

The Rise and Decline of Protective Economic Airline Regulation in Canada*

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I. INTRODUCTION

The mid-seventies marked turning points for the civil aviation industries in the United States and Canada. The industries, distinguished by their technical advances, offering seemingly lower real prices and achieving high growth rates, had experienced sharp reverses as the economies faltered in the aftermath of the energy crises. The pressures to reverse these movements, and to return to falling real prices and high growths, moved against the largely protective regulation within which both the scheduled industries had operated for almost four decades. Regulatory reform, however, has not been an irresistible force, and the turning points have led in different directions.

Unlike the privately owned industry in the United States, which has been undergoing structural adjustment¹ in the wake of the Airline Deregulation Act of 1978,² in Canada, regulation of the mixed private and government-owned industry has been eroded rather than removed, and has resulted in the extension of government ownership of the industry. In

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1. Ellison, *The Structural Change of the Airlines Industry Following Deregulation*, 21 *TRANSP. J.* 58 (1982).

2. Airline Deregulation Act of 1978, 49 U.S.C. § 1301 (1982).

Canada, the federal government had established at the inception of the industry, and has retained for four decades, ownership and regulatory control over Air Canada, the dominant domestic and international carrier. In 1977, although Air Canada was placed under the authority of the Canadian Transport Commission (CTC), the regulatory agency, the carrier remained owned and financed by the federal government. It has been the erosion of the protective regulatory policy in Canada, founded on geographical divisions, "preferred vehicles" and route protection, which has revealed both the vulnerability of the regional carriers and the strength of Air Canada.

The corrosive action upon the protective regulation has come from outside the domestic industry. The substantial diversion of traffic from Canadian domestic carriers to the lower priced transcontinental routes in the United States and the transatlantic routes resulted in the entry of charters on the Canadian transcontinental routes. The diversion to U.S. transcontinental carriers was substantial because of the proximity of the larger Canadian centers to border points served by U.S. carriers. These border points in the U.S. are also among those currently served by carriers offering invitingly low fares to transborder travellers. The diversion of traffic from transborder flights is growing and is placing not only downward pressure on transborder scheduled rates, but is also placing pressure on the side of those who are negotiating for a liberal bilateral agreement between the two countries.

The strength of the federally owned carrier and the weakness of the regionals is clearly shown in central Canada, the most populated region of the country. Of the two regional carriers operating in this region, one has been acquired by Air Canada, and the other by the Quebec government. Whereas in 1977 only one regional carrier was provincially owned, by 1981 only one of the five regional carriers remained largely independent of either federal or provincial ownership. The erosion of the protective regulatory policy has played its part in this outcome. In contrast to the emergence of almost unrestricted competition on transcontinental routes, on most north-south mainline routes, regulation served to prevent the national carriers (Air Canada and C.P. Air) from competing with the regionals. It has been the erosion of these regional boundaries and protected routes, and the entry of the nationals into the charter markets to the south that have revealed the failure of the Regional Carrier Policy to nurture strong, competitive regional carriers. Competing U.S. carriers on transborder and U.S. continental routes promise to present the nationals with a test of their competitive temper.

II. EARLY HISTORY OF AIR CANADA

The passage of the Trans-Canada Airlines Act³ in 1937 was apparently⁴ propelled by the desire of the federal government to contribute towards the economic and political integration of the country and to thwart the entry of American-owned carriers. Trans-Canada Airlines (TCA)—known as Air Canada since 1964—was established to supply services which no one existing carrier was then providing. As a “preferred vehicle” of government policy, it was to supply transcontinental services and those which the government deemed to be of national importance. TCA was also a wholly owned government entity, Canadian National Railway, the federally owned railway, holding all the shares.

Parliament, in passing the Transport Act⁵ in 1938, extended the jurisdiction of the Board of Transport Commissioners (formerly the Board of Railway Commissioners) to include the economic regulation of air carriers. In 1944, a three member Air Transport Board (ATB) was created. Although the ATB could issue licenses, it was subject to approval of the Minister of Transport.⁶ Furthermore, the ATB was to grant, upon application, a license to TCA for the provision of a commercial air service according to the terms of any agreement made with the Minister of Transport under the Trans-Canada Airlines Act. Under the Trans-Canada Airlines Act, the Governor in Council was empowered to authorize the Minister of Transport to enter into a contract with TCA for the provision of “speedy and efficient transport across Canada of passengers and goods.”⁷ The points and routes specified in the Trans-Canada Contract were to be designated by Governor in Council.

A statement made by the Prime Minister in 1943 made it clear TCA was intended to operate all transcontinental routes and “mainline” services as the government might from time to time designate.⁸ On these routes TCA was protected from competition, and able to develop a system of internal cross-subsidization. Privately owned carriers were confined primarily to north-south routes. The largest privately owned carrier was Canada Pacific Airlines (C.P. Air), a subsidiary of Canadian Pacific Railroad, having been formed in 1942 with the merger of a number of

3. Can. Stat. ch. 43 (1937).

4. D. CORBETT, *POLITICS AND THE AIRLINES* 108 (1965).

5. Can. Stat. ch. 53 (1938).

6. The Board of Transport Commissions was a quasi-judicial body, whereas the new Air Transport, who, in effect, was the regulator of the air industry from 1944 until 1967. The change in 1944 occurred as a result of the Board of Trade Commissions' making a decision with respect to CP Air which the Cabinet did not approve. D. CORBETT, *supra* note 4, at 161–65.

7. Trans-Canada Airlines Act, Can. Stat. ch. 43, § 15(l) (1937).

8. Hon. W.L. Mackenzie King, H.C. DEB. 1776–77 (April 2, 1943), D. CORBETT, *supra* note 17, at 163, quoting A.W. CURRIE, *ECONOMICS OF CANADIAN TRANSPORTATION* 552 (1954).

smaller carriers. Despite the entry of C.P. Air into the international market in 1949, TCA retained its monopoly on transcontinental routes until 1959.

The selection of certain carriers as "preferred vehicles" was also reflected in the Regional Air Carrier Policy, announced by the Minister of Transport in 1966.⁹ The regional carriers grew from the merger of small bush operators, graduating to scheduled routes by operating larger aircraft. The policy, however, established one carrier as the preferred vehicle for the development of regional and local air services. Pacific Western Airlines (PWA) was assigned British Columbia and Alberta; Transair, the prairies and north-western Ontario; Nordair, the remainder of Ontario north-eastern Quebec; Quebecair, the regional of Quebec east of Montreal; and Eastern Provincial Airways (EPA), the Atlantic Provinces. They were to provide scheduled services as a supplement to and not in competition with C.P. Air and Air Canada, the designated "national" carriers. Their operations, however, were encouraged by voluntary route transfers from the nationals, by the expansion of a direct subsidy program¹⁰ and by an easing of domestic¹¹ charter regulations.

III. THE REGULATORY FRAMEWORK

The economic and safety regulation of civil aviation in Canada falls within the jurisdiction of the federal government.¹² Parliament has granted powers to the CTC and the Governor in Council (in effect, the Cabinet) to regulate the air transport industry. The National Transportation Act¹³ and the Aeronautics Act¹⁴ govern the regulation of the industry.

9. J. Pickersgill, Statement of Aviation Policy Principles (Oct. 20, 1966).

10. A limited policy of temporary subsidies was introduced and applied to scheduled or regular routes. The level of regional subsidies was frozen in 1975 at about Cnd. \$2 million; EPA and Quebecair obtained most of the subsidies, with small amounts going to Transair in 1967, '68, and '70. *Transport Canadian, Economic Regulation and Competition in the Domestic Air Courier Industry* 106 (1981).

11. The regionals were encouraged to develop domestic charters as a supplement to regular route operations. However, the regulations in effect restricted carriers to chartering between points on their own route network. As a result, the expansion of domestic charters (particularly between points in southern Canada, was substantially limited. The 1966 Statement of Aviation Policy Principles, *supra* note 9 at 138-39, encouraged the regionals to expand into long-range international charter flying "without detriment to Air Canada and CPA regular route operations." By providing international charter services during the winter months, the regionals were able to obtain year-round utilization of their jets. Such business expanded, especially as there was greater freedom to enter the international charter market than there was for the domestic charter market.

12. *Regulation and Control of Aeronautics in Can.*, 1932 A.C. 54 (P.C.) (Can.); *Johannesson v. Municipality of W. St. Paul*, [1951] 4 D.L.R. 609 (Can.).

13. CAN. REV. STAT. ch. N-17 (1970).

14. CAN. REV. STAT. ch. A # (1970). For further discussion of policy making procedures, see Janisch, *Policy Making in Regulation: Toward a New Definition of the Status of Independent Regulatory Agencies in Canada*, 17 OSGOOD HALL L.J. 46 (1979).

The detailed provisions describing the control of aeronautics in Canada are principally located in the Aeronautics Act and the regulations made pursuant to the Act. The Aeronautics Act sets out the respective powers, duties and responsibilities of the Minister of Transport and the CTC. The ultimate responsibility for policy guidance resides with the federal government and is normally offered through statements issued by the Minister of Transport. Neither the National Transportation Act nor the Aeronautics Act, however, provides an explicit legal power for policy direction to the CTC. In practice, the Air Transport Committee (ATC), acting for the CTC, has been responsive to relevant government policy statements.

The National Transportation Act established the CTC as an independent regulatory body, reporting to Parliament through the Minister of Transport. Commissioners are appointed by the government for 10 years, hold office during good behavior, and are only removable "for cause."¹⁵ The National Transportation Act also provides for appeals from decisions of the CTC to the Minister of Transport in the case of licensing decisions, and for the Governor in Council to "vary and rescind"¹⁶ any order of the CTC.

Part I of the Aeronautics Act makes the Minister of Transport responsible for regulating airport and air navigational facilities and services, and the enforcement of safety standards in air carrier operations. The regulatory powers of the CTC are set out in broad terms in Part II of the Aeronautics Act, and have been supplemented by detailed provisions in the Air Carrier Regulations¹⁷ enacted pursuant to the Act. The CTC is empowered to regulate the right to provide commercial air services and generally to regulate airline tariffs, terms and conditions of services and mergers and acquisitions. In issuing a license, the CTC can prescribe the routes that may be followed or the areas to be served and it can suspend, cancel and amend any license. The ATC, acting on behalf of the CTC, is not allowed to issue a license, unless it is satisfied that "the proposed commercial air service is and will be required by the present and future public convenience and necessity."¹⁸

The ATC can suspend or disallow a tariff; it can require a carrier to substitute a satisfactory tariff for one disallowed; and it can substitute a satisfactory tariff for the one disallowed if it deems the fare filed by the carrier is unjust, unreasonable, unjustly discriminatory or unreasonably preferential.¹⁹

Until 1977, Air Canada was free from regulatory control by the ATC

15. CAN. REV. STAT. ch. N-17, Part I § 6(3) (1970).

16. *Id.* at 25, 65.

17. Can. Gaz. ch. 3 (1978).

18. *Id.* at Part II, 7(1).

19. *Id.* at Part VI, 113(3).

except in matters of tariffs. The Crown Corporation operated under the Air Canada Act²⁰ and was subject to the provisions of the Air Canada Contract.²¹ Any Air Canada service authorized under the contract was to be granted by the CTC. The Air Canada Contract ceased to exist with the passage of the Air Canada Act of 1977,²² and the discretion over the approval of Air Canada's license applications was placed with the ATC. Since this time, the ATC has been permitted to apply the criteria of "convenience and necessity"²³ in judging Air Canada's license applications.

Air Canada is a wholly owned Crown corporation, in which the Minister of Transport acts as a trustee shareholder for the federal government. Under the Air Canada Act of 1977, the Governor in Council is empowered to issue directives of a general nature of Air Canada, and to appoint the chairman and president of the corporation. Air Canada is required to refer various reports, such as those submitted annually by the Board of Directors and auditors, to a Committee of Parliament formed to review matters relating to transport. As a Crown corporation, Air Canada is subject to general financial control, direction and accountability under the Financial Administration Act.²⁴ Under the statute, Air Canada is required to submit an annual capital budget for approval by Governor in Council on the recommendation of the Minister of Transport, the President of the Treasury Board and the Minister of Finance.

IV. THE EROSION OF DIRECT REGULATION

The passage of the National Transportation Act²⁵ (NTA) in 1967 marked the government's apparent move away from regimes of direct economic regulation of the transport modes and towards those in which competition in the market place was to be the major regulator. Section 3 of the NTA states:

It is hereby declared that an economic, efficient and adequate transportation system making the best use of all available modes of transportation at the lowest total cost is essential to protect the interest of the users of transportation and to maintain the economic well-being and growth of Canada, and that these objectives are most likely to be achieved when all modes of transport are able to compete under conditions ensuring that, having due regard to national policy and to legal and constitutional requirements. . . .

The phrase "having due regard to national policy and to legal and constitutional requirements" placed a limitation on the move to complete

20. CAN. REV. STAT. c. A-11 (1970).

21. *Id.* at 14.

22. Can. Stat. ch. 5 (1977-78).

23. Can. Gaz. ch 3, Part II, 7(1) (1978).

24. CAN. REV. STAT. ch. F-10 (1970).

25. CAN. REV. STAT. ch. N-17 (1970).

regulation by the market. In air travel, the limitation remained, as a Transport Canada document states, "both the government and the CTC have seen competition in air transportation as an important objective but one that most markets in Canada cannot afford."²⁶ The transcontinental market was apparently one that could afford competition.

In 1967, the federal Transport Minister made public the Transcontinental Air Service Policy,²⁷ which states that it was in the public interest to increase C.P. Air's frequencies and points served on transcontinental routes. In 1958, C.P. Air had been elevated to a "national carrier" and authorized to provide one daily return transcontinental flight serving Vancouver, Winnipeg, Toronto and Montreal. This authorization, however, rather than introducing a process of "regulated competition" launched a system of "administered market shares."²⁸ The 1967 policy allowed the carrier to add Calgary, Edmonton and Ottawa to its daily transcontinental flights, and to provide, by 1970, 25 per cent of the available transcontinental seats. In 1977, however, the controls between C.P. Air and Air Canada were significantly loosened with the reduction of C.P. Air's capacity and turnaround restriction.²⁹ On March 23, 1979, the Minister of Transport removed the remaining restrictions, leaving C.P. Air with the freedom to operate without capacity restrictions and to apply to the ATC for authority to serve additional points anywhere within Canada.

Competition on the transcontinental market, however, was the exception, for in the first decade of the NTA, the CTC pursued a policy of protecting the "preferred vehicles" from competition. Protecting Air Canada's mainline routes from competition was seen as necessary to the generation of internal subsidies and to the maintenance of unprofitable but desirable "social" services.

The Regional Air Carrier Policy,³⁰ announced on August 15, 1969, specified the regional boundaries in which the five regional carriers could operate. The regionals' role, as "preferred vehicles," was to operate local or regional routes to supplement the domestic mainline operations of

26. *Transport Canada*, *supra* note 10 at 26.

27. Westell, *Air Carrier Ties Loosened for Expo*, *GLOBE AND MAIL*, Mar. 27, 1967 at 1, col. 6.

28. In granting CP Air access to transcontinental routes in 1958, the Air Transport Board, the predecessor of the CTC, found that the position of CP Air as an international carrier required bolstering, and that the carrier required a license to operate a daily transcontinental service to connect CPA's existing international operations at Vancouver and Montreal. J.J. Smith, *Regulatory Moves in Canadian Air Transport—Pragmatists at Work*. *Can. Transp. Research Forum Annual Meeting*, Charlottetown, P.E.I. (June 10–12, 1981).

29. CP Air's share of transcontinental market capacity was to be increased from 25 per cent to 35 percent of the growth in 1978 and to 45 percent of the market's growth in 1979. It was also allowed to turn around at points in western Canada on flights from Vancouver, Ottawa, Montreal or Toronto. Department of Transport (Can.), Press Release (June 28, 1977), P.I.

30. Hon. Don Jamieson, Minister of Transport, Statement of Aviation Policy Principles (Aug. 15, 1969).

the nationals and to provide regular and scheduled services to the north. The Regional Air Carrier Policy, however, did state that "there may well be circumstances where other operations of a Regional Carrier in its own areas ought to extend into adjacent areas of another Regional Carrier. These would be dealt with by the CTC on their merits", but the regionals were not to "become directly competitive on any substantial scale with the two mainline carrier." Where the "economic and efficient operation of a regional route pattern" involved competition with one of the nationals on a mainline route segment, the regionals could receive authorization: "In these cases, the National carrier would be expected to limit its competitive efforts, with the ATC to exercise appropriate control if necessary."³¹

By 1977, the restrictive licensing policies of the CTC resulted in 168 city-pairs with over 10,000 trips, some 55 per cent having been authorized for schedule service by only one carrier.³² Of the remaining 45 per cent, the great majority were dominated by one airline carrying 70 per cent or more of the traffic.³³ Air Canada, operating in effect as three airlines in one, remained the dominant domestic and international carrier. It was the major transcontinental and international carrier; it dominated the high volume, short-haul mainline routes in central Canada and it remained a local service carrier to a number of small centers. It was the largest carrier in the Canadian-American transborder and scheduled market, performing 40 of some 115 daily scheduled transborder flights.³⁴ Of the industry's aggregate domestic and international revenue in 1978, Air Canada's share was 51 per cent.³⁵ Over 65 per cent of the scheduled revenue ton miles flown on domestic routes in 1978 were supplied by Air Canada.³⁶

Although the potential domestic competitors to Air Canada were, with the exception of PWA,³⁷ largely privately owned and financed, Air Canada

31. *Id.* at 141-142.

32. *Transport Canada, supra* note 26, at 134.

33. *Id.*

34. Haanappel, *Some Legal and Economic Aspects of Canadian Airline Regulation*, in *PER-SPECTIVES IN CANADIAN AIRLINE REGULATION* 149 (1979).

35. *Transport Canada supra* note 26, at 352.

36. *Id.* at 125.

37. Zwarun, *Buckling up at PWA*, *CAN. BUS.*, Mar., 1983, at 109. The Conservative government of Alberta purchased PWA for \$38 million in August 1974. It was widely considered to be a move designed to retain work in Alberta rather than British Columbia and was expected to make a bid for the carrier. The take-over was approved by the Supreme Court of Canada in 1977. In September 1982 a provincial government task force was set up to study the sale of the carrier. The Premier, however, established the guidelines that western Canadians retain control and that the shares be widely distributed as possible. Provincial ownership, however, has not been confined to regional carriers. In October 1981, the provincial government of Saskatchewan initiated the acquisition of Norcanair, a local carrier. This carrier was originally known as Saskair, and was established by the government of Saskatchewan in the late forties. It was sold to the private

remained financed by debt offerings issued by the federal government and subject, under the Air Canada Contract, to licensing control not from the CTC but from the Minister of Transport. The Air Canada Act of 1977,³⁸ revoked the Air Canada contract. Instead Air Canada's license applications were now subject to the discretion of the ATC. However, the Crown corporation was still required to comply with directives from the Governor in Council "of a general nature."³⁹

Under Sections 10 to 16 of the Air Canada Act, the large debt accrued by Air Canada⁴⁰ was cancelled, and in turn the federal government purchased 329,000 common shares at \$1,000 each, creating a debt/equity ratio of 60/40. This ratio was in line with carriers of comparable size in North America. Section 6 of the Act specified the activities complementary to air transport and which the company was permitted to acquire and operate. Air Canada was permitted to engage in activities related to aircraft, hotels, surface vehicles and both capital and maintenance facilities for the transport and housing of goods and persons. In effect, the carrier was now able to extend its presence in the market by vertically integrating and presenting new services. Under Section 7(2), the Board of Directors were to have "due regard for sound business principles, and in particular, to the contemplation of profit." Provisions were also made in Section 8 of the Act for compensation to be paid to the corporation for any losses incurred as a result of complying with "direc-

sector in 1964. On October 2, 1981, the Saskatchewan Minister of Transport authorized its Crown Investments Corporation to acquire the issue shares and certain assets of Norcanair. The proposal would have involved adding to the fleet. Although the agreement was signed and the documentation forwarded to the Governor in Council for approval, the incoming Conservative government in May 1982 announced that it would be returning the carrier to the private sector.

The government of Ontario owns the nine aircraft in the local service operation known as Norontair, serving 21 centers in northern Ontario. It has invited proposals from private carriers to operate the aircraft to Norontair standards and frequencies. The fares are set by the Ontario Northland Transportations Commission. Hence, the government owns the aircraft and not the airline. The operating subsidy in 1981 was \$1.2 million, with the airline carrying 120,000 passengers. *Minutes and Proceedings and Evidence of the House of Commons Standing Comm. on Transport*, 32d Parl., 1st Sess. 51 (1982) testimony of W.D. Burtnick).

38. Can. Stat. ch. 5 (1977-78).

39. *Id.* at § 8.

40. The Air Canada Act authorized the Government of Canada to purchase up to Cnd. \$750 million of nontransferable shares, up to \$600 million of which could be purchased in exchange for an equivalent amount of Air Canada debt owed to the Government of Canada and the CNR. Of the new equity, Cnd. \$329 million has been issued, leaving Cnd. \$421 million of unissued share capital available for issue without the need for Parliamentary approval if the Governor in Council determines in the future that Air Canada would benefit from additional equity contributions. Such contributions could be either in cash or through conversion of any government held debt. Of the total loan guarantees from the Government of Canada of Cnd. \$750 million, \$252 million has been utilized to date. Thus, the Government, if it wishes, could invest up to Cnd. \$919 million of equity debt and/or guarantees. Air Canada Act, Can. Stat. Ch. 5 (1977-78).

tives of a general nature" from the Governor in Council.⁴¹ Despite the directive to follow sound business principles, it was not clear whether Air Canada was still expected to operate unremunerative "social" services.⁴²

Although, permitted to expand into complementary services and instructed to have regard to the profit motive, Air Canada's license applications were now subject, as were all other domestic carriers, to the discretion of the ATC. It was less certain, however, that carriers would start from comparable positions in a competitive market. Air Canada's debt was backed by the federal government, and it remained the dominant carrier and price leader in domestic and international markets. In pursuing the NTA's goal by increasing competition, the CTC would clearly have to consider the implications of the considerable market power and financial strength enjoyed by Air Canada and its potential domestic competitors. Competition did increase, and the resulting performance and changes in ownership of the regionals underlined the market and financial strength Air Canada enjoyed over its domestic competitors.

The forces activating the initial regulatory changes originated outside the domestic market. It was as a consequence of lower fares resulting from the competition between scheduled and charter carriers on a number of international long-haul routes, that the regionals were presented with access into domestic markets beyond their boundaries. Domestic charters would now be offered to a public aware of low international fares and desirous of lower domestic fares.

V. THE CONSEQUENCE OF THE ENTRY OF CHARTERS

During the spring of 1977, it became apparent to a growing number of travellers that it was cheaper to travel across the North Atlantic than it was to travel across Canada. So many chose to travel on international routes, that the jump in the travel deficit in the balance of payments was explained as being due in large part to marked differences in domestic and international fares.⁴³ A large proportion of air passengers traveled

41. Can. Stat. ch. 5, § 8 (1977-78).

42. Section 8 of the Air Canada Act, 1977 states that the airlines must "comply with directions of a general nature given to it by order of the Governor in Council." Under § 9, however, it is made clear that the Cabinet *may* compensate the airline for losses incurred as a result of compliance with an order under section 8. These provisions seem to suggest that where the federal government wants the airline to serve unremunerative routes it is prepared to pay a subsidy. This alternative, however, may be blocked by the language of section 8 which speaks of "directions of a general nature" from the Cabinet. A specific route or even a number of routes may not fall within the meaning of this provision of the Act.

43. In 1977 the balance of payments on travel account had fallen to a deficit of \$1675 million (Canadian), having been in deficit to the extent of \$284 million (Canadian), in 1974. Not all of this increased deficit, however, has been attributed to higher domestic air fares. Can. Dept. of Fin.

by charters. They were cheap and accessible, for the regulatory "fences" were now insufficiently high to stop increasing numbers of business travellers from using charters. Such low priced charters were not available on domestic routes, but within the year this had changed.

The growth of international air charters was spectacular in the decade of the 1960s, and by 1971, charter travel from Canada to Europe reached two-thirds of the scheduled market.⁴⁴ The acceleration in the growth occurred after 1961, when the "affinity" rules were adopted, permitting the class of license known as 9-4, which had been extended from transborder to international charter in 1954, to carry whole planeloads of passengers with an "affinity."⁴⁵ In 1973, the ATC largely removed the irksomeness of many of these affinity regulations by permitting a new form of charter flight for international charter operations—Advanced Booking Charter Flights (ABCs),⁴⁶ defined as "a round-trip international charter originating at one point in Canada, destined for one point in a foreign country and terminating at the originating point in Canada." Charter travel had received a further boost, but only on international routes. On domestic routes, carriers were prohibited from offering charter services across the scheduled routes of other carriers. In return a carrier received the same protection from other carriers.⁴⁷

Scheduled carriers responded in international routes by flying part charters, in which they offered seats on scheduled flights at conditions and rules competitive with charters. This was facilitated by the deploy-

and Can. Dept. of Indus., Trade and Commerce, Tourism—Economic Performance Discussion Paper 6-7 (1978).

44. Objection filed by CP Air, Nordair Ltd, Pacific Western Lts., Transair Ltd. and the Vancouver Board of Trade to the proposed acquisition by Air Canada of an interest in Wardair Canada Lts. by the purchase of one-third of the issued common shares of Wardair Canada Lts., and later certain non-voting proposed shares (to be issued). (C.T.C.) A.T.C. Decision No. 3566, 5, 6 (March 23, 1973).

45. Spalding, *Civil Aviation Policy in Canada and Its Effect on International and Domestic Charter Services*, in PERSPECTIVES ON CANADIAN AIRLINE REGULATION 65, 70-71 (1979). "In 1951 the Air Transport Board established a class of license known as Class 9-4 to permit the operation of international charter services [on U.S. transborder routes.] In 1954 this license authority was clearly by the Air Transport Board for other international charters." *Id.* at 70.

46. C.T.C. General Order No. 1972-4 Air 1 (Dec. 29, 1972).

47. Greig, *Regional Air Carrier Study*, CANADIAN TRANSPORT COMMISSION RESEARCH BRANCH REPORT NO. 40-77-2 at 55 (1977). "Prior to 1968, route protection was administered under Air Transport Board General Order # 5/51 granting blanket protection to most carriers operating domestic (Class 1 and 2) and international (Class 8 and 9.2) commercial air services In 1971, . . . amendments were added to each domestic charge license so as to protect domestic scheduled services. . . . [Domestic]inclusive tours [were] subject to Section 17 of the Air Carrier Regulations [CAN. ON. REG. ch. 3, Part II (1978)]. Under the section, . . . [they had to] meet the same requirements . . . as international inclusive tours." *Id.* at 55-56. [The ATC, however], when considering an applicaiton, could take "into account the effect of the charter operation on scheduled air services provided to, or near, points identified in the inclusive tour itinerary." *Id.* at 56.

ment of surplus seat management programs, developed principally by Boeing, allowing carriers to accurately predict the revenue derived from selling at discount rates. On their domestic transcontinental routes, they offered a limited number of discount fares comparable to ABCs—known as Charter Class Canada Fares (CCCFs). A cabinet decision of January 19, 1978, however, broke the route protection by permitting any carrier holding an appropriate license to offer interregional ABCs on scheduled services.⁴⁸ This permitted carriers holding licenses to apply for the right to participate in interregional ABCs without giving the two national carriers any primary right to the operation of additional interregional ABCs.

Despite access to the interregional domestic routes the regionals stayed within their boundaries, preferring to charter to their established markets in Florida and the Caribbean rather than facing the counterattacks from the nationals. It was a specialist charter operator, Wardair, who was to offer the most significant challenge to the nationals on their long-haul domestic routes.

VI. THE CHALLENGE OF WARDAIR

In January 1978, Wardair, Canada's largest charter operator, did not hold a domestic charter license. With an expanded jet fleet,⁴⁹ however, the carrier fought back against the scheduled carriers on international routes. In late 1978, Wardair defied the Air Carrier Regulations by offering multi-origin and destination flights and mixed ABCs and Inclusive Tour rates on the same aircraft. The offers met with a ready response from the public, such that on July 27, 1979, the Review Committee of the CTC permitted Wardair to continue its multiple pick-ups in Canada.⁵⁰ On August 16, 1979, Wardair was issued a domestic charter license,⁵¹ while on December 29, 1979, amendments were made to the Air Carrier Regulations easing the conditions attached to the ABCs and allowing carriers such as Wardair, to sell domestic ABCs through partly or wholly owned charters.⁵² On May 8, 1980, Wardair began its domestic ABC fights.

48. P.C. 168 (Jan. 19, 1978). The Cabinet varied the A.T.C. Decision No. 5369 (Dec. 6, 1977), which had allowed Air Canada and CP Air to mount a maximum of 25 interregional return flight ABC's between points on their present licenses. Regional carriers were allowed to operate domestic ABC's.

49. In the Matter of Wardair Canada (1975) Ltd. Applications for Consolidations of certain ABC Charter programs and Requests for Relief in letter to the Minister of Transport and President of the Canadian Transport Commission. (C.T.C.) A.T.C. Decision No. 5785 (Apr. 18, 1979).

50. In the Matter of an application by Wardair Canada (1975) Ltd. for review and rescission of ATC Decision No. 5864. C.T.C. Review Committee Decision File No. 63-3/79 (July 27, 1979).

51. Application by Wardair Canada (1975) Ltd. for authority to operate a Class 4 Charter Commercial Air Service using fixed wing Aircraft in Group H from base at Edmonton, Alberta. (C.T.C.) A.T.C. Decision No. 5904 (Aug. 16, 1979).

52. SOR 80-148, Can. Gaz., Part II, 464-78 (Feb. 27, 1980).

The licensing of domestic ABCs activated controversy over the so called "stimulation/division" issue, namely whether low priced tours would substantially divert passengers from regular fares—or whether they would attract passengers who would not have flown at the regular rates. "Fences," designed to limit the extent of the division from regular fares, became the center of controversy and of examination by the ATC. The nationals were the most vociferous opponents of domestic charters, arguing that their supply would divert regular fare paying passengers, causing drops in average revenue of long-haul routes, and in turn forcing service reduction on less profitable routes. Instead of offering ABC charters, however, the national carriers targeted the nonbusiness market by offering close substitutes at competitive rates. So successful have been these substitutes at capturing the nonbusiness market, that the use of "fences" has shifted from that of containing the diversion from regular to low fares, to that of establishing comparability between promotional fares on scheduled flights and charter fares.

The nationals countered the threat of domestic ABCs with two competing substitutes. Before the appearance of domestic ABCs both C.P. Air and Air Canada had offered, at low prices, the entire seats on selected flights. Air Canada's Nighthawk, introduced on June 12, 1978, required a minimum and a maximum stay, while C.P. Air's Skybus charged 45 per cent of the regular economy price in return for a non-frills service operating three times a week on the major transcontinental routes. The national's most competitive substitutes, however, have been the low fare offered on their regular scheduled flights. Designated as charter class fares, CCCFs were in effect surplus seats offered on regular scheduled flights, and prices at or near marginal cost. It took only a little while for the nationals to further deploy their surplus seat management programs by offering low prices during the seasonal, weekly, and daily off-peaks.

In October 1980, the operators of domestic ABCs faced another competing product, with the extension of the Skybus to regularly scheduled flights on selected city-pairs. Instead of dedicating an entire aircraft to the product, a fixed capacity section was allocated to the sole use of the low-priced product. Operators of domestic ABCs countered by pressuring for lower prices, and for the right to sell a large proportion of seats on their charter flights without a prebooking deadline—known as "top-off seats." "Fences" were steadily reduced (see Table 1). In February 1980, as a result of an easing on the restrictions on domestic ABCs, up to one third of the seats were "top-offs" although there were restrictions such as round-trip obligations and minimum stay requirements.

The competition between the nationals and the charter carriers for the nonbusiness market resulted in a convergence in the products offered. The national's operated part charters, in which they allocated

seats on their scheduled flights at rates and conditions competitive with charters, while the charter carriers offered seats on their flights which were competitive with the lower priced scheduled seats. There was some question, as the Chairman of the CTC stated, as to "whether or not the maintenance of regulations that preserved a real distinction between conventional unit toll services and specialized services catering primarily to the leisure traveler still hold."⁵³

Although in 1980, of the low-priced seats supplied, only 5.6 per cent were domestic charters,⁵⁴ their entry along with the removal of the restrictions on C.P. Air, had played a part on lowering the fares on the transcontinental routes. Between 1977 and 1980, on routes of 2400 km, regular economy fares had fallen by 3.6 per cent, and on routes of 6000 km, by 1.2 per cent.⁵⁵ In contrast, on the shorter haul routes, there were few domestic charters of CCCFs, and this was reflected in rises in economy fares over the period 1977 to 1980,⁵⁶ and in fare structures which offered few low-cost seats for the traveller. This in turn reflected the fact that the regionals on the shorter and medium-haul interregional routes by offering domestic ABCs, chose to remain within their regional boundaries, flying international charters to the sunny South during the winter months. The competitive domestic charters had come from Wardair. This carrier had supplied 62 per cent of the domestic charter seats in 1980, while Nordair and PWA supplied only 2.3 and 35.7 per cent respectively.⁵⁷

While few regionals were tempted to compete against the nationals by offering domestic charters, a number chose to enter the national's routes by seeking licenses to operate scheduled services. Their success in obtaining licenses, however, resulted in a lack of congruence between their actual operations and those established in the 1966 Regional Air Carrier Policy. There was the inevitable call for a clarification of the role of the nationals and the regionals, but more significantly, it introduced the general issue of how far the industry should be regulated.

VII. EMERGENCE OF COMPETITION

The carefully drawn regional boundaries of 1969 started to crack in 1978. Three years later all the regional carriers served Toronto. Instead

53. Address by the Hon. E.J. Benson, President of the C.T.C. *Conference on Regulation in Transition*, McGill University Management Institute, Canadian (Nov. 11-13, 1981).

54. Dodd, Bonnyman & Shore, *The Low-Priced Air Fare Review: A Three-Year Perspective*, C.T.C. RESEARCH BRANCH REPORT NO. 19802/02E 65, table 3.2(1982).

55. *Id.* at 42, table 4.1. Economy Fair Index, July fares, 1970 dollars.

56. *Id.* The economy fares on routes of 300 km length rose by 4.8%, and by 1.1% on routes of 600 km.

57. *Id.* at 83, table 4.14. In 1981, CP Air supplied 15%, Nordair 6.1%, PWA 37.2% and Wardair 41.4%. Grieg, *The Low Priced Air Fare Review, The First Five Years*, in CANADIAN TRANSPORT COMMISSION RESEARCH BRANCH, REPORT NO. 1983/05E (1983).

of flying predominantly north-south routes, all the regionals had started flying east-west by entering the mainline routes of the national carriers. At the start of 1978 there were five regional carriers; a year later there were only four, following the merger of PWA and Transair. In the same year, Nordair became a subsidiary of Air Canada, leaving Quebecair as the then only regional carrier independent of either the national airlines or the provincial governments.

The start of substantial change came with the growing financial weakness of Transair and its subsequent merger with PWA. Transair, a Winnipeg-based regional carrier serving Manitoba, points in the North-west Territories and points west of Winnipeg to Toronto, encountered financial difficulties in the mid-seventies.⁵⁸ As part of its agreement to purchase Transair, PWA approached Air Canada in 1977 with the suggestion that it would seek permission to serve Edmonton, Calgary, Regina and Saskatchewan so that it would have linkage from Vancouver to Edmonton and Calgary to Regina, and Saskatoon to Winnipeg. Air Canada agreed as long as Transair would cancel its licenses to serve points east, from Winnipeg through to Toronto, and that the Winnipeg-Calgary and Winnipeg-Edmonton routes would involve at least one stop. On the latter routes, in return, Air Canada promised to "accommodate" Transair, by reducing its frequencies.⁵⁹ PWA agreed to the terms and sought approval from the ATC.

In its Decision No. 5450, of April 7, 1978, the ATC ruled that the respective licenses of Transair and PWA would be operated independently, and invoked the restrictions requested by Air Canada in its letter of agreement with PWA. As for Transair's routes east of Winnipeg, the ATC granted Nordair in July, 1978 authority to serve Toronto, Sault Ste-Marie, Thunder Bay, Dryden and Winnipeg.⁶⁰ The ATC, found it to be "more in

58. In the matter of: (1) The proposed acquisition by Pacific Western Airlines Ltd. of an interest in the business or undertaking by Transair Limited by Purchase of 2,245,797 common shares without par value in the capital stock of Transair Limited, thereby effecting a change of control of that company; (2) An application by Transair Limited for Authority to serve the additional points Regina and Saskatoon, Saskatchewan, and Calgary and Edmonton, Alberta, under License No. A.T.C. 1788/68(S). (C.T.C.) ATC Decision No. 5450, 6 (April 7, 1978).

59. In its letter of agreement with PWA, Air Canada stated that the "Regional Air Carrier policy of 1966 requires it to recognize the supporting role of the regional carrier and make appropriate provision on the competitive segment accordingly." *Id.* at 6.

60. In the matter of (1) An Application by Nordair Ltd. for Authority to Serve Certain Additional Points in Ontario and Manitoba, (2) An Application by Great Lakes Airline Ltd. to Serve Certain Points in Ontario and Manitoba, and to Amend Condition No. 1 of License No. A.T.C. 1641/66 (NS) by Deleting the Restriction as to the Number and Type of Group E Aircraft Which may be Operated Under said License, (3) An Application by CP Air for the Addition of the Point Thunder Bay, Ontario, as a Point to be Served Under License No. A.T.C. 979/59. Authorizing the Operation of Class 1 Scheduled Commercial Air Service to Provide for the Carriage of Passengers, Cargo and Mail between the Points Vancouver, B.C.; Calgary and Edmonton, Alberta;

the public interest to have another air carrier or carriers operating between Winnipeg and Toronto, than to have some combination of PWA and Transair, controlled by the Province of Alberta, operating from Victoria to Toronto."⁶¹ On the same day the ATC refused to disallow the merger takeover of Nordair by Air Canada.⁶² The Governor in Council affirmed the decision in November, 1978.⁶³

The acquisition of Transair by PWA gave a provincial Crown corporation control of two regional carriers serving four western provinces and the Northwest Territories.⁶⁴ If PWA had retained the Winnipeg-Toronto segment of Transairs' licenses, it would, in effect, have become their transcontinental carrier. The ATC was not prepared to accept such an outcome. Instead, in upholding Air Canada's purchase of Nordair, the Chairman of the ATC argued that it was in the public interest to have a "strong regional carrier in the east, operating from Winnipeg to Montreal."⁶⁵ There was a dispute over whether Nordair would remain independent from Air Canada, and able, in principle, to compete on jointly operated routes. In response to this dispute, the federal government announced that as soon as the acquisition was completed, Air Canada would be required to hand over the Nordair shares to the federal government so as to maintain the independence of Nordair. The federal government also promised to return Nordair to private owners after a few years.⁶⁶

As part of its service to Winnipeg, the Committee also allowed

Winnipeg, Manitoba; Toronto and Ottawa, Ontario; and Montreal, Quebec. (C.T.C.) A.T.C. Decision No. 5538 (July 28, 1978).

61. In the Matter of Application by Transair Limited to Suspend its Class I Scheduled Commercial Air Service Serving the Points Winnipeg, Manitoba, and Thunder Bay and Toronto, Ontario under License No. A.T.C. 1972/70(S) and to Suspend its Class 2 Regular Specific Point Commercial Air Service serving the points Winnipeg, Manitoba, and Dryden, Thunder Bay, Salut Ste Marie, and Toronto, Ontario Authorized Under License No. A.T.C. 818/57 (NS). (C.T.C.) A.T.C. Decision No. 5537 at (July 18, 1978).

62. In the Matter of the Proposed Acquisition of Interest in the Business or Undertaking of Nordair Ltee.—Nordair Ltd. by Air Canada. Air Canada Proposes to Purchase all the Outstanding Shares of Nordair Ltee.—Nordair Ltd., thereby Effecting a Change of Control of that Company. (C.T.C.) A.T.C. Decision No. 5539 (July 28, 1978).

63. Order in Council, P.C. 3389 (Nov. 6, 1978).

64. The two carriers were actually merged in 1979. The A.T.C. approved on August 9, 1979, the full merger of PWA and Transair under which only PWA's identity would remain. On November 29, 1979, Transair Ltd. became a wholly-owned subsidiary of PWA. Air Transport Committee Order No. 1979-A-559, (Aug. 9, 1979).

65. (C.T.C.) A.T.C. Decision No. 5539 *supra* note 62, at B-1.

66. Note that the statement suggesting Nordair would be returned to the private sector was not contained in the Order in Council. Rather, it was mentioned by the Hon. Otto Lang, then Minister of Transport, that he had confidence Nordair would be returned to the private sector within one year. There was no indication, however, that it was the policy of, or that it was a commitment from, the government. Sevens, *Aweird decisions*, GLOBE AND MAIL, Nov. 8, 1978, at 6.

Nordair to operate the Montreal to Toronto route, and in so doing, introduced competition by a regional on a route which had been considered to be one of the national's mainline route. Nordair entered the route in February 1978, followed two years later by Quebecair, which meant that in the summer of 1981, there were two regionals and the two nationals competing on this mainline route. By this time, however, the provincial government of Quebec had acquired a financial interest in Quebecair.⁶⁷

On January 12, 1981, the ATC, in its Decision No. 6333, authorized PWA to serve Calgary-Brandon-Toronto for an experimental two year period. By this decision, PWA had in effect moved up a level and was able to compete directly with Air Canada in providing regional services to the West.⁶⁸

In June 1980, a decision was made which involved more than allowing a regional carrier to enter the mainline routes of the nationals; it permitted a regional carrier to operate nonstop over a mainline route which traversed beyond its adjacent region. The route was the tenth largest city-pair in Canada in 1978, the Toronto to Halifax route, and the carrier was EPA.⁶⁹

C.P. Air had been encouraged in November 1978 by the Minister of Transport, the Honourable Otto Lang, to extend eastward beyond Montreal into the Maritimes.⁷⁰ As a result of its application, C.P. Air won permission to operate a nonstop scheduled service between Toronto and Halifax in competition with Air Canada. In the same decision, No. 6099, April 9, 1980, the ATC also permitted C.P. Air to operate with a stop between Montreal and Halifax. EPA's application to service the Halifax-Toronto route was refused because the ATC concluded that the 1969 Regional Air policy was a "policy impediment" in that Toronto was in a

67. Lemah Inc. owns 34%, Expidex 21%, Societe d' Investissement Desjardins 33% and Corporation Ltee 11% of the issued common stock. "The [Quebec] government injected \$15 million into the airline in July 1981, by pouring \$10.5 million into its general fund and taking the rest as preferred shares. *Province Admits to \$37 million Stake in Quebecair*, Dec. 8, 1982 at B1, col.3.

Since then, the province has given Quebecair loans and loan guarantees worth \$11 million." "[I]n November, 1980, the Quebec transport minister . . . announced that the government was spending \$3 million on Propair, a regional carrier in Abitibi. That money was used by Propair to repay a debt to Quebecair." *Cost of 'saving Quebecair \$29 million to date*, MONTREAL GAZETTE, Dec. 7, 1983 P. B2. The government also purchased two Hawker-Siddeley 748 aircraft from Quebecair in June, 1982 and leased them back to the airline. It is estimated this will cost the Quebec government \$5.2 million. "The government [also] agreed last year to purchase all common shares of Quebecair by . . . July, 1983 even if the airline goes bankrupt. The agreed price is \$2.25 a share [which] will cost about \$3.1 million." *Province Admits to \$37-Million Stake in Quebecair*, MONTREAL GAZETTE, Dec. 8, 1982 at B1, col. 3.

68. (C.T.C.)A.T.C. Decision No. 6333 (Jan. 12, 1981).

69. (C.T.C.)A.T.C. Decision No. 6099 (April 9, 1980).

70. Press Release, Dept. of Transp., June 28, 1977.

region adjacent to the one in which EPA operates.⁷¹

On June 27, 1980, by Order in Council, the decision No. 6099 of the ATC was varied so as to permit EPA to fly nonstop between Halifax and Toronto, while C.P. Air was required to do so without intermediate stop.⁷² EPA had presented a strong argument that it required this service to finance the replacement of its aircraft and to generate funds for a number of its loss making interregional routes. In granting the nonstop Toronto to Halifax route to EPA, however, the Governor in Council overturned not only what had been interpreted by C.P. Air as government support to engage in transcontinental competition with Air Canada, but also broke the 1969 policy statement that restricted the regionals' interregional expansion to communities adjacent to their regions.

By 1981, the protective regulatory policy, founded on geographic divisions, preferred vehicles and route protection, had been substantially eroded. Almost unrestricted competition on transcontinental routes had occurred. Regional boundaries had been breached, threatening the protection of preferred vehicles and the preservation of their charter markets. The ensuing increase in competition⁷³ exposed the weakness of the regional carriers in Central Canada, and hastened their transfer from private to government ownership. The financial weakness of the regionals, however, had been made apparent in the mid-seventies, following the downturn in the economy. Transair and EPA had made large losses⁷⁴ during this period. In 1980, Quebecair incurred an operating loss of over \$1.4 million,⁷⁵ but in contrast, Nordair continued to be profitable.⁷⁶

The poor financial performance of such carriers as EPA, Quebecair and Transair suggested that the 1966 Regional Air Carrier Policy was less than successful at increasing and stabilizing the revenue of the regionals. Encouraged to expand into international charter markets, the regionals had acquired long and medium-haul jet equipment, which was largely unsuitable for short-haul domestic routes. Interest payments increased, operating margins narrowed, leaving profits vulnerable to small changes in costs and revenues.⁷⁷ Competition with the nationals for unionized flight

71. *Supra* note 69.

72. P.C. 1980-1979 (June 27, 1980).

73. "[B]y 1979 half of the 168 Canadian city-pair markets with more than 10,000 trips per year had been authorized for service by more than one carrier, an increase of 12 percent over 1977 [There was] a doubling, from 22 to 48, in the number of multiple-authority city-pair markets in which two carriers were authorized to engage in head-to-head (i.e., unrestricted competition.]" *Transport Canada*, *supra* note 26, at 123.

74. EPA and Transair incurred losses in 1975. Greig, *supra* note 47, at 118-19.

75. *Statistics Canada, Air Carrier Financial Statements*, 16-17 (1980).

76. 1981 marked the 19th consecutive profitable year for Nordair. *Nordair, Annual Report*, 2 (1981).

77. Greig, *supra* note 47, at 99.

and maintenance personnel pushed input costs upward toward the levels of the nationals. They paid more for fuel than the nationals.⁷⁸ The international charter market accounted for a growing share of the regionals' revenues, leaving them vulnerable to changes in these markets. Quebecair and Nordair were particularly vulnerable, with approximately 72 and 64 per cent respectively of their total system revenue miles accounted for by charter operations.⁷⁹

In 1978, the regionals' charter services on the transatlantic market met with increasing competition from scheduled carriers offering low discount fares. The regionals, and particularly Quebecair and Nordair, retreated to their Southern (Caribbean, Central and South America) and Floridian markets, only to face competition from American carriers and the nationals, who offered low discount prices. For the regionals in Central Canada, the charter market had started to decline⁸⁰ (see Table 2). Their domestic operations were also confined to a region which although it contained a high number of dense routes,⁸¹ was the hub of Air Canada's mainline routes.

The poor performance of the regionals, however, was influenced not only by the failure of the Regional Air Carrier Policy to diversify and sustain their revenues, but also by their disadvantageous position vis-a-vis Air Canada, which entered into competition from the advantageous position of being "first among equals." Although, subject to the licensing authority of the CTC in 1977, it was not confined, as were the regional carriers, within regional boundaries. It was the dominant "omnibus" carrier, already operating⁸² in all but eight of the 50 largest markets. As a scheduled carrier it was also aided in the defense of its market shares, for it had the advantage over charter operators, who were subject to the

78. The "data indicate that mean domestic fuel prices paid by the regional carriers ranged between 7.7 to 15.1 percent higher than the prices paid by the [National] carriers." Jordan, *Performance of Regulated Canadian Airlines in Domestic and Transborder Operations* in RESEARCH MONOGRAPH NO. 12, BUREAU OF COMPETITION POLICY, CONSUMER & CORPORATE AFFAIRS CANADA, 104 (1982).

79. *Id.* at 38 and 39, Table 7.

80. The traffic data for the nationals is not broken down for the two national carriers, and hence the actual traffic movements of Air Canada in the domestic schedule and charter markets cannot be exactly identified. The table shows, however, the considerable drops in the average annual rates of growth of traffic of Quebecair over the period 1975-80 and the drops in charter traffic growth for Nordair over the same period. Quebecair's average annual passenger revenue miles flown on charter services fell by 16.4%, while Nordair growth was reduced to 6.1%, when it had averaged 23.5% over the period 1966-75.

81. Of the city pairs exceeding 10,000 outbound and inbound passengers in 1980, nine of the top 30 ranked by volume, were in the Ontario-Quebec region, accounting for 18% of the total traffic. Of the top 10 city pairs, seven involved Toronto. *Statistics Canada, Air Passenger Origin and Destination [Domestic Report]* (1980).

82. The figures are for 1977, and are taken from *Canadian Transport Commission Research Branch, Unit Toll Licenses And Airline Conduct—The Extent Of Competition*.

charter rules embodied in the Air Carrier Regulations, in being able to deploy, with less administrative delays, promotional fares, such as CFFS, and in providing attractive part-charters on scheduled flights.⁸³ The charter operators claimed that the advantages enjoyed by Air Canada, of having a large share of the scheduled market and the facility of swiftly responding to charter fares, permitted the Crown corporation to threaten charter competing carriers with predatory pricing.⁸⁴

As well as defending its domestic markets, Air Canada moved aggressively into international vacation markets. Taking advantage of the provisions of the Air Canada Act, it formed a tour company, Touram Inc., and proceeded to offer competitive tour packages to the major winter tourist markets. Diversification included the purchase of a share in a company, Guinness Port Aviation Ltd., which was involved in the sale, leasing and financing of aircraft. Revenues from operations other than flying, including the company's reservation system, maintenance, ground services, and computer contracting and the credit card operation enroute, totalled almost \$146 million in 1981, and made a major contribution to profits.⁸⁵

Air Canada's acquisition of Nordair appears to have been a defensive move, aimed at easing entry into the charter market. Although Nordair was offering alternative scheduled services to Air Canada on the Toronto-Ottawa-Montreal triangle, it had a much more significant presence in the charter markets on such routes as Toronto and Montreal to Florida and Montreal to Jamaica.⁸⁶ Acquiescence was achieved by acquisition, which in turn was facilitated by the offer of sale, prompted, it was said at the CTC hearing, by the inadequate real return on capital and the political uncertainty in Quebec.⁸⁷ It would also appear that following the financial difficulties of Quebecair in 1980, Transport Canada intended to use Nordair to acquire Quebecair, with the intention of merging the air services in Quebec.⁸⁸ The offer for Quebecair made by Air Canada in 1981 was rejected, and instead, the Quebec Government stepped in by

83. Spalding, *Civil Aviation Policy in Canada and Its Effect on International and Domestic Charter Service*, in PERSPECTIVES ON CANADIAN AIRLINE REGULATION, 65 (1979).

84. *Minutes of Proceedings and Evidence of the House of Commons Standing Comm. on Transport*, 32d Parl., 1st Sess. 46-8 (1982) (testimony of Max Ward, Chairman and President, Wardair Canada Ltd.)

85. In 1979, estimates of profit from nonairline operations were placed at \$44.2 million, when they were more than 75 percent of the airline's reported \$55.4 million record profit. Romain, *Air Canada Finds Profit on the Ground*, GLOBE AND MAIL, June 28, 1980 at B4, col. 2.

86. On the Toronto-Florida Route in 1976, Nordair had 43 percent of the charter market, 61 percent on the Montreal to Jamaica and 38 percent of the Toronto to Jamaica charter market. *Id.*

87. (C.T.C.) A.T.C. Decision No. 5539, A5 (July 28, 1978).

88. *Merger was planned for 2 Airlines*, GLOBE AND MAIL, Mar. 16, 1983, at 83, col. 1. (reporting the testimony of Denis de Belleval, former Quebec Transport Minister, testifying to the Quebec Provincial Commission on Quebecair).

purchasing \$15 million preference shares. In the following winter season, Quebecair was knocked out of the Montreal-Florida charter after intense competition from Air Canada's "Sun Charters." Suntours, the largest tourist retailer in Canada, and an opponent of Air Canada's acquisition of Nordair, went bankrupt, leaving the Montreal-Florida market primarily to two tourist operator, Touram (Air Canada) and Treasure Tours (Nordair).

By the summer of 1981, in the words of the President of the CTC, "competition between air carriers has stolen in on little cats feet and so subtly that many people are not even aware that it has happened.⁸⁹ The policy makers, however, were well aware, for the financial involvement of the Quebec government in Quebecair indicated the extent to which the Regional Air Carrier Policy had disintegrated. Regional carriers were no longer confined within their geographic boundaries. The demarcation between National and Charter carriers had blurred, as they competed on transcontinental routes by supplying very similar services. The response of the policy makers was to keep the aviation map and merely to redraw the lines.

VIII. ALTERNATIVE POLICIES

A. FINE TUNING THE STATUS QUO

In August 1981, Transport Canada presented its proposal for a domestic air carrier policy,⁹⁰ arguing that the uncertainty, caused in particular by the erosion of the Regional air carrier policy, necessitated a policy defining the carriers' roles. The policy was designed to provide a general and flexible framework for the regulatory agency's decision.⁹¹ It was to do this by defining relationships among the three groups of carriers in terms of the areas and kinds of routes where they could compete. It did not limit the permissible amount of competition among carriers. The latter would be decided by the CTC in light of particular circumstances, including any future policy on competition.⁹²

The proposed policy was, in the words of a departmental representative, "an attempt to fine tune the *status quo*."⁹³ Under the proposal, the regulatory function of the CTC would remain unchanged in that all carriers would still be required to obtain approval for entry, exit, changes in operating restrictions, fare changes and acquisitions and mergers. The paper defined the roles of the carriers such that they corresponded closely with

89. Benson, *supra* note 53, at 10.

90. Transport Canada, *Proposed Domestic Air Carriers Policy*, (TC-15-81-DP-E) (1981).

91. *Id.*

92. *Id.* at 15 para. 39(2) at 14, para. 38, 16, para. 40.

93. *Minutes of Proceedings and Evidence of the House of Commons Standing Comm. on Transport*, 32d Parl., 1st Sess. 5 (1982) (Feb. 3, 1982) (statement of J.A.A. Lovink, Director, Domestic Policy Air, Canadian Air Transp. Admin.).

their existing roles. There were to be no increases in national or regional carriers. There was to be no change in the role of charter carriers, although the paper did state this arrangement depends on "the maintenance of regulations that preserved a real distinction between conventional unit toll services and specialized services catering primarily to the leisure traveler."⁹⁴

The national carriers were to retain their present "omnibus role", providing scheduled services on any route in southern Canada (i.e., south of the 60° N latitude) suitable for the operation of large aircraft. They would not be allowed to operate scheduled services in areas north of 60° N latitude. Only the national carriers would be allowed to operate interregional services and nonstop jet services in southern Canada between city-pairs in excess of 800 miles. In southern Canada, regionals would be allowed to operate nonstop scheduled jet services between city-pairs of up to 800 miles within their respective regions. The regions were to be redrawn: EPA, Nordair, and Quebecair would be allowed to operate up to and east of a dividing line running through Winnipeg and Resolute Bay; PWA would be allowed to operate up to, and east of that line. Between interregional city-pairs more than 800 miles apart, the regionals would be allowed to operate flights only with one or more intermediate stops. They would not be allowed to operate east-west interregional scheduled services, with or without intermediate stops. Local carriers would be allowed to provide scheduled passenger and cargo services on any routes in Canada, using, however, only nonjet equipment. They would be permitted to use jet equipment for all other cargo services.⁹⁵

Although, the paper argued that the proposal "provide the potential for greater competition between regional and national carriers",⁹⁶ it remained silent on the policy that the CTC should pursue with respect to competition. By redefining the physical limits within which each type of carrier should be allowed to operate, and by upholding the test to public convenience and necessity administered by the CTC, the paper proposed the continuation of the rigid control over market entry and the division of the market between existing scheduled carriers. Implicit in the policy was an understanding that the future growth of the air transport market would be less than in the past, such that rapid growth for one carrier could only come at the expense of others.⁹⁷ Deregulation was eschewed, for it was argued that all airline markets in Canada (including transcontinental) "remain relatively low-density by U.S. standards, so that the negative effects

94. Transport Canada, *supra* note 86, at 20.

95. *Id.* at 16-20.

96. *Id.* at 20.

97. These "implicit" assumptions were spelled out by a Department of Transport official. Address by J. Lovink, Air Transport Assoc. of Canada, Annual Meeting, (Nov. 2, 1981).

of possible over-competition are more of a concern than they are in the U.S..”⁹⁸

B. COMPETITION WITHIN A REGULATED ENVIRONMENT

All except the nationals disliked the *status quo*. As a result, on December 15, 1981, the Minister of Transport presented the House of Commons Standing Committee on Transport an order of Reference to study and make recommendations relating to Transport Canada’s Proposed Domestic Air Carrier Policy. On April 6, 1982, the Committee, comprised of members from the three Parties, tabled its document, entitled *Domestic Air Carrier Policy*.⁹⁹

The Committee advocated a “regime that should increase competition within a regulated environment.”¹⁰⁰ Unlike the proposal of Transport Canada, the Committee was explicit in its guidance to the CTC (see Table 3 for the contrasts between the two proposals). They were to “rely on competition as the principle means of promoting the objectives.”¹⁰¹ Accordingly, the Committee recommended that except on long-haul routes exceeding 1,500 miles, which would remain the preserve of the nationals, carriers, whether local, regional or newly established, would be free to apply for operating certificates for scheduled passenger or cargo services. In recommending such an entry policy, the Committee rejected the prescribed roles for the carriers contained in Transport Canada’s proposals, on the grounds that such rigidity would “seriously impede the efficient development of the industry and would deny the traveling public the most desirable choices of services and fares.”¹⁰² The CTC was recommended to encourage price competition by defining a “zone of flexibility within which carriers would be allowed to vary their fares upward or downward with no other requirement than a short notice to the CTC.”¹⁰³

Although the extent of competition would appear to be limited by the protection afforded the nationals on their long-haul routes, the Committee’s recommendations to lower the restrictions on charter and to “ensure that fair competition is maintained between ABC’s and low cost fares offered by scheduled carrier,”¹⁰⁴ would make the protection ineffective. The Committee recommended that “the Air Carrier Regulations should be amended to include a provision requiring scheduled carriers to state

98. *Id.*

99. *Can. H.C. Standing Comm. On Transport, 9th Report, Domestic Air Carrier Policy, 32d Parl., 1st Sess. (1982).*

100. *Id.* at 21.

101. *Id.* at 42, recomm. 8.

102. *Id.* at 28.

103. *Id.* at 43, recomm. 9.

104. *Id.* at 43, recomm. 10.

clearly in their advertisements for low-cost fares the number of seats being offered at those fares on each route,"¹⁰⁵ and that a relaxation of restrictions on charters, such as reducing the length of stay requirement and allowing one-way trips for the one-third "top-off," so that charter carriers can compete more equitably in low cost markets at the same time having some access to higher yield markets."¹⁰⁶

In recommending the removal of geographical entry restrictions while at the same time upholding the discretion of the CTC as to the actual extent of entry, the Committee envisaged the emergence of a workable competitive domestic airline industry:

On short and medium-haul routes, the increased threat of entry would stimulate carrier efficiency and service. On long haul routes, the potential threat of competition from other carriers' multi-stop services would have the same effect and, in addition, should result in more long haul, non-stop services being offered by national carriers than would be the case if this threat did not exist A redistribution of market shares would take place, fleet planning strategies would be re-oriented, weaker carriers might be merged with more efficient ones, and new low-cost carriers might emerge. The proposed roles provide the flexibility that is necessary for this process of change to continue and to produce a stronger air carrier industry that provides government service at a fair price.¹⁰⁷

The Committee also implied that its recommended competitive policy would work, despite the fact that there are only two large privately owned carriers (C.P. Air and Wardair), among the competing national, regional and charter companies, since, according to the Committee, Air Canada should retain its present role and status.¹⁰⁸ Although the Committee mentioned the concerns of some witnesses regarding the implications of provincial ownership for a workably competitive industry, change was not recommended.

C. ONE-WAY SWINGING GATE

The Economic Council of Canada had addressed the issue of government ownership in its report, *Reforming Regulation*, published in June 1981.¹⁰⁹ The Council recommended a phased deregulation of entry and

105. *Id.* at 43, recomm. 11.

106. *Id.* at 42, recomm. 7.

107. *Id.* at 31, 32.

108. "The Committee proposes no change in Air Canada's role or status at this time." It did not list this as one of its recommendations, *Id.* at 32.

109. *Economic Council Of Canada Reforming Regulation* (1981). The Report was in response to a request from the First Ministers (Premiers of the Provinces and the Prime Minister) after a third February 1978 meeting that the Economic Council, in consultation with both the provinces and the private sector should review all questions of governmental economic regulations to determine recommendations for action.

fare authorization.¹¹⁰ In the case of entry, a "one-way swinging gate" approach was recommended, under which existing or new regional, charter or local carriers could freely enter and service any domestic market served by a national carrier, but neither of the nationals would be allowed to enter domestic routes served by a regional or local carrier. Each of the two national carriers would be free to serve any new point or any point currently served by the other within Canada. As entry deregulation was expected to result in the national and regional carriers' existing from unremunerative routes, the Council recommended an abandonment procedure designed to facilitate a shift from larger to smaller carriers or from internally subsidized to government-subsidized service. Carriers were recommended to establish their own fares, subject only to an upper limit established by the CTC; regulations, and in particular minimum stay and advance booking requirements pertaining to domestic and international charter operations and charter-class fares, were recommended to be less restrictive.

The purpose of the asymmetric approach to entry was to give the weaker regional and local carriers time to adjust without having to encounter increased competition on their own routes from the larger and more financially sound nationals. Similarly, the Council recognized the government-owned carriers. As it was an advantage which could significantly affect the workings of a deregulated industry, the Council recommended that government-owned carriers should not be able to call upon additional government financing of persistent deficits, but they should be reimbursed by an overt subsidy, on a non-discriminatory basis, for operating at a higher level of service or on routes that they would not otherwise service.¹¹¹

IX. CONCLUSION—*THE CONTINUING STATUS QUO*

After almost a year of deliberation, the Minister of Transport announced he could not accept the Standing Committee's main recommendation. Instead, he suggested the "*status quo* is continuing with a lot of emphasis being given to the CTC in the decisions we are making now, and the emphasis will be on public convenience and necessity rather than on the formalities of a clear-cut flight policy".¹¹² The *status quo* will continue in that the CTC will continue to regulate without the benefit of a clear-cut statement of the appropriate degree of competition and regulation

110. *Id.* at ch. 4. See also, Ellison, *U.S. Airline Deregulation: Implications for Canada* ch. 5 (1981).

111. Economic Council of Canada, *supra* note 109, at 33.

112. *Minutes of Proceedings and Evidence of the House of Commons Standing Comm. on Transport*, 32d Parl., 1st Sess. 88 (Mar. 15, 1983) (testimony of Hon. Jean-Luc Pepin, Minister of Transport).

necessary to achieve the desired air transport policy. Some carriers, however, have either undergone or are undergoing changes in ownership, while all have faced increasing international competition, such that their positions are far from the *status quo* of a year ago. So strong are these competitive forces that the Department of Transport will be compelled to make decisions concerning provincial and federal ownership and bilateral transborder agreements. The *status quo* will change, but not as a result of a stated change in domestic air carrier policy.

The failure to adopt either a more competitive or a redefined protectionist domestic air carrier policy reflects in large part the effects of eroded protective regulation. The erosion contributed to the demise of the privately owned regional carriers and resulted in their transfer to the public section. Air Canada has emerged to command an even more dominant position than when it entered the period of eroded protectionism. Nordair is controlled by Air Canada. Quebecair, after being the subject of negotiation between the federal government and the provincial governments of Quebec and Ontario, was purchased by the Quebec government in June 1983.¹¹³ There is currently only one privately owned national carrier—C.P. Air—and one regional, EPA—while Wardair, despite its presence on transcontinental routes, is a charter operator and is not “recognized” in Transport Canada’s domestic (scheduled) air carrier policy. Despite considering privatization, the Government of Alberta remains the owner of PWA.

The extension of public ownership in the industry has moved to the front as an issue of policy, for it raises the question as to whether the privatization of the industry is necessary before a competitive industry could work. C.P. Air, the largest privately owned carrier, has opposed deregulation on the grounds that it would be in a disadvantageous position in competition with Air Canada.¹¹⁴ The federally owned carrier would be able to draw upon financial resources which would be inaccessible to C.P. Air. The provincial ownership of regional carriers raises the possibility of taxpayers’ revenue subsidizing fares which plunge below costs in

113. Quebec Transport Minister Michel Clair and his Ontario counterpart, James Snow, presented a scheme in August 1982 to the federal Minister of Transport to form a new private holding company, dubbed “Newco,” from Nordair and shares owned by Air Canada as well as shares from Quebecair, its subsidiary Regionair. In late June 1983, the government of Quebec executed their threat. The province invested \$828.2 million and will provide a \$12 million annual operating subsidy for the carrier. A newly created company, Quebec Transport Co., will direct the acquired carrier. *Nationalists find a new course in Campaign to save Quebecair*, Montreal Gazette, Nov. 27, 1982 B-1, col. 4; *Pepin OK’s bid to save Quebecair*, Montreal Gazette, Dec. 22, 1982 B-2, col. 3; *Nationalism At Any Price*, Montreal Gazette, Mar. 3, 1983, at B-2, col. 1. *More Domestic Airlines To Come Under Scrutiny*, Financial Post, July 2, 1983, at 4.

114. Address by Ian A. Gray, Canadian Club of Montreal (Oct. 19, 1978) (Mr. Gray was then the President and Chief Executive Officer of CP Air).

unregulated, competitive markets. In general, provincial ownership, while it may not challenge directly the jurisdiction of the federal government over the economic and safety regulation of civil aviation in Canada, presents the possibility of conflict between regulatory policy of the federal regulatory agency and the goals adopted by the provincial government for their carriers. This threat of conflict appears in part to have prompted the federal government to introduce legislation limiting the provinces and their agencies from owning more than 10 per cent of a carrier.¹¹⁵

Despite shoring up its domestic market in Central Canada, Air Canada—and C.P. Air—face growing threats to their shares of the transborder markets from low cost carriers able to offer low fares from points within the United States but sufficiently close to the major Canadian centers to attract substantial traffic.¹¹⁶ Airports at Buffalo and Niagara near Toronto and Hamilton, Burlington International Airport in Vermont, 150 kms for Montreal, and Detroit International Airport near Windsor are being served by low-cost carriers and which are biting into the national's (and U.S. trunk carriers) transborder market. For unlike the U.S. trunk carriers, the transborder market is of some significance for the nationals, accounting for 15 per cent of their gross revenue.¹¹⁷ Furthermore, rather than travelling on Canadian carriers on transcontinental route to destinations in the United States, Canadian passengers have been moving, as they did in the late Seventies, to these border airports and purchasing the low-priced, off-season "fly anywhere type fares" offered by the major carriers.¹¹⁸

The competition from substitute transcontinental and border services is clearly placing a squeeze on Canadian carriers. A more liberal bilateral agreement may allow the nationals—and the U.S. trunks—to recapture some of their markets. But it will be at a cost, for their fares will have to drop, and they will probably land at unprofitable levels. For unless the

115. *Corporate Shareholding Limitation Act*, or S-31, received its first reading in the Senate on November 2, 1982. It would stop provinces from owning more than 10% of pipelines and transportation companies engaged in inter-provincial and international trade. The first effect was to block Quebec from investing further in Quebecair—but there was later a specific exemption for Quebecair. It was later revealed, that one of the aims was to stop the Caisse de Depot et Placement du Quebec, the provincial agency that invests in Canadian Pacific. The Caisse held just under 10% of C.P. *Cost of 'Saving Quebecair' \$29 Million to Date*. *Montreal Gazette*, Dec. 7, 1983 D-5, col. 2.

116. The first and clearest forecast of this development was given by R. Pulsifer, *Reforming Regulation-Airlines Panel*, 5, 6 (June 25, 1981) (unpublished manuscript).

117. Jordan, *supra* note 78 at 44, table 8.

118. For instance, although the Seattle-Tacoma International Airport is 150 miles from Vancouver, it has been attracting passengers from Vancouver, who find it advantageous to purchase low priced transcontinental seats on U.S. carriers to Buffalo, and then move over the border up to Toronto and Montreal. *U.S. Airlines Tapping Canadian Market*, *Av. WEEK & SPACE TECH.*, Apr. 18, 1983, at 42.

nationals are able to bring down their costs, they will continue to be uncompetitive and lose money on these routes. The prospects for the emergence of lower cost national carriers are uncertain, for such an outcome would probably involve a restructuring of the carrier, with the development of subsidiaries operating with lower overheads and tailored for shorter haul, high frequency routes. In the case of C.P. Air, it would probably mean developing a low-cost carrier in Central Canada. Instead, it would appear probably that having lost protection on transborder and transcontinental routes, the nationals will continue to shore-up their domestic markets and in particular, their large Central Canadian market. Travellers on domestic routes will be taxed even more to pay for the increasing losses on transborder routes and the reduced margins on international routes. Air Canada is forearmed for this exercise. It has acquired the competition in Central Canada and will probably obtain federal subsidies to assist in the running of its acquisitions. It will also probably retain the subservience of C.P. Air. Indeed, C.P. Air, hampered by the threat of competition from a federally funded Air Canada, is in a most vulnerable position, and could possibly become the target for other expanding carriers.¹¹⁹

TABLE 1
LOW-PRICED AIR FARE EXPERIMENT: CHRONOLOGY
OF MAJOR EVENTS

February 1, 1977	Advance purchase CCC fares on Air Canada and C.P. Air commence.
January 19, 1978	Order-in-Council expanded the scope of domestic ABC's.
April 9, 1978	Changes to the CCC fare; the length of haul reduced from 700 to 400 miles.
May 1, 1978	C.P. Air's Courier Jet Service, requiring no advance booking, but requiring a minimum/maximum stay introduced.
June 24, 1978	First domestic ABC's operated.
July 17, 1978	Advance purchase requirement of CCC fare reduced from 45 to 30 days.

119. In 1982 CP Air entered servicing agreements with E.P.A., which, in effect, affords the carrier some presence in Eastern Canada. The carrier, however, remains vulnerable. For instance, Claude Taylor, Chairman of Air Canada, has argued for a "unified Canadian international air service," in which Air Canada would take all scheduled international routes, including those of CP Air that it required. Transport Canada has reviewed international air transport policy. See Canada's World Scale Airline—The Future. Speech by Claude I. Taylor, President and Chief Executive Officer of Air Canada, to Vancouver Board of Trade, Vancouver, B.C. (Apr. 1, 1981).

Table 1. (Cont'd)

March 23, 1979	First Seat Sale fare available on both Air Canada and C.P. Air.
April 9, 1979	CCC fare available for off-peak, mid-week, off-peak weekend and peak season.
June 1, 1979	C.P. Air's Skybus starts; no advance booking or minimum/maximum stay requirement.
August 16, 1979	Wardair awarded a temporary Class 4 charter commercial license.
September 24, 1979	Second Seat Sale fare on Air Canada; easier prebookings and minimum stay requirements.
December 21, 1979	Changes in Domestic ABC's: less restrictive regulations on advance booking period, length of stay, ticket purchase; allowed the sale of "top-off" seats within a reduce pre-booking period.
January 14, 1980	Winter Seat Sale fare on Air Canada; easing of advance purchase for short-haul routes.
February 12, 1980	Domestic ABC's: eased restrictions; greater number of "top-off" seats available without prebooking period.
April 13, 1980	Spring Seat Sale fare on Air Canada and C.P. Air.
May 15, 1980	Wardair began operating domestic ABC's.
June 1, 1980	C.P. Air cancelled Courier Jet, expanded Skybus service.
September 15, 1980	Fall Seat Sale fare on city-pair's over 1,000 miles on Air Canada and C.P. Air. Deep discounts on direct flights with an early ticket purchase requirement.
September 19, 1980	Eased conditions attached to CCC and Seat Sale fare.
October 26, 1980	C.P. Air Skybus operated as a separate component on scheduled flights.
January 17, 1981	Winter Seat Sale on Air Canada and C.P. Air.
April 9, 1981	Spring Seat Sale on Air Canada and C.P. Air.
June 6, 1981	New domestic advance purchase excursion fares and deep discounts on Air Canada and C.P. Air transcontinental pairs; CCC, seat sale and Nighthawk replaced.
August 19, 1981	As an interim measure, domestic deep discounts commencing November 1, 1982 which are more than 25 per cent from the lowest applicable unrestricted public fare, subject to conditions, including: discounts to apply to return fares, 14 day booking period, evidence of justification.

Source: *The Low-priced Air Fare Review. A Three-year Prospective*. Canadian Transport Commission Research Branch, Report No. 1982/02E, March 1982.

Table 2

Traffic Carried by Canadian Air Carriers on Scheduled and Charter Services, 1966, 1975 and 1980

Carriers	Year	Domestic schedule		All charter services	
		Passenger	Revenue passenger miles	Passenger	Revenue passenger miles
(figures in thousands)					
The Nationals	1966	3,932	2,865,624	77	204,413
	1975	9,033	7,472,612	348	956,527
	aag. ¹	9.5%	11.5%	18.0%	18.5%
	1980	10,856	10,481,100	478	1,251,852
The Regionals ²	aag.	3.8%	7.0%	6.5%	5.5%
	1966	666	188,329	122	129,902
	1975	3,829	1,172,389	624	1,137,986
	aag.	21.5%	22.5%	19.5%	27.0%
E.P.A.	1980	6,295	1,905,154	883	1,081,711
	aag.	10.4%	10.2%	7.2%	(0.1)
	1966	102	26,578	18	2,037
	1975	611	237,775	62	85,677
Quebecair	aag.	22.0%	27.5%	14.5%	51.0%
	1980	959	361,498	29	35,854
	aag.	9.4%	8.7%	(16.4)	(19.0)
	1966	166	44,609	3	853
Nordair	1975	577	172,492	205	410,533
	aag.	15.9%	16.0%	60.0%	98.5%
	1980	720	179,902	211	190,389
	aag.	4.5%	0.8%	0.5	(16.6)
PWA	1966	8	10,210	36	46,017
	1975	252	131,710	214	306,640
	aag.	46.0%	33.0%	22.0%	23.5%
	1980	957	436,940	284	413,166
PWA	aag.	30.5%	27.1%	5.8%	6.1%
	1966	300	77,878	39	52,921
	1975	2,041	476,998	101	215,160
	aag.	23.5%	21.5%	11.0%	17.0%
PWA	1980	3,659	926,824	360	442,000
	aag.	12.4%	14.2%	13.3%	15.4%

¹ aag. means average annual growth.

² The figures for 1966 and 1975 include Transair.

Source: Statistics Canada, Catalogue No. 51-002 1970-80) and No. 51-202 (1966-69).
Regional Air Carrier Study, Research Branch, Canadian Transport Commission, 1977, Table 3.3, p. 33.

Table 3

Comparisons of Proposed Domestic Air Carrier Policy:
House of Commons and Transport Canada

TRANSPORT CANADA	HOUSE OF COMMONS STANDING COMMITTEE
<ol style="list-style-type: none"> 1. National Carrier (restricted to Air Canada and C.P. Air) allowed to provide schedule services on any route in Southern Canada. 2. Only national carriers allowed to operate interregional services and nonstop scheduled services in Southern Canada between city-pairs more than 1,300 km apart. 3. Regional Carriers: EPA, Nordair and Quebecair confined to east of Winnipeg; PWA to operate to the west. Allowed in Southern Canada to operate nonstop to 1,300 km apart within their regions. No limit in Northern Canada. Not allowed to operate east-west interregional scheduled services. No increase in number of regional carriers. 4. Local carriers to operate scheduled services only with nonjet equipment. 	<ol style="list-style-type: none"> 1. In Southern Canada (south of 60° N), any Canadian carrier, new or existing should be able to apply to CTC to operate any scheduled service between city-pairs up to 1,500 miles. 2. New or existing carriers should be permitted to apply to operate any route in Northern Canada. 3. No restriction on size or type of aircraft.
FARES	
<ol style="list-style-type: none"> 1. CTC to continue to authorize fares and rates with no specific instructions as to changes in policy. 	<ol style="list-style-type: none"> 1. CTC to continue to authorize fare and rates. 2. Encourage competition by authorizing the CTC to define a zone of flexibility within which carriers allowed to vary fares upward or downward.

Table 3. (cont'd)

TRANSPORT CANADA

HOUSE OF COMMONS STANDING
COMMITTEE

DOMESTIC CHARTERS

Maintenance to regulations that preserve a real distinction between conventional scheduled services and specialized services catering primarily to the leisure traveler.

Restrictions on domestic charters should be reduced, but distinction should be maintained between charter and scheduled services.

SUBSIDIES

Implicit support for the continuation of cross-subsidization.

Direct operating subsidies, administered by the CTC, should be granted for a limited period of time.

Sources: *Domestic Air Carrier Policy*. House of Commons, Ninth Report of Standing Committee on Transport, Ottawa, April 1982. *Proposed Domestic Air Carrier Policy*. Transport Canada, TC-15-DI, Ottawa, August 1981.