

Submission by the Canadian Airports Council to The Canadian Transportation Act Review Panel

Introduction

The Canadian Airports Council (CAC) is pleased to provide comments to the Canadian Transportation Act Review Panel. We agree with the final statement made at the 41st Annual Premiers' Conference in Winnipeg last Fall, where first ministers attested that:

Canada needs effective and viable air transport services to strengthen investment and jobs. Canadian businesses must have access to a modern, competitive, effective and efficient air transport network to meet the needs of the 21st century.

The overall economic well being of the Canadian aviation industry – of which airports are an essential part – must be maintained if the needs of shippers and travellers, both within Canada and internationally, are to be met. Canada needs to remain competitive with our major trading partners in terms of transportation infrastructure and facilitation if the benefits of more open trading links are to flow back to Canada and to Canadians.

In the late 1980's and early 1990's the federal government set out its agenda to meet the growing needs of communities, business and travellers for an efficiently managed air transportation infrastructure. The result of that policy initiative – the creation of not-for-profit, non-share capital airport authorities from coast-to-coast – has been overwhelmingly successful. But as is often the case, that success has generated calls from some sectors for the government to jump back into the management of airports. CAC strongly argues that this would be counterproductive.

Today, the devolved airports are more responsive to their customers, and accountable to their communities as never before. They are also significant facilitators of regional and national economic growth. An economic impact study by the U.S. based Airports Council International – North America (ACI-NA) in 1998 concluded that

- Over 195,000 passengers each day rely on Canadian airports for business and leisure travel;
- Canadian airports create over \$30 Billion each year in total economic activity:
- Airports generate over 290,000 jobs in Canada, evenly split between on-airport jobs and those generated in the support sector in local communities;
- Canadian airports generate \$4.5 Billion in tax benefits to all levels of government.

As you can see, Canada's airports are significant economic factors.

However, concerns have been raised vis-à-vis the federal government's investment in essential infrastructure, particularly at smaller airports. In addition, the disincentive effect of the crown rental regime at Canada's major airports adversely affects their ability to self finance essential capital improvements.

Federal rent reductions are not the only solution however, and to achieve levels of fiscal efficiency and productivity enhancements, common ground must be found in such areas as continuing federal cost downloading and improved federal and provincial tax structures.

The Canadian Airports Council (CAC)

The CAC is an Association of airports across Canada, ranging in size from Gander, Nfld to the Greater Toronto Airports Authority: airports serving from 90,000 to over 26 million passengers each year.

Founded in 1991 by the first four airports in the devolution process, the Association's central office is located in Ottawa. Today, CAC's role is to represent and advocate the interests of Canadian airports to the federal government and other industry stakeholders on strategic issues, and provide a forum for information sharing and development of best practices which promote safe and secure operations across the country.



While CAC is acknowledged as the “Voice of Canadian Airports” the Association is membership driven and consensual in approach. And while the issues I will discuss today have been agreed collectively by the CAC Board, there are nuances on some of these issues which reflect the diverse economic situations and stages of development of CAC's membership. To get these nuances I would encourage you to talk to as many individual airport authorities as possible.

The Canada Transportation Act Review

Section 53 of the Canada Transportation Act (the *Act*) requires the Review Panel to assess whether the legislation provides an “efficient, effective, flexible and affordable” transportation system for Canada and Canadians. It is the general intent of the policy, rather than specific regulatory provisions of the CTA, that is of particular importance to Canadian airports.

CAC is pleased to note that Minister Collenette has asked that the review panel also consider issues such as:

- the effectiveness of the legislative and regulatory environment to sustain capital expenditures required to enhance productivity and promote innovation;
- support for Canadian transportation stakeholders in meeting global logistics requirements and adapting to the new e-business environment; and
- public policy issues that may emerge from newly arising industry structures.

The Panel has also identified related issues requiring further research which the CAC considers especially pertinent, including:

- emerging market structures among transport carriers;
- sustainability of capital spending; and
- governance and accountability of newly-commercialised transportation infrastructure providers.

Taking into consideration the general principles under review, and the specific issues identified by the Minister and the Panel, we have identified 5 primary areas of concern to Canadian airports, specifically:

- the National Airports Policy and re-regulation of the airport industry;
- governance and accountability of commercialized airports;
- small airport viability;
- competition and emerging market structures; and
- international air policy agreements and Free Trade.

Each of these issues is covered in detail in the attached issues statements.

In summary, we would like to reiterate that the economic well being of the Canadian air transportation industry is essential to meet the needs of shippers and travellers and to contribute to the overall growth of the Canadian economy. While we continue to proclaim the overwhelming success of the airport devolution program, there are increasing, federally imposed restrictions on airports which threaten to compromise financial sustainability and limit opportunities to meet consumer demands.

It is our considered opinion – shared by many others in the industry – that re-regulation would negate many of the advantages achieved through the devolution process.

Air travel in the 21st century is no longer a luxury, but a necessity to economic growth and a large trading nation, such as Canada, must continue to invest in its transportation infrastructure to ensure continued prosperity. We believe that the review of the CTA presents an excellent opportunity for the federal government to reconsider and strengthen its commitment to this essential industry.

The CAC would like to thank the Review Panel for its consideration of these issues. We would be pleased to provide additional, supporting documentation as Panel Members may require.

Issues

1. The National Airports Policy and Re-regulation of the Airport Industry

Position:

CAC and its member airports fully support the devolution process: overall the National Airports Policy (NAP) has been a resounding success. However, while the benefits to the federal government continue to increase, through reduced costs and increasing rents, airports are having to deal with the offloading of costs and the increase in regulatory burden.

The federal government must recognize the negative impact of escalating rent, work with airports to establish a fair rent structure, and not reinsert itself – either directly or indirectly - into the management of operations of our successful airport authorities.

- Benefits of the NAP include:
 - For the federal government, the NAP has meant that 4,000 employees have been taken off the public payroll without loss of employment; it no longer funds capital improvements at Canada's major airports; it has moved from a position of spending at least \$135 million to operate these airports in 1993 to receiving \$225 million in rent on those same properties in 2000.
 - For communities, the management of the airports locally allows them to focus on their needs as never before; local accountability and access to members of the Boards has been enhanced.
 - For passengers, it has meant significant improvements in customer service and a more client-oriented style of business.
 - For other airport users and airlines, it has meant a refreshing business orientation to decision making which better meets their needs.

- The federal government receives significantly more in airport revenue than it pays out in support programs. That net receipt is set to balloon in the next ten years.
- Transportation infrastructure must be funded on a sustainable basis. Infrastructure investment should be strategic and capitalize on modal strengths without creating competitive distortions, including the effects of any taxes, rents or fees and their effects across modes and jurisdictions. Specifically, it must take account of the significant advantage afforded to competing US airports through their ability to issue tax-exempt bonds.
- While not identified as part of the Review mandate, the current Crown rent formula imposes an undue burden on Airport Authorities and should be considered under the “new arising industry structures”. By removing significant amounts of capital from the National Airports System, capital which could be better used to directly fund the necessary investment in infrastructure required to meet rapidly increasing demands, the federal government has created an unwarranted burden on the authorities which were created to manage the airports and enhance regional economic development. Going forward, the federal rents paid by the NAS airports should be based on sound business principles.
- The provisions of the current Crown leases between the federal government and airport authorities should be transparent and straightforward.
- The federal government should consider liberalizing the rules of ownership for those NAS airports wishing to assume title on a non-share capital basis similar to Nav Canada. These airports are currently operated by non-share, not-for-profit entities under long-term leases from the federal government. The federal government should be required to demonstrate what material interest is being served by retaining public ownership of these airports.

- Adding to the financial burden are increased regulatory impositions. CAC has brought these issues to Transport Canada's attention – for instance, the implications of changes to the ERS regulations – and we anticipate many more regulatory initiatives which could dramatically increase the cost of operations.
- The Panel may require consideration of the economic impacts of regulations for safety purposes, for example, by mandating risk analysis and cost-benefit justification for proposed risk mitigation regulations.

2. Governance and Accountability of Commercialized Airports

Position:

Canadian Airport Authorities operate in an open and transparent environment as defined in the comprehensive Public Accountability Principles and governed through the structure of non-share capital, not-for-profit corporations, guided by a locally nominated Board of Directors. Recognizing that there are some differences in the individual application of these principles, due in large part to changes in government policy, CAC's Governing Board has adopted eight core principles which it believes member airports should recognize in drawing up their own governance procedures.

The CAC's work in this area is predicated on one of the founding principles of the devolution process: that is, to move decision making into the hands of authorities accountable through their local boards to the communities they serve. The former federal airports are more accountable to airport users, tenants and local communities than ever before. There is absolutely no policy justification to reverse this process.

- The core principles are attached.
- Anecdotal evidence has been presented in this and other fora which might indicate that the governance and accountability principles need to be changed. However, those arguments to date have lacked substance.
- There is no evidence that airport infrastructure is being over-built. In fact because the federal government decided not to invest in airports infrastructure from the late 1980's onwards there is a significant backlog of essential capital investment.

- User-pay is an established mechanism to pay for needed capital investment at Canada's major airports and the airlines have now acknowledged the need. In fact to quote from one of your earlier presenters, ATAC, the airlines' industry association:

"...The major capital projects undertaken in most cities were critically needed and probably would not have been undertaken under the government's management."

The airlines have a greater influence on the scope and pace of airport infrastructure development than ever before.

- The financial markets and bond rating services also provide an essential review mechanism and discipline with regard to infrastructure investment. Airport authorities are non-share capital corporations – any excess that is generated is put back into the business, reducing the cost of borrowing and translating directly into lower charges for the consumer.
- And last, but by no means least, the boards of the Authorities have taken seriously the need to consult with their communities concerning future development. In a competitive market – and make no mistake the airport industry is competitive – everyone knows that increasing the cost of operations will result in traffic diversion.

3. Small Airports Viability

Position:

Canada's smaller airports are an integral part of the national air transportation infrastructure yet their financial viability is not secure. It is important that they achieve financial viability and long term operational stability without being compelled to penalise their communities or the regional and smaller carriers in the process. Small airports must be capable of providing a cost-effective level of service consistent with public safety and security and, to achieve this, an effective program of capital assistance must be developed.

- Impediments to viability – such as the imposition of unnecessary regulation and compliance costs - should be removed as a first step towards the implementation of a financial relief program.
- Government spending on infrastructure should be treated as an investment, not a cost, thereby encouraging and facilitating new & innovative investment vehicles for the public and private sectors.
- Airports are recognized as economic engines for growth and expansion and should be supported.
- The bankruptcy of InterCanadian, the merger of Air Canada and Canadian Airlines and other factors have had a negative impact on the financial stability of many smaller airports. Many have been forced to increase the fees charged to the remaining carriers flying out of their locations. These increased user fees have in turn had an impact on the financial viability of smaller airlines, start-ups and regional carriers. As this cycle of rising airport fees undermines the financial viability of carriers, the inevitable result will be that carriers will withdraw services from less profitable destinations. Inevitably, this will undermine air

service to some locations and regions and threaten the national scope of our air transportation network.

- For many small communities, the airport is often the only lifeline to the rest of Canada. Permitting small airports to decline will have a significantly harsh impact on Canadians living in rural, northern and remote communities.
- Having access to a reasonable range of air transport options is a basic precondition to involvement in the modern economy. Air travel is no longer a luxury enjoyed by a select few.
- Small airports are a major jurisdictional problem, given the respective roles of the federal, provincial and municipal governments. There is an opportunity for the federal government to take an important lead role in ensuring the sustainability of a national system that serves all Canadians, and not just those in the catchment area of the NAS airports.
- Financial and operational constraints imposed by regulations – such as the transport of dangerous goods, runway contamination, CAR's 308, gravel runways and approach bans - are cumulative and, if not reasonably controlled will have a devastating effect on small airports that are already facing financial uncertainty.
- The Airports Capital Assistance Program (ACAP) needs to be revamped to allow airports to have longer-term security where project approval and funding is concerned. Small airports have limited funding options and the restrictive ACAP eligibility criteria leave some airports no available opportunities to invest in much needed infrastructure improvements. For instance, at present only airside safety projects are potentially eligible for ACAP funding. Capital investment needs are much broader.

4. Competition and Emerging Market Structures

Position:

The CAC supports recent statements by the Port of Vancouver that every traveller and shipper must have effective, competitive options, preferably through the workings of the marketplace. Effective competition will be achieved by removing impediments to new entrants, including foreign ownership restrictions. Competition should be encouraged by public policy and delivered by the market. Regulation, per se, will not generate competition. This is an effective way of achieving real competition and bringing the air mode in line with most other modes of transport, and businesses generally in Canada.

To support that aim it is also vital the federal government improves the quality and scope of the data that the airlines are required to provide, both for passenger and cargo traffic. Access to timely and accurate information is essential if communities are to access competitive and affordable air transportation.

- The current CTA, related legislation and federal government policies should be judged against the ability to provide effective, competitive options and the reality that the role of government in supporting transportation has changed fundamentally, from what has been termed *reactive regulation* in the past to *proactive facilitation* today.
- A trading country like Canada must meet global challenges by taking a thoroughly collaborative approach, and by thinking “outside the box”. The government needs to define what will be needed well into the future to ensure the prosperity of all Canadians, and then tailor transportation policy accordingly.

- In the final analysis, it does not matter who owns an airline, just that it operates as a good corporate citizen. The foreign carrier issue needs to be addressed on the basis of what is best for Canada not necessarily one or other airline. The greater good available from a competitive industry should prevail over narrow sectoral interests.
- Modification of the rules for foreign ownership of Canadian carriers to 49% is required to facilitate financing. Ownership laws should apply equally to all Canadian carriers.
- Controlled cabotage, or right of establishment, available to U.S. and foreign air carriers, should be considered in order to address the issue of competitive air services beyond Canada's international gateways so that a broader base of Canadian communities can benefit and properly participate in the international air travel market. Australia has successfully started down this path. The issue of reciprocity for Canadian carriers also needs to be considered.
- While not directly involved in the CTA Review, Transport Canada's decision to allow the airlines – which in most cases is one major airline – to allocate priority to small airport ACAP applications sets up a real conflict of interest, and although it may not be anti-competitive in intent, is anti-competitive in effect.
- One barrier to effective competition is the lack of data available to the airports and federal government. The CTA should be immediately changed to require airlines to submit data at least as comprehensive as that available in the US. Moreover, the analysis and dissemination of the information which is currently available is painfully slow – and the base data is stale and has passed its usefulness date in many cases. If Stats Canada cannot provide comprehensive and timely data then privatization should be considered.
- Finally, a comprehensive review and monitoring of the impact that Canada's airline industry restructuring is having in international markets is required.

5. International Air Policy Agreements and Free Trade

Position:

In the last several years the Canadian Airports Council has expressed a strong interest in the development of Canada's international air policy because of the substantial impact that air transportation has on the economic well-being of our communities. Further advances in Open Skies agreements between the USA and other countries are creating a competitive airline industry environment for international air services. We believe these developments, against a stagnant international air policy in Canada and a single, dominant air carrier regime, do not create the best situation for airports and the communities that they serve in Canada. It is important that Canada's international air policy reflects the needs of its airport stakeholders and, to that end, Airport Authorities must play a key role in securing international air agreements, as their US counterparts, and Canadian airlines, already do.

Cargo is sometimes treated as an afterthought, but in policy terms it should be at the forefront of the Panel's mind as it goes forward with recommendations. Global cargo traffic is projected to increase 5 to 6 per cent per annum – or double within 15 years. Canada will only benefit from these business opportunities and create the associated employment here if the right environment exists. The federal government has its part to play in negotiating more flexible 'open-skies' agreements, adopting customs cargo clearance and facilitation processes which expedite the movement of cargo through Canadian airports, and adopting tax and user-fee regimes which encourage transshipment and value added processes in Canada.

CAC supports the establishment of a government/aviation industry advisory committee to jointly propose changes to current international air policy and assist in making recommendations that reflect the aviation interests of most Canadians.

- Businesses depend on a high level of direct flight frequency and reliable air transportation. In order to achieve maximum tourism results, leisure travellers and the tourism industry rely on adequate airline seat capacity, direct air services and affordable airfares.
- The CTA should facilitate the integration of Canada's trade and transportation into the North American and global economies. Transportation policy has to promote the seamless and harmonized international movement of people, goods and information.
- Airport Authorities, at a minimum, should have observer status at bilateral negotiations. There must be meaningful participation by stakeholders in formulating the agreements that will shape and define Canada's international air markets.
- The traditional air-carrier focus of Canada's international air policy needs to be replaced by one following the "best interests of Canada" as a whole, including the important role of Airport Authorities in attracting and retaining international aviation business.
- Canada has adopted an open trade policy, particularly with developments such as NAFTA and WTO, that suggests Canada's international air policy should be moving in the same, liberalized direction in order to keep pace with these growth opportunities.
- Issues that may help ensure international competition in Canada are:
 - a Canadian Open Skies policy for all cargo services, including co-terminalization and fifth freedom traffic rights;
 - a true Open Skies air agreement between Canada and the US that includes fifth freedom traffic rights for airlines of both countries;
 - re-negotiation of existing air bilateral agreements to obtain improved airport access for designated Canadian carriers and services by newly designated carriers, where current air bilateral agreements impose restrictions on frequency, capacity and

named destinations, as a means of moving closer to open skies regimes;

- reconsideration of the validity of the 300,000 passenger threshold as it applies to Canadian air charter operators wishing to provide international services; and
- support for foreign air carriers currently operating in Canada that may wish to expand their current Canadian operations, and those that are interested in initiating new Canadian services.
- The federal government should move to enhance system efficiencies such as passenger processing, transit without visa, intransit passenger preclearance and other measures to make our airports more competitive.
- Air-cargo services also are closely regulated between Canada and other countries, including the U.S. There is a concern that needed cargo services will not be available to support value-added and e-commerce growth, because Canadian carriers do not seem to be interested in providing all-cargo services and the federal government restricts entry to foreign carriers unless it deems there to be equivalent “benefits” for our carriers – perhaps at the other end of the country or perhaps related primarily to passenger rather than cargo.
- The Canada-U.S., open-skies agreement excludes cargo, resulting in co-terminalization and pre-clearance restrictions that impede the international movement of goods. These constitute a throw-back to the days of a Canadian economy protected from foreign competition. While their removal would benefit some carriers and airports more than others, these are decisions to be decided by shipper need and carrier/facility provider performance, not policy makers or regulators.

- Both the new, emerging industries and more traditional manufacturing and resource industries have common logistics needs for an effective, competitive and local air cargo system. That applies equally to oil and gas instrumentation in Edmonton, hi-tech in Ottawa, or lobster in Bedford, NS.
- There is a significant lack of wide body cargo capacity available. Most international cargo must move by ULD pallets, requiring trucking moves to the nearest airport, including US points. If Canadian carriers cannot, or choose not to provide main-deck cargo capacity, then foreign carriers must be allowed to do it.