Milestones in Canadian Transportation Policy - Rail and Air - Part I

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I. Introduction

Throughout Canada's history, transportation has been a major part of national policy. Policy has not remained static, it has evolved over time to adapt to new challenges and changes over time. Ample testimony of this is provided in the major milestones in Canadian transportation policy, the subject of this paper.

Part I deals with policy in rail transportation and air transportation.[1] It first provides an overview of policy in rail transportation and then examines the milestones in rail transportation. This is followed by an overview of policy in air transportation and its major milestones. There is also a companion paper dealing with water and highway transportation policy.

II. An Overview of Canadian Rail Transportation Policy

In brief, Canadian transportation policy in rail is a history of: growth and unification, government ownership, rate regulation and subsidies, intermodal competition, deregulation, commercialization and sustainability. This history is described briefly hereafter.

1850-1885*: National Policy* (Unification / Growth/ Regional Development/ Interprovincial trade)

Transportation policy was initially subsumed under the objectives of national policy. National policy was mainly concerned with encouraging economic development, fostering growth of the manufacturing industry in Canada, and increasing revenues to finance new transportation facilities to unite Canada. In the 1850s, the railways the centre of economic growth, played an important role in consolidating Canada and the Confederation. They were the creatures and instruments of national policy. This led to the first railway act, the *General Railway Act of Canada* of 1868, which was formed from the *Railway Consolidation Act of 1851*.

1886-1902*: Ownership* (Commercial failures/Financial Concern)

The *Railway Act* of 1888 which was a revision of the 1868 act created a Railway Committee of the Privy Council. The Committee was to regulate railway freight rates and hear complaints but was largely ineffective.[2] By the early 1900s, 3 transcontinental lines had been built though there was insufficient traffic to even

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* *The views expressed here are those of the authors and are not purported to be those of the Commissioner nor of the Competition Bureau nor of Industry Canada.*

fully utilize one. This led to massive railroad bankruptcies and loan defaults forcing the Government to intervene to consolidate them. Since much of the private investment was financed through government guaranteed bonds issued in Europe[3], commercial failures forced the government into an ownership role, primarily to protect Canada's image on international markets.

***1903-1960**: Rate Regulation* (Monopoly)
The Railway Act of 1903 provided for the beginning of rate regulation due to the monopoly of the railways. The Board of Railway Commissioners was set up on February 1, 1904 and an era of rate regulation began which lasted nearly seventy years. In 1908, the Board assumed jurisdiction over express, telephone and telegraph tolls and on May 19, 1909, it obtained jurisdiction over electric power rates. The Board's approach to rate regulation gradually became unsuitable to industries that did not display the characteristics of a natural monopoly. This led to the formation of other boards. In 1944, the Air Transport Board was formed to regulate the air sector and in 1947 the Canada Maritime Commission was established to consider maritime matters.

***1961-1970**: Intermodal Competition* (Transportation Policy)
In September 1966, Transport Minister Jack Pickersgill introduced the *National Transportation Act* in the House which passed on January 27, 1967. The Act contained a statement on Canada's National Transportation Policy for the first time.[4] It defined the key principles that should underpin this policy. Besides the policy and principles, it brought all modes of transportation into a single bill under a single regulatory body, the Canadian Transport Commission (CTC); it provided for railways to have the freedom to set rates without regulation; and it provided for abandonment of uneconomic branch lines unless ordered otherwise.[5]

***1971-1990**: Deregulation* (Intramodal Competition)
In July 1985, Transport Minister Don Mazankowski laid down sweeping revisions to the transportation policy that involved reduced economic regulation and greater reliance on market forces in his paper *Freedom to Move*. There were to be more choices and greater competition in rail transportation.[6] More specifically reforms were introduced in four areas: access to alternative rail service; new tariff provisions; rail network rationalization; and dispute resolution services. It was a culmination of numerous factors [7] which led to the introduction of Bill C-126, the National Transportation Act of 1987. The Act now specifically contained the objective of competition and market forces.[8]

***1991-2005**: Commercialization* (Elimination of subsidies)
In 1994, Transport Minister Douglas Young set out the government's vision for the future of transportation.[9] He indicated "The Canada Transportation Act will modernize and streamline rail regulation. The measures we are proposing will

enhance the viability of CN and CPR, and ensure the continuation of coast-to-coast rail. They will ease the entry of smaller, lower-cost rail carriers to operate with CN and CPR, paving the way for a more efficient industry that benefits both communities and shippers. The new Act will also ensure that shippers continue to have access to competitive rail services, ... The far reaching legislative reform complements the commercialization of CN."[10] On February 27, 1995, Finance Minister Paul Martin announced the end of three railway subsidy programs by the summer of 1995, including the historic Crow Rate.

2006-2015*: Safety/Security/Efficiency/Environmental Compatibility*
In 2003, Transport Minister David Collenette tabled *STRAIGHT AHEAD A Vision for Transportation in Canada* in the House of Commons in which he stated "... transportation policy must provide a framework that addresses the three elements of a sustainable transportation system - social, economic and environmental - giving carriers and infrastructure providers the opportunity to adapt, innovate, compete, and serve shippers and travelers in a way that takes into account each of these elements."[11] This vision is guided by certain principles: safety and security; efficiency resulting from a market-based system; compatibility with the environment; recovery of full costs based on user pricing; accessibility to Canada's remote regions; mobility for disabled persons by removal of undue obstacles; and partnerships and integration among jurisdictions and with the private sector.[12]

III. Milestones of Canadian Rail Transportation Policy

Interest in railways began in Canada in 1836 when the first steam locomotive, the *Dorchester*, a wood burner, was introduced by the Champlain and St. Lawrence Railroad. Enthusiasm to building railways continued thereafter until Canada's first transcontinental rail line was completed on November 7, 1885.

1850-1885 *Railway Clauses Consolidation Act* of 1851: The Act provided for: fixing tolls by the railways which required G-I-C approval; affording no person or class of persons an undue advantage, privilege or monopoly in the tolls stipulated; and reducing tolls by Parliament if its net income in the year before exceeded 15% on the capital used in its construction.[13] In 1868, the first *General Railway Act of Canada* was formed from it.

1886-1902 *1886 Royal Commission and the Railway Act of 1888*: In 1886, growing dissatisfaction over railway rates led to the appointment of a Royal Commission to examine railway regulation. The Commission recommended that the Railway Committee of the Privy Council be given control over rates and called for the establishment of a uniform classification of rates. Both these recommendations were incorporated in the *Railway Act* of 1888. The Act also provided for equality of tolls to all persons under the same circumstances but made allowance for quantity or distance discounts. Further, it did not permit

discrimination between different localities except to meet competition.

Crow's Nest Pass Agreement (1897): The Crow's Nest Pass Agreement was signed between the Federal Government and the Canadian Pacific Railway (CPR) in 1897. CPR for its part agreed in part to: i) accept the control of CPR rates by G-I-C or a Railway Commission; ii) reduce rates on certain westbound goods and reduce rates by three cents per hundred pounds on grain and flour from all points on its main line, branches or connections west of Fort William and Port Arthur and all points east. The rate reductions were fixed under the contract. The government for its part was to provide a subsidy of $11,000 per mile for the construction of a rail line from Lethbridge through the Crow's Nest Pass to Nelson, B.C.

1901 Manitoba Agreement: Farmers in Manitoba wanted rates below the rates provided for under the Crow's Nest Pass Agreement. In exchange for assistance from the Manitoba Government, Canadian Northern lowered a number of rates. Subsequently, an agreement was made between the Government of Manitoba and the Canadian Pacific Railway to lower rates between the Lakehead and Winnipeg. This not only resulted in rates equal to the level of those on Canadian Northern but assisted in establishing Winnipeg as a distributional centre.

1903-1960 *Railway Act of 1903 (October 24, 1903):* This was the first transportation act that led to the establishment of an effective regulatory body, the Board of Railway Commissioners (BRC). It was given broad regulatory authority over matters of rates, services, operations and safety of railway companies under federal charter or declared to be 'for the general good of Canada'. The Act contained a statement of long-and short-haul discrimination. It also empowered the board to impose a duty on the railways to afford reasonable facilities for receiving, forwarding, delivering and inter-changing of traffic. The board was not to approve tolls for like goods and like movements that was greater for shorter than longer distances unless the board determined that competition demanded it. The board was also given the power to determine whether there had been unjust discrimination and whether lower tolls were necessary in the public interest together with apportioning tolls for carriage by land and water.

1914 Western Rates Case: On April 6, 1914, the BRC issued its decision on discriminatory freight rates and the mountain scale (i.e. a higher railway rate for traffic in the rockies). It found that though rates in Western Canada may be discriminatory they were justified by greater competition the railways faced in East. Canada. It therefore denied equality of rates between the West and the East, though it provided for equalization of Class rates within the Prairie provinces.

1917 Royal Commission (H. L. Drayton) / Railway Act of 1919: To deal with the problems of bankrupt railways, the Royal Commission of 1917 was appointed. Two of the three Commissioners recommended the consolidation of the bankrupt

railways (eg. Canadian Northern, Grand Trunk and the Grand Trunk Pacific) and other wholly owned lines by the government into the Canadian National Railways. The Government of Canada accepted this proposal which led to the revised *Railway Act* of 1919 providing for the incorporation of the Canadian National Railways Company. In 1923, the Grand Trunk and the Grand Trunk Pacific Railways were amalgamated into the Canadian National Railways.

1926 Royal Commission (A. R. Duncan) / Maritime Freight Rates Act (1927): To study the claims of the Maritime Provinces that the rate policy of the BRC undermined their position vis-à-vis central Canada, the Royal Commission was appointed in 1926. The Commission recommended a 20 per cent decrease in the current tolls within the Maritime provinces providing three reasons: the promises of pre-Confederation; the differences in rate increases on the railways; and the circuity of the Intercolonial Railway route. The Government of Canada accepted the Commission's recommendation and passed the *Maritime Freight Rates Act* in 1927 reducing rates by 20 per cent (local rates and rates on freight from the Maritimes) thereby restoring the relationship that existed prior to the formation of the BRC. The Act also provided for compensation to the railways for example losses from rate reductions.

1931 Royal Commission (L.P. Duff) / the Canadian National-Canadian Pacific Act of 1933 / Transport Act (1937): To provide a solution to the financial problems of the railways, the Royal Commission of 1931 was appointed. It was impressed by 'the red thread of extravagance' in the administration of the Canadian National. It therefore proposed changes to the constitution of the Canadian National. Further, to cut out unnecessary waste it recommended voluntary cooperation between the two railways and a more coordinated system of regulation of transport. To give effect to these recommendations, the Government adopted the *Canadian National-Canadian Pacific Act of 1933* to encourage cooperation and co-ordination of the railway system permitting the railways to make agreed changes (regarding passenger services and elimination of unprofitable duplication of lines). In addition, the Government passed the *Transport Act* in 1937 permitting the approval of agreed charges. It also replaced the BRC by the Board of Transport Commissioners with regulatory powers over rail, air and water.

1951 Royal Commission (W. F. A. Turgeon) /Railway Act of 1951: In January 1949, the government set up a Royal Commission to study freight rates and transportation policy. On March 15, 1951, it recommended: an equalization of freight rates; a uniform system of classification of rates throughout Canada, excluding the Maritimes; a uniform system of accounts and reports for the railways; a continuation of lower rates on grain and flour as set out in the Crowsnest Pass Agreement; and a faster rate for handling applications. Many

recommendations were accepted by the Government in the amendments to the *Railway Act*, 1951 such as: equalization, competition on rates (controlled), and limitation of transcontinental rates (one-and-one-third rule).

1955 Royal Commission (W.F.A. Turgeon) / Transport Act (1955): The ineffectiveness of the general rate policy of the previous Commission together with the use of agreed charges by the railways to circumvent the one-and-one-third-rule led to demands to overhaul the agreed charge provisions in the *Transport Act*. In 1955, a one man Royal Commission was appointed to investigate the matter. The Commission recommended complete freedom for the railways in the making of agreed charges and recommended reducing the role of the board to that of being merely the recipient of the tariffs to be filed. These were promptly included in amendments to the Act. [H. J. Darling, p. 25]

1955 Equalization on Class Rates (March 1955): The equalization of rates while provided for in the Act did not go into effect immediately. After hearings and consultations on the matter, the Board undertook equilibrating rates between Western and Eastern Canada. Finally, on March 1, 1955, it ordered that standard mileage class rates be made identical throughout Canada except on the White Pass and Yukon route and in the Maritimes.

Freight Rates Reduction Act (1958): Between 1948 and 1958, in response to demands for increases in rates by the railways, the Board of Transport Commissioners granted a number of increases. Increasing opposition to rate increases and shippers' complaints led to the passage of the *Freight Rates Reduction Act*. The Act directed the Board to roll back or reduce the most recent increase (17%) granted by them on December 17, 1958 while the government compensated the railways for this by subsidy. In effect, this committed the government to a policy of subsidization.

1961-1970 *1961 Royal Commission (M. A. MacPherson) / The National Transportation Act (1967):* In 1959, the Government established a Royal Commission to examine freight rates and all aspects of transportation. It recommended: the achievement of transportation policy through competition rather than regulation (a shift from the past); the removal of the burden of regulation that imposed obligations (uneconomic passenger services, unprofitable branch lines, subsidized statutory grain rates and free statutory transportation) on the railways when it was a monopoly so as to enable it to compete; and the equal treatment of all modes of transport so as to allow it to compete with another (i.e., transportation subsidies not be disguised when provided to a particular shipper).
These recommendations were embodied in the *National Transportation Act 1967*. Its three unique features were: 1) the establishment of the Canadian Transportation Commission with jurisdiction over all transportation modes including commodity pipeline, telegraphs and telephones; 2) the freedom for the railways to set freight

rates without regulation (other than grain covered by the Crowsnest Pass Agreement); and 3) the permission to the railways to close uneconomic branch lines and passenger services, unless required in the public interest. The act also provided a national transportation policy for the **first** time.

1971-2005 *Policy on Rail Passenger Service (January 29, 1976):* In 1976, Transport Minister, Otto Lang, issued a policy statement and directive to the CTC for the development of 'a basic single network of rail passenger service across Canada' with the expressed purpose of 'avoiding duplication of service'. It called for the development of an efficient and economical passenger network where passengers are willing to pay for what is used. However, service in remote areas should be continued where no reasonable transportation alternatives exist. Where superior alternative modes exist they should be encouraged and passenger train service that is not suited should be replaced. The CTC directive called for the development and implementation of a plan which was to be guided by eight specific principles, eg. reduction in subsidies, commercially viable fares, capacity related to traffic, common use of facilities, etc.

On February 24, 1986, the *VIA Rail Act* (in Bill C-91) was introduced. Its features were: a national passenger policy, a scheduling priority, a compensation regime by VIA to CN and CP; a standard for service determination; and a provision for commuter rail service.

The National Transportation Act (August 28, 1987): This Act signaled a new era in Canada's transportation history: greater competition, less regulatory intervention and more innovative services. Reforms, originally discussed in the 1985 Minister's paper *Freedom to Move*, were introduced in four areas: 1) Access to Alternative Rail Service; 2) New Tariff Provisions; 3) Rail Network Rationalization; and 4) Dispute Resolution Services. The access provisions included expansion of the interswitching limits, extended interswitching, and a competitive line rate for those outside the interswitching limits. The tariff provisions to encourage competition were: abolishing collective rate setting; negotiating confidential contracts; and filing of contracts. The rail network rationalization provisions included the transfer of lines to independent operators and the funding of improvements for alternative transport facilities. The dispute resolution services were: mediation; FOA; and public interest investigation.

The Canada Transportation Act (July 1, 1996): Based on the recommendations of the Royal Commission on National Passenger Transportation (1992), the National Transport Act Review Commission (1993) and the Standing Committee on Transport (1993), CN was privatized. On February 27, 1995, Finance Minister Paul Martin announced the end of three railway subsidy programs under the *Western Grain Transportation Act*, the *Maritimes Freight Rates Act* and the

Atlantic Region Freight Assistance Act by the summer of 1995. With that, the rates paid under the Crow Agreement now officially known as the Western Grain Transportation subsidy came to an end after 98 years on August 1, 1995.[14] The new *Canada Transportation Act* was passed in 1996. The new provisions focused on: 1) the development of a healthy short line industry by easing entry of smaller, low cost rail carriers (eg. before lines are abandoned by Class I carriers they must be offered for sale also providing governments an opportunity); 2) a more cost effective industry by enabling Class I carriers to rationalize their lines through a less adversarial process; and 3) the provision for retaining rail services by requiring railways to issue a 3-year plan.[15]

Amendments to the Canada Transportation Act (July 26, 2000): The Estey Review relating to Grain Handling and Transportation and Kroeger's follow-up report and its implementation resulted in attempts to bring further reforms in rail.[16] The amendments dealt with a revenue cap, a final offer arbitration process, and an abandonment of the branch line process. First, the revenue cap was expected to reduce revenue from freight rates by $178m. or 18% from the 2000-01 levels. Second, the final offer arbitration provision provided for: a summary process for disputes of less than $750,000, an exchange of offers after ten days, a faster process (i.e., 30 or 60 days) and a three person arbitration panel. Third, the branch line provisions facilitated rationalization.[17]

2006 - *Proposed amendments to the Canada Transportation Act -Bill C26, Bill C44 and Bill-C11 (May 4, 2006):* On May 4, 2006, the Minister of Transport, Infrastructure and Communities introduced amendments to the *Canada Transportation Act* in the House of Commons. The major amendments pertaining to rail were on: 1) a modernized and simplified National Transportation Policy Statement; 2) an improved policy framework for publicly funded passenger rail services that will help address urban transportation challenges; 3) a public interest review process for mergers and acquisitions of all federally regulated transportation services; and 4) a provision allowing the Canadian Transportation Agency to address railway noise complaints. Some of the amendments were largely based on the recommendations of the CTA Review Panel and the report of the Transport Minister David Collenette *STRAIGHT AHEAD A Vision for Transportation in Canada.* Earlier versions of the Bill (i.e., 26 and 44) died with the election of the Conservative Government in February 2006.[18]

In sum, the railways were initially used as an instrument of national policy. Thereafter, bankruptcies and commercial failures forced the government into ownership and rate regulation to protect shippers. Subsequently, concerns about intermodal competition and uneconomic operations together with changes in technology led to liberalization of regulations, privatization, rationalization and

introduction of some competition between the railways.

IV. An Overview of Canadian Air Transportation Policy

In brief, Canadian transportation policy in air is a history of: technical and safety regulation; protectionism, economic regulation and market allocation; deregulation, competition and commercialization; and restraints on monopoly power and regulatory restrictions and accountability.

***1919-1935**: Technical and Safety Regulation*

In 1919 there were a few commercial airlines in Canada. Their activities were limited to exploring and to developing the north. Government policy was basically limited to technical regulations, as Canada was required to implement its obligations under the 1919 Paris Convention. The Air Board set up in 1919 under the first *Air Board Act* was responsible for the safety aspects of civil aeronautics including such functions as: the direct provision of air navigation facilities and services; the investigation of accidents; the development of aeronautical research; and the licencing of aircraft and personnel. Airports were largely the responsibility of private individuals or communities, except those of the government.

***1936-1983**:Protectionism,Economic Regulation and Market Allocation*

In 1937, Trans-Canada Airlines (now called Air Canada) was established as a crown corporation with Canadian National Railways holding all its shares. Having established Air Canada, the government was committed to provide subsidies to cover any annual deficits or to use any other means to ensure its viability. Accordingly, Air Canada was designated to be Canada's 'flag' carrier and was given the rights of first refusal on all overseas and transborder rights. The government directed the Post Office to give Air Canada preferential treatment for the carriage of mail and assumed responsibility for the provision of airport services and infrastructure. In 1942, Canadian Pacific Airlines was formed as Canada's second air carrier but was not given the same treatment as Air Canada.

Notwithstanding the above, Air Canada's economic viability and pre-eminence was threatened by CP Air's attempt to expand their role and the by failure of the Board of Transport Commissioners to adhere to government policy. As a result, Transport Minister, C. D. Howe in 1943 unofficially advised the Board of Transport Commissioners not to consider any more applications for route licences and a year later the duties of the Board were transferred to a new Air Transport Board. This however did not deter CP completely, and its persistence finally resulted in it being given an increased role in 1948. By the late 1950s and mid 1960s there was a shift to managed and controlled competition between public and private carriers, mainline and regional carriers, and scheduled and charter carrier until the mid 1980s.

***1984-1998**: Deregulation, Competition* and *Commercialization*

In the early 1980's, there was increasing dissatisfaction (stagnant traffic, travel deficits and low cost charters and fares in the United States) with the state of regulation in the airline industry in Canada. To add to this, Congress in the United States passed the *Airline Deregulation Act* in 1978 and the *International Transportation Act of 1979* facilitating entry into markets and providing greater flexibility in rate setting. Further, the Economic Council of Canada and other economists called for more responsible regulation pointing to the costs of regulation and the need for deregulation. This led to the *New Canadian Air Policy* in 1984. The policy provided for deregulation of domestic markets. Thereafter, the process of privatizing Air Canada began in 1988 followed by a period of intense competition. In 1994, Transport Minister Douglas Young introduced a policy of commercialization and decentralization of government operations. In other words, privatization, creation of a new not-for-profit private sector corporation to operate certain services, leasing and divestiture of ports and airports, and a reduction or elimination of subsidies. The transborder market was deregulated with the Open Skies Agreement and in 1994 the National Airport Policy was announced (commercializing of airports) which was followed by the privatization of NAV CANADA in 1996.

1999-2006:*Concern about Monopoly-Restructuring and Accountability*

In 1999, the competitive struggle between Air Canada and Canadian Airlines (which included CP Air and other airlines) was over. Canadian Airlines became bankrupt. This led to the approval by the Minister of Transport of the acquisition of Canadian Airlines by Air Canada, now a monopoly, provided it agreed to a number of conditions which were designed to protect the public. Amendments were subsequently introduced in the *Canada Transportation Act*. The process of restructuring began with: the acquisition of Canadian Airlines by Air Canada; the 9/11 events, the outbreak of SARS, Air Canada's emergence from bankruptcy protection on September 30, 2004, and the demise of Jetsgo airlines in early 2005. This has probably come to an end with the emergence of two prominent carriers: Air Canada and WestJet Airlines Ltd. On May 9, 2005 the Minister announced a new airports rent policy to reduce rents by more than 60 percent so as to provide relief to airlines from the airport rents and on June 15, 2006 the Minister tabled a bill on *Canada Airports Act* to provide for greater accountability.

V. Milestones of Canadian Air Transportation Policy

Interest in aviation in Canada began with air ballooning whose earliest recorded experiment took place in 1837. It was not until February 23, 1909 that the first flight by a powered heavier-than-air machine took place at Baddeck, Nova Scotia. A few years later, during the First World War, sustained interest in aviation began with the production of the Curtiss JN-4 for military training and flying. Post war

activity witnessed the beginning of commercial activity.

1919-1935 1919 *Air Board Act/1927 Aeronautics Act*: The year 1919 marked the beginning of government involvement. The Government passed the *Air Board Act* in response to the need for safety standards. This 1919 Act provided for the establishment of the Air Board and empowered it to control all flying in Canada and to implement the International Convention on Air Navigation. In 1923, the Department of National Defence took over the responsibility for aviation and the Air Board ceased to exist, being replaced by the Minister of National Defence. In 1927, the *Aeronautics Act* replaced the *Air Board Act* and was mostly the same.

1936-1983 In 1936, the Department of Transport was created by Prime Minister Mackenzie King and C.D. Howe became its first minister. The Department assumed responsibility for Canada's non-military flying and the implementation of air regulations under the *Aeronautics Act*.

Trans Canada Airlines Act (1937) / *The Transport Act (1937)*: An agreement between the federal government and the Canadian National Railways resulted in the formation of Canada's first national airline, Trans-Canada Airlines (i.e., TCA). This agreement led to the enactment of the *Trans Canada Airlines Act* in 1937 and to a policy of restricting competition by providing for the creation and the preservation of a virtual monopoly for TCA in transcontinental domestic and international areas. *The Transport Act* gave the Board of Transport Commissioners (BTC) authority over air transport.

War Measures Act (1940): The Air Transport Board was created in 1940 (empowering it to regulate the economic aspects of commercial aviation such as control of entry, route allocation, investigation of rate and tariff complaints) and Canada's national airlines were formed beginning a period of extensive economic regulation. On April 2, 1943, Prime Minister Mackenzie King made the following policy statement in the House of Commons “Competition between air services over the same route will not be permitted whether between a publicly-owned service a privately-owned service or between two privately-owned services.” In 1944, the *Aeronautics Act* was amended transferring from the Board of Transport Commissioners all duties to a new Air Transport Board which was to be advisory in character and under the authority of the Minister of Transport.

Route Allocation and Market Division: In 1948, the government decided to give Canadian Pacific Air Lines, the right to carry the Canadian flag in the Pacific and to represent the nation as its chosen instrument in that half of the world. Domestic transcontinental routes continued to be reserved for TCA. The policy of route/market allocation and monopoly continued. As the Minister of Transport, George Hees in 1958 wrote “Governmental policy for civil aviation has, for a

number of years, been one of restricted competition. ... I am of the view that the time has come for the introduction of some measure of competition on our transcontinental routes." He subsequently appointed Mr. S. Wheatcroft to study the implications of such a policy.

In 1965, the Minister of Transport, the Honourable J. W. Pickersgill announced a policy giving effect to his April 1964 statement whereby international routes would be geographically divided. International scheduled service was not to be competitive or the policy was not to be in conflict. The domestic scheduled policy regarding the national carriers continued to protect the financial viability of TCA, though the principle of competition was not rejected. The 1964 policy briefly dealt with regional air carriers ensuring that their role did not conflict with the transcontinental carriers.[19]

Regional carrier Policy: In 1966, the Minister of Transport, issued a statement on the principles for regional carriers. Regional carriers were to provide regular route operations into the north and were to operate regional routes to supplement the domestic mainline operations of the two transcontinental carriers. Greater opportunity was to be provided to regional carriers in the development of routes together with the possibility of limited subsidies. In 1969, Transport Minister, Don Jamieson further elaborated on the policy for regional carriers. He indicated that they were not to become directly competitive on any substantial scale with the two mainline carriers. In addition, the policy defined the geographical areas in which the 5 regionals were to operate.

International Passenger Charter Policy: In August 1977, Transport Minister released a paper *International Passenger Charter Policy* reflecting the policy of capacity control, frequency control, load control and the possibility of fare regulation if the free play of market forces proved to be too strong for scheduled operators. On September 5, 1978, Otto Lang, the Minister released a statement on the International Air Charter Policy promoting a mix of charter and scheduled air service to meet the needs of the public.

1984-1999 *New Canadian Air Policy:* On May 10, 1984, the Minister of Transport, Lloyd Axworthy announced a *New Canadian Air Policy*. First, competition was at the heart of this policy. Second, the major thrust of this policy was the elimination of pricing controls. This policy had a few key features: elimination of defined roles for carriers; relaxation of entry into markets; elimination of licence restrictions on frequencies and aircraft types; and freedom to discount ticket prices. The policy was affirmed and extended in the 1985 document *Freedom to Move* and embodied for the *National Transportation Act, 1987*. The Act retained economic regulation for Northern Canada and for international air services. The market entry test was 'fit, willing and able' for

licence applications in Southern Canada. Advance notice required for exit was 120 days and domestic tariffs had to be published but not filed. There was limited control over fares on monopoly routes.

National Airports Policy: In July 1994, the Federal Government announced a National Airports Policy (NAP) for national, regional and local, small, and remote airports. The NAP adopted a community based model. Under this policy, Canada's twenty-six busiest airports which form the National Airport System would be commercialized. These airports would be retained under federal government ownership, however, the government would enter into long term leases with local Canadian Airport Authorities for their financial and operational management. The federal government would cease its ownership of regional and local airports, and small airports.

New Policy for International (scheduled) Air Transportation: In December 1994, the Minister of Transport announced a new policy for international (scheduled) air transportation which was designed: to make the best use of Canada's international route rights through a 'use it or lose it' approach; to facilitate access to Canada for foreign carriers; and to provide consumers with more travel options and to improve protection for their travel arrangements.

Canada Transportation Act 1996 (Amendments): The amendments continued to reflect the policy of deregulation. The residual restraints on Northern services were removed. Exit notice of 60 days was required for the 2nd last and last carriers, unless a shorter notice period is approved. The 'public interest' requirement when seeking an international non-scheduled (charter) licence was removed. The *Air Transportation Regulations* incorporated changes to the charter rules for Canada-US services. Four years later, the Minister of Transport announced a new policy. "This policy removes fences surrounding international passenger charter services, such as advance booking and minimum-stay requirements, and restrictions on one-way travel." Its intent was to enhance travel, encourage competition, innovation and charter growth.

1999-2006 *Restructuring and Accountability*: On October 26, 1999, Transport Minister David Collenette issued a policy statement for the restructuring of the airline industry to protect the public interest. Later, on December 21, 1999, the Minister announced that the Government was prepared to approve the Air Canada offer to acquire Canadian Airlines since it obtained certain commitments. The acquisition went through and amendments to the *Canada Transportation Act* were tabled on February 17: to increase the powers of the Canadian Transportation Agency to review price and prevent price gouging on monopoly routes; to restore powers for the Agency to deal with conditions of carriage for domestic service; to improve notice of exit provisions; to oblige airlines to consult with communities

when planning service reductions or withdrawals; and to create an Air Travel Complaints Commissioner at the Agency. In addition, the *Official Languages Act* had to be complied with by Air Canada where there was significant demand and the *Competition Act* was also amended.

Notwithstanding the above, financial problems continued to affect the industry. On May 9, 2005, Transport Minister announced that the Government of Canada would adopt a new rent policy for federally-owned airports which was expected to provide some relief. He said "By lowering airport rents by 60 per cent, the Government of Canada is radically changing the financial outlook of the air transport sector in Canada. Through this policy, our major airports will see a substantial reduction in long-term costs, which should greatly benefit airlines and the travelling public."

On May 4, 2006, *amendments were proposed to the Canada Transportation Act -Bill C-11:* The major amendments pertaining to air transportation are on: agreements, price disclosure, international agreements and provision for the Minister to authorize the development of regulations for greater transparency in the advertisement of air fares.

On June 15, 2006, the Minister of Transport, Infrastructure and Communities tabled the *Canada Airports Act* bill in the House of Commons. The bill provides an accountability framework for Canada's largest airports, as well as a modern corporate governance regime for the airport authorities. It includes a new declaration of Canadian airports policy and sets out the roles and obligations of the Minister and the affected airport operators. It will initially affect the 28 largest airports and later medium sized ones. It includes a fee-setting regime for affected airports, with basic charging principles and notice requirements for setting aeronautical and passenger fees together with avenues for public response. It also provides the federal government with authority to audit the business affairs of airport authorities and to give direction on matters such as equitable access measures, allocation of slots, and compliance with environmental requirements. A new international air policy, Blue Sky, was announced on Nov. 27, 2006.

In sum, government policy in air transportation began with its concern over technical and safety aspects of flying. Economic pressure to provide mainline service led the government to establish Air Canada. This committed the government to protect Air Canada by restricting competition through a policy of market division and route allocation. Dissatisfaction with economic regulation and changes in technology finally led to deregulation and commercialization.

[The companion paper presents the future of transportation policy with a few concluding remarks].

Endnotes

[1] By transportation policy is meant government instructions to the public service and regulatory

bodies enabling them to control, guide and assist all participants in transportation. The instruments of policy are typically programs (eg. plans, studies, funding, appropriations, divestitures, etc.), legislation, regulations and other actions that enable the policy to be implemented.

[2] See *100 Years at the Heart of Transportation*, Canadian Transportation Agency, Feb. 2004, p. 8.

[3] See *The Evolution of Canadian Transportation Policy*, John Gratwick, Report Prepared for the Canada Transportation Act Review Panel, March 2001, p. 2.

[4] It stated "It is hereby declared that an economic, efficient and adequate transportation at the lowest total cost is essential to protect the interests of 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."

[5] It was based on the recommendations of the MacPherson Commission (excluding those related to subsidies). The report defined Canada's national transportation policy. It was the first to recommend that the transportation policy be achieved through competition rather than regulation, a radical change in approach. It recommended reduced regulations of railways so as to enable it to compete with trucking together with reduced obligations and compensation when required. It also recommended equal treatment of all modes and that financial aid to other sectors should not be disguised as transportation subsidies.

[6]. In a speech in the HOC he stated "Economic regulatory reform in transportation is needed in Canada if it is to achieve economic renewal and growth to meet international competition."

[7]. The reports of the Economic Council of Canada on regulation, the far reaching changes that occurred in transportation in the US, the events in Canada, and the need to accommodate the structural changes that were occurring in the economy.

[8] Section 3(b) of the NTA states: "competition and market forces are whenever possible, the prime agents in providing viable and effective transportation services."

[9] In a Ministerial report he stated "Our vision is to commercialize and bring Canadian transportation into the 21st century", The Canada Transportation Act, TC, June 1995, TP 12499, p. 1.

[10] It was a culmination of views. The 1992 Royal Commission on National Passenger Transportation stated "Government departments should no longer own, finance, maintain, or operate Canada's transportation system." It also recommended the withdrawal of government transportation subsidies and application of a user pay concept. The NTARC encouraged further deregulation.

[11] *STRAIGHT AHEAD A Vision for Transportation in Canada*, Transport Canada, 2003, p. 17. [12] Id., pp. 17-21.

[13] *Competition and Regulation in the Railway Freight Industry*, CTC, No. 1982/09E, p. 31.

[14] Since then, railway freight rates for western grain have been regulated by a tariff or schedule of freight rates known as the rate cap.

[15] In addition, the provisions on non-compensatory rates were repealed; a substantial harm test was added to section 27(2); the public interest test was removed for: CLRs, level of service and interswitching; the Agency's review of a transport acquisition was dropped; the operation of the *Competition Act* would not be affected; and the Governor-in-Council may take steps, prevailing over the *Competition Act* in the event of an extraordinary disruption.

[16] The Estey Review made 4 important recommendations relating to rail transportation of Canadian Wheat Board grain and Mr. Arthur Kroeger developed operational details to implement them.

[17] These are: compensating affected municipalities ($10,000 per mile for 3 years) when a grain line is closed, operating the remaining part of the branch line for 3 years, discouraging de-marketing of grain lines, granting running rights and identifying lines for discontinuance in the 3 year plan.

[18] A major change between these bills and Bill C11 was the removal of recourse available to rail shippers (i.e. removal of the substantial commercial harm test; replacement of the competitive line rate with the regulated connection rate; removal of the requirement that determined interswitching rates to be maximum rates; and removal of joint shipper submission for final offer arbitration.

[19] The policy described after 1960 is based on various statements issued by Transport Canada.