Intelligence MEMOS

From: Benjamin Dachis

To: Concerned Canadian Travellers

Date: January 25, 2018

Re: **Don't limit airline competition behind closed doors**

With frigid temperatures, many Canadians are looking for flights to warmer climates. Many of those flights will be codeshare flights: one airline operates the aircraft, but affiliated airlines offer ticket sales on that flight as well. A bill in front of the Senate may make these more common – with the risk of making that trip to a tropical paradise pricier.

Codeshare agreements raise the risk of reducing competition, and therefore can lead to higher prices. On domestic flights, code-sharing is likely not a major cost driver. The largest domestic competition impediment is that only airlines majority-owned by Canadians can operate domestic flights (to the government's credit, a recent improvement relative to the former 25 percent foreign ownership limit).

But, on international flights, consolidation among codeshare groups has begun to raise competition concerns. There are now three major global alliances: Star Alliance (of which Air Canada is a member), SkyTeam, and oneworld. (For its part, Westjet has 16 code-share partners, but almost all do not fly parallel routes.) Canada has had concerns with potential anti-competitive agreements in the past. Air Canada and United Airlines reached an agreement in 2012 with the government to limit how much they would coordinate on cross-border flights.

Creating a larger network of flights, as code-sharing does, creates benefits for travellers too. A bigger network can sustain individual routes that would be uneconomic in a disjointed point-to-point fashion. That benefits travellers by providing more flight options.

Embedded in Bill C-49, currently in front of the Senate, is a proposal to let the Minister of Transport allow airline joint ventures, like code-sharing, even when the Competition Bureau, thinks they are anti-competitive. Under Bill C-49, a subsequent review by the office of the Minister of Transport would grant the minister the ability to unilaterally reject the views of the Competition Bureau. This new power should raise some concerns.

Bill C-49 would, in effect, create another sector-specific regulatory regime shielding the regulated industry from the enforcement of the *Competition Act* by the Competition Bureau. This problem is not unique to the airline industry. It affects many sectors ranging from beer to butter to barristers.

The *Competition Act* lays out the basic criteria that the bureau uses to determine how competitor behaviour will affect economic efficiency. The Competition Bureau focuses on economic efficiency above all else. Will the Minister of Transport do the same? He should do so, but will the Minister prioritize airline jobs at the expense of travellers? Will the sway of one airline matter more than others?

Travellers and competing airlines will only know what the Minister of Transport decides if the reasons for the office to reject the Competition Bureau's arguments are made public. At a minimum, Bill C-49 should require, specified in the *Competition Act*, that both the minister's and the bureau's full decisions – not just a summary – become public. It is important the public know why the government would override the Competition Bureau.

Canada is not the only country that has grappled with the prospect of two parts of the government viewing agreements between airlines differently. Codeshare agreements have pitted the US transport regulator against the competition regulator. While sector-specific regulators risk aiding anti-competitive behaviour, there can be good reasons for a sector-specific review. Giving one authority the final regulatory say provides clarity to companies rather than needing to juggle multiple regulators.

Competition is what will make flights to escape the harsh Canadian winters as affordable as possible. Ottawa should be very careful and transparent when it limits the application of the *Competition Act*.

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