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BRIEF

Standing Committee on Transport, Infrastructure and Communities
House of Commons, Ottawa

State of Airline Competition in Canada

In January 2023, the Greater Saskatoon Chamber of Commerce called on Canada's Competition Bureau to examine Air Canada's decision to terminate air service from Saskatoon to Calgary's regional hub, and the implications for travellers who now face less choice and higher costs because competition has been harmed.

"Air Canada has not adequately explained its 'business decision' to disregard strong and growing demand and eliminate a route that has been consistently profitable for over 30 years," said Jason Aebig, CEO of the Saskatoon Chamber, noting forecasts that predict strong economic and population growth for Saskatoon and Saskatchewan in the years ahead. "If Air Canada is unwilling to explain its decision to its customers and stakeholders, it can explain its decision to its regulators."

He continued: "We believe in profitability. We believe in competition. The decision doesn't make sense and all of it needs a closer look."

The Chamber's 11-page submission to the Bureau contended that Air Canada's cancellation of service from Saskatoon to Calgary amounted to a net loss of competition and choice for business and leisure travellers, leaving its closest, direct competitor as the sole provider of comparable service to Saskatoon and Saskatchewan. WestJet would be the only airline offering direct service between Saskatchewan and Calgary once Air Canada's route cancellation took effect, giving it an anticompetitive monopoly.

Route changes through 2022 suggest that Air Canada and WestJet took steps to soften competition in the oligopolistic Canadian airline industry. Air Canada withdrew competition from the traditional home-turf regional routes of WestJet, and WestJet did the same in the traditional home-turf regional routes of Air Canada.

The Chamber asked the Bureau to determine whether the air carriers either expressly or tacitly came to an agreement to allocate markets, contrary to the conspiracy provisions, or the civil competitor collaboration provisions, of the Competition Act.

Even if the conduct fell short of being an "agreement" between the airlines, the Chamber contended it amounted to an abuse of dominance by Air Canada and WestJet where the airlines engaged in conduct intended to harm competition, thereby improving their respective positions in the market.

"Generations of taxpayers have supported the operation of our airlines and national air services system with the expectation that they work for the benefit of all Canadians, in every province and region," says Aebig. "They have a responsibility to the country, and specifically the travelling public, to account for decisions that are clearly undermining competition and choice."

The Chamber believes softened competition between Air Canada and WestJet has been to the detriment of the Canadian travelling public and the Canadian business community with Saskatoon and Saskatchewan as the latest victims.

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"Air Canada's route cancelation means that Saskatoon-based businesses will spend more time and more money to connect with the people and markets they serve," said Aebig. "Compared to neighbouring provinces, Air Canada's decision creates unnecessary barriers for Saskatoon's current businesses, research institutes and residents, as well as those wishing to visit, study or do business here."

The Chamber believed Air Canada's decision to abandon a longstanding and profitable domestic route, and cede ground to its closest direct competitor, was concerning and warrants the Bureau's intervention.

"We trust the Competition Bureau to clarify the issues," said Aebig at the time. "What is clear is business confidence is strong, our economic horizon is bright, and growing numbers of people are eager to visit, learn and work in Saskatoon and Saskatchewan."

The Chamber's submission to the Bureau is attached.

The Greater Saskatoon Chamber of Commerce

The Greater Saskatoon Chamber of Commerce is Saskatoon's voice for business, representing a powerful network of community-minded businesses, organizations and leaders who want the best for their city. Learn more at saskatoonchamber.com or follow on all social media using handle @TheChamberYXE.

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Greater Saskatoon Chamber of Commerce

Submissions to the

Commissioner of Competition

Concerning

Anticompetitive Conduct by Air Canada and WestJet

In relation to Canadian Regional Business and Leisure Air Travel

January 17, 2023

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I. Overview

1. Throughout 2022, Air Canada and WestJet have taken steps to soften competition in the oligopolistic Canadian airline industry. Air Canada has withdrawn competition from the traditional home-turf regional routes of WestJet, and WestJet has done the same in the traditional home-turf regional routes of Air Canada. The softened competition between Air Canada and WestJet has been to the detriment of the Canadian travelling public and the Canadian business community.

2. On December 6, 2022, as part of this broader cross-country softening of competition, Air Canada announced that effective January 16, 2023, it will no longer service several regional routes out of its hub in Calgary. Two of the cancelled Air Canada routes are between Calgary and Saskatoon, and between Calgary and Regina.

3. The Saskatoon/Regina to Calgary routes are of vital importance to the residents and business community of Saskatchewan, as well as those wishing to visit or do business in Saskatchewan. The routes are critical not just for travel to and from Calgary itself, but for the further destinations accessible from Air Canada's Calgary hub. Air Canada cancelling these routes to and from Saskatchewan, in spite of their profitability, will leave WestJet as the only airline offering direct service between Saskatchewan and Calgary, giving it an anticompetitive monopoly.

4. Air Canada and WestJet's competition-softening conduct across Canadian regional air routes is anticompetitive. This conduct warrants inquiry by the Bureau to determine whether the air carriers have either expressly or tacitly come to an agreement to allocate markets, contrary to the conspiracy provisions, or the civil competitor collaboration provisions, of the *Competition Act*.

5. Importantly, the airlines' conduct warrants Bureau intervention even if the conduct falls short of being an "agreement" between the parties, as it is an abuse of dominance by Air Canada

and WestJet: dominant firms are engaging in conduct intended to harm competition, resulting in a substantial lessening or prevention of competition in the markets for business and leisure air travel.

6. The Greater Saskatoon Chamber of Commerce ("**GSCC**") requests that the Bureau investigate the conduct of Air Canada and WestJet and obtain a remedy that will overcome the effects of their anticompetitive conduct.

II. Background

7. GSCC is a member-driven organization of professional, business, and community organizations and individuals in Saskatoon. One of GSCC's mandates is to work to improve the environment for business growth and job creation on behalf of its members, and the Saskatoon community.

8. Air Canada is Canada's largest provider of scheduled airline passenger service in Canada. Air Canada operates an expansive network of international and regional Canadian flight routes. Air Canada is a founding member of the Star Alliance network, which allows for significant cooperation and coordination among participant airlines throughout the world. Air Canada was founded and is headquartered in Montreal.[1]

9. WestJet is Canada's second largest provider of scheduled airline passenger service in Canada. WestJet operates an expansive network of international and regional Canadian flight routes. It was founded and is headquartered in Calgary.[2]

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[1] Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act — Report (Air Canada and Transat) at 4. Parties to the Transaction.
[2] Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act (04690) (WestJet and SunWing) at 4. Parties to the Proposed Transaction

10. Across much of Canada, WestJet and Air Canada are each other's main rivals for regional air travel in both the business and leisure markets.

III. The "Home Turf" Strategy

11. In June 2022, WestJet announced that it would be refocusing its routes and fleet on its historical stronghold of Western Canada.[3] Expert commentators concluded that this change in focus away from the Toronto-Montreal-Ottawa triangle occurred because Air Canada was too dominant in the East for WestJet to compete; with Air Canada having a "vice-like grip" on Eastern Canada.[4] WestJet's change in strategy occurred after having spent more than a decade adding routes to central and Atlantic Canada in an effort to go head-to-head with Air Canada.[5]

12. In December 2022, Air Canada reciprocated in kind, and announced that moving forward it would be focusing on routes out of its main hubs in Toronto, Vancouver, and Montreal, and that it would be cancelling several regional routes out of Calgary effective January 16, 2023, including routes to several British Columbia cities,[6] the route between Calgary and Saskatoon, and the route between Calgary and Regina.[7]

13. WestJet's CEO subsequently confirmed that WestJet would be further implementing its strategy of centralization in Western Canada throughout the course of 2023.[8] Its Director of Commercial Strategy has described WestJet's focus on the West as being "to really own Canada's West."[9] The cancellation of Air Canada's Western Canadian flights certainly goes a long way to

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[3] Securing the future: how a growing, stronger, sustainable WestJet benefits Canadians | WestJet official site
[4] Experts say Air Canada is too dominant in the East for WestJet to compete | Globalnews.ca
[5] Experts say Air Canada is too dominant in the East for WestJet to compete | Globalnews.ca
[6] Air Canada drops direct Victoria-Calgary service - Victoria Times Colonist
[7] Air Canada cuts Saskatoon, Regina flights to Calgary | CTV News
[8] WestJet to focus on implementing new strategy in 2023 | Calgary Herald
[9] WestJet's Commercial Strategy Director: Why The Airline Must Change (simpleflying.com)

accomplishing this monopolistic goal of owning the market, to the detriment of Canadian consumers and businesses.

IV. Impact of Air Canada's Calgary-Saskatoon Route Cancellation

14. At the time of Air Canada's December 2022 announcement, there were 8 flights per day between Calgary and Saskatoon: 6 flights from WestJet and 2 flights from Air Canada.[10] Effective January 16, 2023, WestJet will be the only airline operating between Calgary and Saskatoon, having a monopoly on the route unchecked by comparable competition. Prices have already gone up several hundred dollars in response to Air Canada's cancellation of the route.[11]

15. The significance of the loss of Air Canada's service to Calgary goes beyond just direct travel to Calgary. Calgary is the preferred regional hub that connects Saskatoon outward to the rest of the world. Calgary is a particularly important hub for the Saskatoon and broader Saskatchewan business communities and the anchor industries of uranium, oil, gas, potash, and other critical minerals. Companies such as Nutrien, Cameco, BHP, Federated Cooperatives, Orano, Vendasta and many of Saskatoon's other top manufacturing and exporting companies rely heavily on air travel to support and develop markets across North America and around the world.

16. A number of globally recognized research institutes and facilities are also headquartered in Saskatoon, including the Canadian Light Source Synchrotron, VIDO-InterVac, and the University of Saskatchewan, whose researchers and research partners rely on Calgary's connectivity to collaborate and utilize scientific infrastructure.

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[10] Flair offers Saskatoon to Calgary flights after Air Canada cuts service | CTV News
[11] 'Saskatchewan is getting less and less accessible': Airlines cancel service to province | Globalnews.ca

17. In the aftermath of Air Canada's announcement, Flair Airlines announced that it would introduce a Saskatoon to Calgary flight beginning in May 2023.[12] While Flair's planned entry to the market is welcome news, it will not effectively replace the competition previously offered by Air Canada. Flair is an ultra low-cost airline with routes targeting vacation destinations. As the Bureau has previously noted, Flair's current expansion plans are centered on deploying capacity to leisure markets.[13] There is no equivalency between Flair and Air Canada on service, convenience, or connectivity. Flair cannot provide an effective substitute for business travellers, who will be left with no choice but to travel WestJet.

18. Given its proximity, Calgary is Saskatoon's preferred connection to Air Canada's Star Alliance and code share partners, and for international travelers to access Saskatoon in return. WestJet is the only airline to offer a comparable service. Other domestic carriers cannot or do not provide the same level of service, ease of access or network connectivity that Air Canada has traditionally provided through Calgary to and from Saskatoon.

19. Air Canada's decision represents a net loss of convenience and choice. For passengers who book their domestic and international itineraries through the Calgary hub, that level of convenience and cost-saving is no longer an option thanks to Air Canada's decision. In conversations with GSCC, Air Canada has suggested that travellers from Saskatoon can still connect to Air Canada's network through hubs in Vancouver, Montreal, and Toronto. This is not a viable suggestion, as such detours would add significant time and cost to most destinations. A flight from Saskatoon to Winnipeg through Calgary involves materially less flying time (3 hours 21 minutes) than

[12] Flair offers Saskatoon to Calgary flights after Air Canada cuts service | CTV News
[13] Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act (04690) (WestJet and Sunwing) at 7.4.2. Likelihood of timely and sufficient entry or expansion.

connecting through Vancouver (5 hours 2 minutes) or Toronto (6 hours 4 minutes), and the cost is significantly less ($395 vs $1,019 through Vancouver and $987 through Toronto).[14] No other hub will match the cost-saving or convenience of the Calgary hub.

20. Air Canada's route cancelation means that Saskatoon-based businesses will spend more time and more money to connect with the people and markets they serve. Relative to neighbouring provinces, this decision creates unnecessary barriers to Saskatoon's competitiveness, connectivity, and capacity to grow its economy.

21. Air Canada's decision to shut-out Saskatoon from its most important and accessible travel hub is particularly concerning because passenger loads and yields are strong on Air Canada's Saskatoon to Calgary routes. There is a high demand for business and leisure travel, with anecdotal evidence suggesting very well-sold flights, often with individuals flying stand-by. This is a profitable route that has served the Saskatoon and Saskatchewan market for over 30 years. In that period, the route has never been flagged as being "at risk" (low profitability) by Air Canada to airport officials in Saskatoon.

22. Saskatoon's economic vitality will only increase. The Conference Board of Canada is forecasting Saskatoon's economic growth to outpace nearly every other Canadian city. These trends are attributable in part to Saskatoon's impressive growth in population, increasing 7.5% over the past five years alone. Blessed with abundant natural resources and processing facilities, thriving agri-food and research clusters, and a burgeoning tech hub, Saskatoon is poised to grow faster, and stronger, than anywhere else in Canada. Saskatoon has the resources, products,

[14] Fares obtained from Air Canada website on Jan 10, 2023, for a one-way flight departing January 13, 2023.

technologies and ideas the world needs. Any "business case" for leaving Saskatoon appears to be very weak.

23. The impact of Air Canada's route cancellation is already being felt. [redacted] was scheduled to host a large company convention in Saskatoon in 2023, which it was forced to cancel and move outside of the province as a direct result of Air Canada's route cancelation.[15] [redacted] has a travel risk policy that does not allow more than a certain number of employees to fly on the same flight, which meant that Saskatoon could no longer host the event.

24. The Bureau has previously recognized that "[t]he airline and travel industries play a critical role in the Canadian economy, generating economic growth, creating jobs, and facilitating international trade and tourism."[16] Air Canada's route cancellation will not only lead to increased prices, reduced choice, and poorer quality of service from an unchecked monopolist, but it will also lead to significant knock-on economic effects on Saskatoon's economy. The [redacted] cancellation is a harbinger of things to come, with further cancellations expected, and with Saskatoon being completely overlooked for other future business opportunities.

V. Competition Law Analysis

25. Air Canada and WestJet will mutually benefit from their business strategies of withdrawing from the other's home markets. Air Canada and WestJet have softened, or eliminated, meaningful competition from the markets where they have chosen to withdraw.

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[15] [redacted]

[16] Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act (04690) (WestJet and Sunwing) at Executive Summary.

26. GSCC is not in a position to know whether Air Canada and WestJet's strategies are the result of an express or tactic agreement to allocate markets, and accordingly whether the Bureau's intervention under either s. 45 or s. 90.1 of the *Act* may be warranted. The above narrative does raise questions about motivations, and it would be appropriate for the Bureau to commence an Inquiry.

27. However, even if the "home turf strategy" is mere conscious parallelism between Air Canada and WestJet, such conduct constitutes abuses of dominant position by each of Air Canada and WestJet, which should be remedied by the Bureau.

i) Anticompetitive Act

28. The abuse of dominance provision was expanded in 2022 by legislative amendment. Historically, the abuse of dominance provision only covered acts by a dominant firm that had an intended negative impact on a competitor that was predatory, exclusionary, or disciplinary. The 2022 amendments expanded the definition of "anticompetitive act" to now also include an act by a dominant firm that is intended "to have an adverse effect on competition."[17]

29. The Bureau advocated for the foregoing amendment, explaining that the old version of the provision "may allow dominant firms to escape scrutiny even when their conduct softens competition. This gap should be closed by ensuring that the provision captures conduct intended to harm competition, and not just conduct intended to harm a competitor."[18]

[17] *Competition Act*, s. 78(1).
[18] Examining the Canadian Competition Act in the Digital Era (canada.ca) s. 3.1.

30. This complaint presents a tailor-made example of dominant firms softening competition by their conduct of reducing or eliminating competitive intensity. Air Canada and WestJet have each chosen to withdraw competition from certain routes, with the remaining airline enjoying the benefits of a reduction (or elimination) of competition.

31. The softening of competition between Air Canada and WestJet was a reasonably foreseeable consequence of each of them implementing their current strategy. Accordingly, for the purposes of the abuse of dominance provision, the airlines "intended" to commit an anticompetitive act, since persons are assumed to intend the reasonably foreseeable consequences of their acts.[19]

ii) Dominance

32. Air Canada and WestJet are each dominant in several relevant markets.

33. The Bureau typically defines relevant geographic markets in transportation industries according to origin-destination pairs and considers different modes of transportation to belong to separate product markets. The Bureau also typically views air passenger service for leisure and for business as being separate product markets.[20]

34. WestJet is dominant in most or all of the Western Canadian regional routes from which Air Canada withdrew service (including the Saskatoon to Calgary route) for both leisure and business

[19] Abuse of Dominance - Enforcement Guidelines (canada.ca) at para. 54.
[20] Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act (04690) (WestJet and Sunwing) at 7.1 Relevant Markets; and Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act — Report (Air Canada and Transat) at 7.1.1 Services for business and leisure passengers.

travel. Air Canada is dominant in most or all of the Eastern Canadian regional routes from which WestJet withdrew service for both leisure and business travel.

iii) Substantial Lessening or Prevention of Competition

35. WestJet and Air Canada's conduct has substantially lessened and/or prevented competition in both the business and leisure air travel markets across numerous Canadian regional routes.

36. A substantial lessening or prevention of competition occurs when an impugned practice causes a materially greater degree of market power to exist than in the absence of the practice.[21] This analysis involves a consideration of whether, in the absence of the impugned practice, prices would likely be materially lower or the non-price dimensions of competition (such as innovation, service, quality, and variety) would likely be higher.[22]

37. The anticompetitive harm from a single airline carrier having a monopoly, or a near monopoly, on a route is self-evident. The Bureau has noted such anticompetitive effects numerous times in its exhaustive work in this sector.[23] By exiting each other's stronghold markets, Air Canada and WestJet are enhancing and maintaining each other's market power in those stronghold markets.

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[21] Abuse of Dominance - Enforcement Guidelines (canada.ca) at para. 86.
[22] 2016 CACT 7 (CanLII) | The Commissioner of Competition v The Toronto Real Estate Board | CanLII at para. 464.
[23] See, for example, Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act (04690) (WestJet and Sunwing) 7. Competitive Analysis; and Report to the Minister of Transport and the Parties to the Transaction Pursuant to Subsection 53.2(2) of the Canada Transportation Act — Report (Air Canada and Transat)7.3 Competitive Effects.

38. The "Impact of Air Canada's Calgary-Saskatoon Route Cancellation" section above addresses the numerous anticompetitive impacts and consumer harm for both leisure and business airline travel that will occur because of Air Canada's cancellation of its Saskatoon to Calgary route.

39. In the absence of competition from Air Canada, WestJet is likely to extract monopoly profits from the Saskatoon to Calgary route, with poorer service offerings, and no consumer choice. The potential entry of Flair Airlines will only be relevant to a small portion of the leisure travel market and will do nothing to constrain WestJet's monopoly for business travel, given Flair's leisure-focused flight network, its strategic focus on leisure travel, and its ultra low-cost driven service levels.

40. Through the softening of competition, WestJet will indeed meet its goal of "owning the West", including owning business and leisure travel between Saskatoon and Calgary.

41. While this complaint has focused primarily on the Saskatoon to Calgary route given the interests of GSCC, the same or similar anticompetitive effects noted herein would be found for many other impacted routes throughout Canada.

VI. Conclusion

42. WestJet and Air Canada have engaged in concerning anticompetitive behaviour through their 2022 strategies to reduce competitive intensity on certain regional Canadian routes. These business strategies will be harmful to Canadian consumers and the Canadian business community.

43. For Saskatoon in particular, Air Canada's cancelation of a profitable route will have profound negative impacts on the local population, local business, and the local economy. Air Canada's route cancelation does not pass the smell test, and the Bureau's intervention is warranted.