hold talks with other countries but has so far seen no potential conflict unless another jurisdiction requires conferences, and none do.[8] The Commission's decision was agreed to by Member Countries of the European Union. On September 25, 2006, the European Union in a historic decision announced the repeal of Regulation 4056/86 which enables liner carriers to meet in conferences, fix prices and regulate capacities. After October 2008, conference activities, in particular price-fixing and capacity regulation, will no longer be permitted. It is believed that this could set in motion reforms by other jurisdictions.

3.4 Two Marine Transport Bills That Were Introduced Died With the Election of the New Government

In June and October 2005, two marine related bills were introduced Bill C-61 *An Act to Amend the Canada Marine Act* [9] and Bill C-68 *The Pacific Gateway Act*. The first dealt with Canada Port Authorities and the second sets out a new policy and governance foundation for further development of Canada's Pacific Gateway. With the election of the new Conservative government, the bills died and the issues dealt with under the bills have not yet been addressed.

4.0 Rail Transportation

4.1 The State of the Industry - The Railways

The exceptional performance of the Canadian railways in 2005 continued in 2006. For Canadian Pacific Railway (CPR), net income was a record \$543 million an increase of 32% in 2005 compared to 2004 and for 2006 it was \$796 and increase of 48%. For Canadian National Railway (CN), net income was Cd. \$1,556 million an increase of 24% in 2005 compared to 2004 and was Cd.\$2,087 an increase of 34% for 2006. From 2004, the operating ratio of CPR increased in 2005 and 2006 by 2.6 points and 1.8 points from 77.2 and 75.4. For CN it increased by 3.1 points and 3.1 points to 63.8 and 60.7, respectively. These results were supported by the fact that the railways carried more freight in 2005 than for the previous five years.

4.2 Major Transport Bill Introduced - Canada Transportation Act

On May 4, 2006, Lawrence Cannon, the Minister of Transport Infrastructure and Communities introduced (Bill C-11) *An Act to amend the Canada Transportation Act and the Railway Safety Act and to make consequential amendments to other Acts* in the House of Commons. This major bill

applies to all modes of transportation under federal jurisdiction. The important amendments in this bill were: a modernized and simplified National Transportation Policy Statement; a new provision for the Minister to authorize the development of regulations for greater transparency in the advertisement of air fares; an improvement to the policy framework for publicly funded passenger rail services that will help address urban transportation challenges; a public interest review process for mergers and acquisitions of all federally regulated transportation services[10]; and a provision allowing the Canadian Transportation Agency to address railway noise complaints.[11] This Bill replaces Bill C-44 which died when the new Conservative Government was elected. It is much less controversial than the previous bill and does not contain any of the amendments to improve the competitive access provisions in the rail sector as were contained in the previous bill. This will be a great disappointment to captive shippers and to advocates of competition who spent many years attempting to introduce competition into the rail sector. It is not known yet whether these competitive access provisions will be introduced later in another bill.

5.0 Highway Transportation

5.1 The State of the Industry - The For-hire Trucking Carriers

The operating revenues and expenses of for-hire trucking companies (with revenues of \$1 million or more) for 2005 totalled \$27.13 billion and \$24.92 billion respectively, up 5.4% and 3.96% from 2004. For the first nine months of 2006, operating revenue and expenses increased compared to the same period in 2005. The average number of companies in 2005 was 3,356 up 4.99% compared to 2004. The operating ratio for 2005 decreased to 0.918 from 0.931 in 2004, indicating that efficiency in the industry increased.[12] For the first nine months of 2006, the operating ratio remained about the same. Net income in the for hire trucking industry in 2005 and 2006 rebounded after several years of little change.

5.2 Issues - Border Crossings Delays

Estimates of chronic delays at the Canada-U.S. border crossings indicate that it is costing the economy more than US\$4.1 billion a year. Improving efficiency at these points was not surprisingly a priority. Ottawa committed \$443 million over five years to better deliver and secure efficient border service. Progress is being made to reduce border crossing delays. The governments of Canada, the United States, Ontario and Michigan announced that they have made significant progress towards developing a new river crossing at the Detroit-Windsor Gateway. In addition, the Government of Canada, the Government of Ontario and the Niagara Falls Bridge Commission celebrated the completion of the \$45 million fifth lane Queenston-Lewiston Bridge. This bridge is Canada's fourth busiest commercial crossing with more than one million truck crossings every year and \$28 billion goods carried annually. This completion will help reduce congestion. Furthermore, the Governments of Canada and British Columbia announced a new extension of the Highway 15 NEXUS/FAST truck lane in Surrey, B.C. at the Pacific Highway Border Crossing. The federal and various provincial governments also reached agreements for deployment of Intelligent Transportation Systems and confirmed several investments in road transportation infrastructure.[13]

5.3 Bill Introduced on International Bridges and Tunnels Act

On April 24, 2006, the Minister of Transport, Infrastructure and Communities, tabled the *International Bridges and Tunnels Act* (Bill C-3) in the House of Commons. The Act will establish a legislative framework enabling the government to exercise authority over international bridges and

tunnels. It also meets the government's agenda of securing Canada's borders, improving infrastructure and supporting the creation of jobs through international trade. There are currently 24 international vehicular bridges and tunnels and five international railway tunnels linking Canada and the United States.

6.0 Other Transportation Matters

6.1 Infrastructure

Infrastructure concerns have attracted the attention of the new government and it has indicated that it will provide unprecedented support for initiatives to improve the infrastructure and transportation system in the 2006 Budget. Among the initiatives are: a new, permanent Highways and Border Infrastructure Fund providing \$2.4 billion over the next five years with an additional \$400 million; an additional \$2 billion to renew the Canada Strategic Infrastructure Fund; a sum of \$2.2 billion over the next five years to renew the Municipal Rural Infrastructure Fund; and a sum of \$591 million over the next eight years for investments in the Pacific Gateway initiative. The Budget also accelerates investments in public transit (i.e., \$400 million). The Government of Canada will also provide a one-time payment of \$900 million to provinces depending on availability of funds. The Budget maintains the gas tax funding commitment under the New Deal for Cities and Communities transferring up to five cents per litre of the gasoline excise tax, or \$2 billion. In total, federal support for provincial, territorial and municipal infrastructure will reach \$16.5 billion over the next four years. Transit tax credit will also apply to dependent children which could save the average transit user \$153 a year.[14] According to the Finance Minister, "a great trading country like Canada must have the best in highway and border infrastructure." A key objective, said the minister, "will be to cost share with provinces and territories improvements to the core national system including the Trans Canada Highway." The government will allocate \$100 million to "begin arming border officers and eliminating 'work-alone' posts" and \$303 million is earmarked to "implement a border strategy to promote the movement of low-risk trade and traffic within North America while protecting Canadians from security threats." [15] In August 2006, a document *Restoring Canada's Fiscal Balance* was released. It indicates that the government is focussing on consultations with the provinces and municipalities. Further, the Prime Minister in a recent speech said "*The federal role must be defined to deal with projects of national significance. Federal funding must be put on a predictable, long-term track.*"

6.2 Security

Since the 9/11 incident, security has become an important issue in all modes of transportation. On June 16, 2006, Prime Minister Stephen Harper announced new measures to help increase Canada's capability to detect and respond to a potential terrorist attack.[15] The new measures are: conducting a thorough review of our country's anti-terrorism legislation; improving security at our borders; and introducing new measures to better protect our transportation systems. Regarding the latter, security at Canada's airports (passenger luggage and air cargo) will be bolstered; resources for the Canadian Air Transport Security Authority will be increased; protection for our rail system will be boosted; and marine port security will be improved. These comprehensive and important actions will cost more than a quarter of a billion dollars over the next 2 years. The Budget will also provide \$303 million towards measures that will increase the security of people and freight (i.e., \$133 million to support Canadian Air Transport Security Authority operations, \$95 million for new measures to enhance the security of passenger rail and urban transit; and \$26 million over two years

to design and test security measures). In the last six months of 2006, the government announced two rounds of funding under Transit-Secure providing up to \$122 million.

In sum, 2005 and 2006 were prosperous for transportation companies in nearly every sector largely as a result of an increase in trade and a healthier economy.

Endnotes

1. He said “By lowering airport rents by 60 per cent, the Government of Canada is radically changing the financial outlook of the air transport sector in Canada. Through this policy, our major airports will see a substantial reduction in long-term costs, which should greatly benefit airlines and the traveling public.”
2. The six recommendations were: 1) a reduction in airport rents by 75% (with no payment for airports with less than 2 million passengers) and a reinvestment of rents received in the airports system; 2) the airport rental revenues received be used to increase funding for the Airport Capital Assistance Program with a simplification and cost reduction of the process for applying for this program; 3) the Air Transport Security Passenger fee be eliminated; 4) the government pay for Canada Border Services Agency services at airports that provide regular non-domestic flights; 5) the downloading of regulations (e.g. firefighting) be paid by the government if it increases costs of airports significantly; and 6) the free services to government departments and agencies be ended in five years.
3. Mr. Mackay of ATAC stated “These recommendations build upon Minister Lapierre’s own airport rent reform announcement of last week by adding significant and immediate value. By calling for immediate and meaningful cost savings and dealing with all the various government cost pressures imposed on the industry, this report charts a course for re-balancing the relationship with the federal government as a true partnership aimed at delivering opportunities for carriers and consumers alike.”
4. Blue Sky: Canada Takes its International Air Policy to New Heights, November 27, 2007, www.tc.gc.ca The vision for the new policy was conceived of many months ago but pressure for implementing such a policy grew when the airport industry warned that Canadian air travellers were missing out on lower air fares and that in contrast to Canada, the U.S. has 77 open skies agreements. It was not until October 25, 2006 that this vision began to take shape when the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, released a consultation document in support of a new international air transportation policy calling for a modernized approach to international air transportation, including Canada’s bilateral air transportation negotiations.
5. ATAC Welcomes Minister’s New International Air Policy Announcement, November 27, 2006, www.atac.ca and “Blue Sky” Policy will Benefit Canadian Travellers, Shippers and Communities, Airports Group Says, November 27, 2006, www.cacairports.ca
6. Transport Minister Introduces *Canada Airports Act*, June 15, 2006, www.tc.gc.ca
7. The Asia-Pacific Gateway Corridor Initiative, October 12, 2006, www.tc.gc.ca
8. How will European deregulation affect others?, *The Journal of Commerce*, May 8, 2006, p. 10; Blust Says Conflict Likely, *The Journal of Commerce*, May 8, 2006, p. 8.
9. Under the present *Canada Marine Act*, port investment in infrastructure is constrained because it forbids public financial grants, subsidies and limits borrowing powers of ports.

10. A new merger review provision will apply to all transportation undertaking under federal jurisdiction. In these cases, if the Governor-in Council, on the recommendation of the Minister of Transport, decides a merger is in the public interest, it may approve it. The Bureau will conduct the examination of the merger with respect to competition issues and will provide a report to the Minister of Transport. In air transportation the major new amendments are on: international agreements and advertising regulations regarding price disclosure on the recommendation of the Minister. The first was basically designed to protect smaller carriers from abuse of market power by the dominant carrier. The second will require airlines to include the total price of air travel, including all airline-generated surcharges, in their price advertisements. The third would prohibit carriers from advertising products they do not actually sell and the existing provisions regarding advertisement and investigation have been replaced. The fourth was designed to protect airlines from possible violation of the *Competition Act* and could be efficiency enhancing.

11. *Canada Transportation Act* Amendments Introduced in Parliament, May 9, 2006, www.tc.gc.ca

12. Statistics calculated from averaging quarterly data published in *The Daily*, published by Statistics Canada.

13. For example: funding of one million dollars to establish the Bureau of ITS and Freight Security at the University of British Columbia; ITS funding of \$.5 million for installation of environmental stations in BC; ITS funding of \$1 million in Newfoundland and Labrador; investment of \$4 million for cameras and electronic message signs on Blue Water Bridge and Highway 202; ITS funding of \$.7 million in the N.W.T.; the \$8.1 million federal-provincial partnership to make southern Vancouver Island safer, etc.

14. Speaking Notes for the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, to the House of Commons on the 2006 Budget, May 9, 2006, www.tc.gc.ca. Also see Notes for an address by the Honourable Lawrence Cannon Minister of Transport, Infrastructure and Communities to the Federation of Canadian Municipalities, Montréal, Quebec, June 4, 2006, June 4, 2006, www.tc.gc.ca

15. Tax Relief, Highway and Border Infrastructure prominent in first federal budget, May 4, 2006, www.ctl.ca