



# Air Transport

in 34 jurisdictions worldwide

Contributing editor: John Balfour

# 2010



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# Canada

**Laura M Safran QC**

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## General

**1** Which bodies regulate aviation in your country, under what basic laws?

In Canada, the two principal bodies regulating aviation are Transport Canada and the Canadian Transportation Agency (the Agency).

Transport Canada is a department of the federal government with general oversight over transportation-related issues in Canada, including safety issues. With respect to aviation, Transport Canada is responsible for administering the Aeronautics Act (Canada) and the Canadian Aviation Regulations (CARs) promulgated thereunder.

The Agency is an independent, quasi-judicial body created under, and primarily responsible for the administration of, the Canada Transportation Act. The Agency's mandate includes the processing of licence and charter permit applications, negotiating or assisting with the negotiation of international air agreements, administering international tariffs and hearing air travel-related complaints.

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## Regulation of aviation operations

**2** How is air transport regulated in terms of safety?

Safety issues are primarily regulated under the CARs. Part III of the CARs addresses safety at airports. Part IV addresses the requisite training, licensing, rating and medical requirements for flight crew, air traffic control and maintenance personnel. Airworthiness of aircraft is addressed under part V. General operating and flight rules are addressed under part VI. Commercial air services are addressed in part VII. Air navigation services are addressed under part VIII. These regulations, together with Transport Canada policies, generally govern aviation safety.

**3** What safety regulation is provided for air operations that do not constitute public or commercial transport, and how is the distinction made?

If the operations involve the transportation of passengers via a large (5,700kg or greater) or turbine-powered pressurised aircraft, then a private operator certificate is required under part VI of the CARs. Oversight over such operations was recently transferred from Transport Canada to the Canadian Business Aviation Association (CBAA). The CBAA requires operators to profile safety risks associated with the operator's operations. In turn, manuals and procedures are tailored to the specific operations and such operations are subject to periodic audits by the CBAA. A private operator certificate is not required for the operation of small or non-turbine-powered aircraft.

In respect of the operation of an aircraft or helicopter in aerial work involving helicopter external loads, towing of objects, dispersal of products and carriage of persons other than flight crew, subject to limited exceptions, such operations require an air operator certificate under part VII, subpart 2, CARs.

**4** Is access to the market for the provision of air transport services regulated, and if so how?

In addition to safety requirements, air transport services in Canada are subject to meeting certain financial requirements, insurance requirements and ownership issues. Some of these regulatory requirements are discussed further in question 5. Scheduled international air transport services to and from Canada by non-Canadian carriers are governed primarily by bilateral air transport agreements between Canada and those countries. Those agreements form the legal basis for regulating those air services and establish traffic rights for each country. 'Open skies' agreements are also being negotiated, as discussed below.

**5** What requirements apply in the areas of financial fitness and nationality of ownership regarding control of air carriers?

An applicant for the operation of a Canadian domestic licence, non-scheduled international licence or scheduled international licence authorising the operation of an aircraft configured for 39 or more passengers must meet the financial fitness requirements prescribed in the Air Transportation Regulations. In general, an applicant must demonstrate that it has sufficient liquidity to cover all operational costs for the first 90 days of operations without having to rely on revenues from operations.

Under the Canada Transportation Act, an applicant is not able to obtain a licence for a domestic service unless the applicant is 'Canadian'. To be considered Canadian-owned and controlled, an air carrier must be incorporated in Canada, must have at least 75 per cent of its voting interests owned and controlled by Canadians and must be controlled in fact by Canadians.

**6** What procedures are there to obtain licences or other rights to operate particular routes?

A licence from the Agency is required to operate a domestic or international air service. Pursuant to part II of the Canada Transportation Act and parts I and II of the Air Transportation Regulations, licences are categorised according to the type of aircraft (small, medium, large, all-cargo), whether the air service is domestic or international and, in the case of an international air service, whether the service is scheduled or non-scheduled. An applicant must establish that it holds a Canadian aviation document issued by or approved by Transport Canada valid for the proposed service and that it meets the nationality, insurance and financial requirements prescribed in the Air Transportation Regulations.

As noted above, scheduled international air services and access to particular routes are governed by bilateral air transport agreements negotiated between various countries and Canada.

- 7 What procedures are there for hearing or deciding contested applications for licences or other rights to operate particular routes?

The Agency has the powers, rights and privileges of a superior court to exercise its authority. In addition to administering the federal government's aeronautical policy, the Agency hears complaints, including those respecting licences or other rights to operate particular routes. The Agency's rules of procedure are set forth in the Canadian Transportation Agency General Rules, SOR/2005-35. An appeal lies from the Agency to the Federal Court of Appeal of Canada on a question of law or a question of jurisdiction upon leave to appeal being obtained from that court following an application made within one month after the date of the decision, order, rule or regulation being appealed.

- 8 Is there a declared policy on airline access or competition, and if so what is it?

In November 2006, the federal government announced 'Blue Sky: Canada's New International Air Policy'. That policy outlines the federal government's approach to bilateral air transportation negotiations for scheduled passenger and all-cargo services. The policy suggests that Canada will actively pursue opportunities to enter into more liberalised bilateral agreements with other states, contemplating fifth and sixth freedoms for passenger services and seventh freedom for all-cargo services. However, the policy stops short of consideration of cabotage. Canada recently negotiated open skies-type agreements with the United Kingdom and the United States. Among other matters, those agreements remove bilateral restrictions on pricing and allow each country's carriers to carry origin and destination passengers and cargo between the other country and third countries.

- 9 What requirements must a foreign air carrier satisfy in order to operate to or from your country?

In the event the foreign carrier seeks to operate scheduled services to or from Canada, it must obtain a scheduled international licence from the Agency under section 69(3) of the Canada Transportation Act provided it has an equivalent licence from the foreign government. Additionally, it must obtain authorisation from Transport Canada and, in certain situations this could involve visits by Transport Canada representatives to the maintenance facilities of the carrier to ensure certain safety and technical standards are met; Transport Canada then issues a Foreign Air Operator Certificate (FAOC). In the event the foreign air carrier anticipates non-scheduled services and provided it has the applicable authorisations and licences from the foreign government, it must file its charter agreement with the Agency together with certain other information in order to receive the applicable permit from the Agency. Again a FAOC from Transport Canada will be required but the review by Transport Canada may not be as extensive as in respect of scheduled services. Further comments concerning charters are set forth below.

- 10 Are there specific rules in place to ensure aviation services are offered to remote destinations when vital for the local economy?

There are no rules that require aviation services to be provided to remote destinations when vital to the local economy. However, section 64 of the Canada Transportation Act provides that an air carrier planning to discontinue or reduce a domestic air service must meet certain notice requirements. Notice is required in three situations:

- when the discontinuance would result in only one or no air carrier serving a point;
- when an air carrier proposes to reduce the frequency of an air service to less than one flight per week, so that only one or no air carrier would serve that point at least once per week; and
- when the discontinuance of a year-round, non-stop scheduled air

service between two points in Canada would significantly reduce seating capacity on the affected route.

When required to provide notice of a proposed discontinuance of or reduction in a domestic air service, the air carrier must give 120 days' notice to the Agency, the federal minister of transport, the minister responsible for transportation in the province or territory affected by the proposal and the affected communities, unless the air service has been operating for less than one year. In the latter case, the notice period is 30 days.

- 11 Are charter services specially regulated?

A carrier holding a licence for a non-scheduled international service must obtain a permit or authorisation from the Agency to operate charter flights from Canada to a foreign country. Charter services are regulated under the Air Transportation Regulations, the federal government's policies on International Charter Passenger Air Services of 4 April 2000, and International All-Cargo Charter Policy of 29 May 1998. Parts III and IV of the Air Transportation Regulations address international charter flights (excluding the US) and trans-border charter flights (between Canada and the US), respectively; however, it should be noted that the federal government's charter policies have rendered many of the requirements under the Air Transportation Regulations irrelevant. One of the most important requirements to obtain a charter permit is the provision of a financial guarantee by means of a letter of credit or guarantee to ensure that all advance payments paid by the charterer or tour operator to the carrier are protected. The Agency prescribes the form of charter transportation agreement as well as the financial guarantee.

- 12 Are airfares regulated, and if so, how?

There are no blanket rules or regulations covering air fares generally. However, section 66 of the Canada Transportation Act addresses 'unreasonable fares or rates'. If there is only one licensee providing domestic service on a route, it is open to the Agency to consider the reasonableness of the air fare or cargo rate upon receiving a complaint in respect of the same. The Agency has the power to vary fares and rates it considers unreasonable. Section 66(3) of the Act outlines the factors that the Agency must take into account when determining whether a fare or rate is unreasonable, inclusive of historical data of fares or rates on the route, fares or rates on similar routes and competition from other modes of transport.

## Aircraft

- 13 Who is entitled to be mentioned in the aircraft register? Do requirements or limitations apply to the ownership of an aircraft listed on your country's register?

The federal minister of transport maintains the Canadian Civil Aircraft Register (CCAR) pursuant to the Aeronautics Act (Canada) and the CARs. It is the exclusive federal register for aircraft registration purposes. Matters relating to title and property interests in aircraft are governed by provincial laws and there are separate provincial personal property registers at which certain of those interests may be registered.

To be qualified to be the registered owner in respect of a CCAR registration, the applicant must be a Canadian citizen or resident of at least 16 years of age or a corporation having at least 75 per cent of its voting shares and de facto control held by Canadians.

A non-Canadian entity incorporated or formed under Canadian federal or provincial laws may qualify to be a registered owner of a CCAR registered aircraft, if, inter alia, the flight time accumulated by the applicable aircraft in Canada is at least 60 per cent of the total accumulated flight time at the end of each six-month period.

In addition, when a foreign-registered aircraft remains in Canada in excess of 90 days in any 12-month period, the operator must obtain Canadian registration for the aircraft and meet the requirements of section 202.42 of CARs (ie, the foreign jurisdiction is a contracting state with Canada and the operator is a citizen of or formed under foreign laws and has a proper air-operator certificate).

'Ownership', as it is understood and defined in terms of CCAR registration, denotes 'legal custody and control' of the aircraft rather than legal or beneficial title. Section 202.35(3) of the CARs defines legal custody and control as 'responsibility for the operation and maintenance of the aircraft'.

**14** Is there a register of aircraft mortgages or charges, and if so how does it function?

In Canada, matters relating to security interests in personal property, including aircraft, are determined by provincial laws and there is no federal or single national register of security interests. Most of the provinces have adopted a Personal Property Security Act (PPSA) modelled generally on article 9 of the Uniform Commercial Code of the United States. In general, PPSA legislation applies to every transaction that in substance creates a security interest, without regard to its form. The perfection of a security interest in an aircraft requires 'attachment' (ie, that value has been given, that the debtor has rights in the collateral and that the security agreement is executed by the debtor) and the filing of a financing statement with the Personal Property Registry (PPR). As a general rule, a secured creditor who perfects its security interest under a PPSA obtains priority over subsequent creditors and transferees from the date of registration of the financing statement. In most PPSA provinces, a financing statement may be registered before a written security agreement is made or the security interests attach but such registration alone does not denote perfection of the security agreement. The legal effect of registering a financing statement at the PPR upon attachment is to perfect the security interest in the collateral. Failure to perfect would render the security interests subordinate to or not effective against judgment creditors, a bankruptcy trustee or other perfected security interests. Under the PPSAs, it is possible to conduct searches of the PPR register by searching the debtor name, the Canadian aircraft registration mark, or equivalent registration mark, or the PPR registration number (if known).

Canada has enforced portions of an Act to Implement the Convention on Matters Specific to Aircraft Equipment (the 'Implementation Act') that amends the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Bank Act, all four being federal statutes. The effect of the proclamation of those portions of the Implementation Act is to grant to legal titleholders of 'aircraft objects' (based on the Capetown Convention definition) more favourable treatment than would be granted to titleholders of other types of assets after the debtor has filed or had filed against it proceedings in bankruptcy or insolvency, or both. Therefore, the lessor, conditional seller or creditor who holds security in an aircraft object may take possession of it if the insolvent person defaults in protecting or maintaining the aircraft object in accordance with the lease, conditional sale or security agreement, with certain cure rights available to the insolvent person after a specified time period. The balance of the Implementation Act has yet to be enforced. Canada's adoption of the Capetown Convention should occur when the provinces and territories adopt the Convention.

**15** What rights are there to detain aircraft, in respect of unpaid airport or air navigation charges, or other unpaid debts?

The Aeronautics Act (Canada) provides that the registered owner and operator is liable for payment of charges imposed for the use of any facility or service provided by or on behalf of the federal minister of transport or at any aerodrome on behalf of or operated by or for the

minister. Such charges are due to the Crown and can be recovered as such in any court of competent jurisdiction. For any charge and interest thereon not paid, the minister may, on application to the superior court in which the aircraft is situated, obtain a court order authorising the minister to seize and detain the aircraft. The minister must release the aircraft from detention upon payment of the amount in question or the deposit of a bond or other security in the amount in respect of which the aircraft was seized.

Pursuant to the Civil Air and Navigation Services Commercialization Act (Canada), NAV CANADA operates the air navigation services for any aircraft operating in Canadian airspace and imposes charges in that regard. NAV CANADA is a private federal company operating Canada's air navigation system. In addition to remedies available for collection of unpaid and overdue charges, NAV CANADA may apply to a superior court of the province in which an aircraft is owned or operated by the party liable to pay the charges for an order authorising NAV CANADA to seize and detain the aircraft until the charge is paid, or a bond or other security is deposited with NAV CANADA.

Additionally, where a person fails to pay amounts required under the Income Tax Act (Canada), the minister of national revenue, upon notice, may seize the personal property of that person. The Airport Transfer (Miscellaneous) Matters Act (Canada) also permits seizure of an aircraft by a person owing an amount for landing fees, terminal fees or fees related to the use of an airport. The airport authority may obtain a court order authorising seizure and detention of the aircraft. Upon depositing a bond or security for the amount in respect of which the aircraft was seized, the airport authority must release the aircraft.

Aircraft also may be seized in limited circumstances under other legislation, including under the Criminal Code of Canada, the National Defence Act (Canada) and the Environmental Protection Act (Canada).

**16** Do specific rules regulate the maintenance of aircraft?

Part V, subparts 71 and 73 of the CARs and the Airworthiness Manual regulate aircraft maintenance and maintenance facilities. Generally no person, other than the holder of a Transport Canada issued aircraft maintenance engineer (AME) licence specifying the appropriate rating, can sign a maintenance release as required under the Airworthiness Manual. The minister issues to applicable maintenance organisations, that demonstrate they meet the relevant requirements of CARs, an approved maintenance organisation (AMO) certificate authorising the maintenance of specified aeronautical products or provision of specified maintenance services. Transport Canada will issue an air operator certificate only to carriers that meet the necessary maintenance, technical and safety standards.

**Airports**

**17** Who owns the airports?

Canada's National Airport System (NAS) is defined by government policy and includes all airports serving national, provincial and territorial capitals or having annual traffic of at least 200,000 passengers. All airports in the NAS are owned by Transport Canada. In the mid-1990s, pursuant to the National Airports Policy (NAP), the minister of transport transferred the operation of major Canadian airports to local airport authorities established under provincial and special legislation. The minister of transport continues to own the airport lands and leases the lands to the local airport authorities. Smaller airports are operated by the minister of transport or by other entities authorised by the minister to operate such airports. Part III of the CARs governs aerodromes and airports in Canada. Each Canadian aerodrome and its characteristics is registered in the Canadian Flight Supplement.

**18** What system is there for the licensing of airports?

Each airport operator must obtain the approval of the minister of transport of its airport operations manual. Upon such approval and adherence to CARs requirements, the operator is granted certification by Transport Canada.

The Canada Airports Act was tabled in parliament in 2003 and seeks to re-regulate Canada's primary airports, giving the minister of transport more unilateral control, decreasing the authority of the local airport authorities and regulating commercial relationships between users and airport authorities. The Act is not yet in force.

**19** Is there a system of economic regulation of airports, and, if so, how does it function?

There is no system of economic regulation of airports per se. Rather, all airports must meet the requirements under CARs in order to be issued an Airport Certificate by the minister of transport. Local airport authorities that have assumed airport operations are bound by leases with the minister of transport that also contain provisions that indirectly constitute a type of economic regulation.

**20** Are there laws or rules restricting or qualifying access to airports?

Access to Canadian airports by foreign carriers is generally dependent upon the bilateral air agreements between Canada and other countries. Each such agreement governs, among other matters, specific cities or airports to which foreign carriers are granted access. Access to airports by any carrier are restricted also by noise abatement regulations, curfew rules and types of aircraft that may utilise the runways (eg, restrictions as published in the Transport Canada Aeronautical Information Publication directed to domestic flight crews).

**21** How are slots allocated at congested airports?

Slots generally are allocated by each airport after consultation with the air carrier. At congested airports, it is usual for carriers to agree among themselves as to slots pursuant to the IATA Schedules Conference (further to which air carriers coordinate take-off and landing slots) and then meet with the airport authority that allocates the slots. If there is a dispute between a local airport authority and a carrier as to slots, the minister of transport may appoint a representative to resolve the dispute.

**22** Are there any laws or rules specifically relating to ground handling?

Ground handling arrangements and agreements in Canada are typically handled between the airport authority and the air carrier and no particular rules apply. The provision of ground handling services is subject to all applicable Canadian laws, including competition laws. The Competition Act (Canada) is federal legislation governing most business conduct in Canada and contains civil and criminal provisions aimed at preventing anti-competitive practices.

**23** Who provides air traffic control services? And how are they regulated?

NAV CANADA is a non-share capital private corporation that owns and operates Canada's air navigation system. Currently there are seven area control centres operated by NAV CANADA and numerous flight service stations, control towers, radar sites and ground-based navigational aids. NAV CANADA operates pursuant to the Civil Air Navigation Services Commercialization Act (Canada) and regulations enacted thereunder.

**Liability and accidents****24** Are there any special rules in respect of death of, or injury to, passengers or loss or damage to baggage or cargo in respect of domestic carriage?

There are no special rules applicable and any domestic carriage incident will be subject to the common law (or, in Quebec, the Civil Code), the Criminal Code of Canada (if applicable) and applicable Canadian federal and provincial legislation.

**25** Are there any special rules about the liability of aircraft operators for surface damage?

There are no special rules but any incident in Canada involving surface damage by an aircraft will be investigated by the Canadian Transportation Accident Investigation and Safety Board (TSB) and by Transport Canada. Additionally, the Airport Traffic Regulations promulgated under the Government Property Traffic Act (Canada) regulate surface vehicles and pedestrians at airports. Federal and provincial environmental legislation may also be applicable.

**26** What system and procedures are in place for the investigation of air accidents?

Pursuant to the Canadian Transportation Accident Investigation and Safety Board Act (Canada), the TSB is established as an independent agency reporting to the federal government. Its mandate is to advance transportation safety through investigation of transportation accidents and public inquiries into accidents. The purpose of its investigations is to make findings as to causes and contributing factors of accidents and to identify safety deficiencies that may result in recommendations. However, the TSB does not assign fault or determine civil or criminal liability and its findings are not binding on the parties to proceedings. The TSB also cooperates with other organisations and entities in respect of accidents, including the coroner (if there are fatalities), the police, the Royal Canadian Mounted Police and Transport Canada. Transport Canada will investigate all accidents and can assess penalties and fines or withdraw certifications and permits, or both.

**27** Is there a mandatory accident and incident reporting system, and if so, how does it operate?

The TSB Regulations and part V of the CARs regulate reporting requirements. Where a reportable aviation accident occurs, the owner, operator, pilot, crew member or air traffic controller having direct knowledge of the accident must report the accident to the TSB as soon as possible. A 'reportable' aviation accident is defined in the TSB Regulations but generally involves injuries or fatalities or the sustaining of aircraft damage or failure affecting structural strength, performance or flight characteristics of an aircraft. Such reporting would be in addition to alerting the local emergency and police services.

**Competition law****28** Do sector-specific competition rules apply to aviation? If not, do the general competition law rules apply?

The Competition Act (Canada) is Canada's primary legislation in respect of competition law and is applicable to the aviation sector. Additionally, there are specific competition law rules under that statute in respect of aviation in the case of entities that operate a 'domestic service'. These include provisions relating to the abuse of dominant position (sections 78(1)(j) and (k), 78(2), 79(3.1), (3.2) and (3.3)) and Regulations Respecting Anti-Competitive Acts of Persons Operating a Domestic Service, SOR/2000-324, as well as sections

53.1 to 53.6 of the Canada Transportation Act in relation to reviews of mergers and acquisitions.

**29** Is there a sector-specific regulator or are competition rules applied by the general competition authority?

The Competition Bureau is responsible for handling matters pertaining to, and complaints in respect of, mergers or acquisitions or predatory behaviour involving air carriers operating in Canada. Merger or acquisition notices must be provided to the commissioner of the Competition Bureau under section 114 of the Competition Act (Canada) and, in respect of aviation, such notification must also be provided to the minister of transport and the Agency in accordance with section 53.1 of the Canada Transportation Act.

**30** How is the relevant market for the purposes of a competition assessment in the aviation sector defined by the competition authorities?

In general, a relevant market is defined as the smallest group of products and the smallest geographical area in relation to which sellers could impose a significant and non-transitory price increase. A commonly accepted approach for determining relevant geographic markets in the aviation industry is by reference to origin–destination city-pairs. However, a consideration in using this approach is that, depending on the travel time, more than one airport may be considered to be in sufficiently close proximity so as to make it possible to substitute travel to or from the other. As a general rule air transport will be considered to be in a separate market from other forms of transportation; however, this proposition must also be qualified on shorter routes where other modes of transportation could reasonably be considered to be a substitute for air transport.

**31** What are the main standards for assessing the competitive effect of a transaction?

The merger provisions of the Competition Act (Canada) permit the commissioner of competition, who is the administrative head of the Competition Bureau, to apply to the Competition Tribunal for a remedial order where a merger is likely to prevent or lessen competition substantially in a market. Section 93 of the Act sets out relevant factors, including the extent to which there will be remaining competition and barriers to entry. The commissioner has published Merger Enforcement Guidelines that set out the Bureau's analytical approach in deciding whether to challenge a merger in proceedings before the Competition Tribunal.

Generally, mergers will not be challenged by the Bureau in the event the post-merger market share of the merged entity would be less than 35 per cent and where the market share of the four largest entities in that market would be less than 65 per cent. Even if the market share of the four largest entities is more than 65 per cent, it is unlikely that a merger would be challenged where the merged entity's market share would be less than 10 per cent. If a proposed merger exceeds those safe harbour thresholds, the proposed merger is examined more closely, taking into account other factors, such as barriers to entry and whether the business of one of the parties to the merger is likely to fail. The Competition Act (Canada) also has an express provision that provides for an efficiency defence in the event the efficiencies will be greater than, and will offset, the anti-competitive effects of the merger.

**32** What types of remedies have been imposed to remedy concerns identified by the competition authorities?

The Competition Bureau has employed both structural and behavioural remedies to address competition concerns. Structural remedies include prohibiting all or part of a merger from being completed or

ordering divestitures of an ongoing business or parts of a business. Behavioural remedies seek to create structural changes indirectly by reducing barriers to entry into the market.

When Air Canada acquired Canadian Airlines International Ltd in 1999, the Competition Bureau required Air Canada to agree to various undertakings aimed at alleviating various concerns the merger might have on competition. Conditions of the merger included the divestiture of a regional carrier, surrender of certain airport slots at Pearson International Airport (Toronto) and adherence to a provision that if another carrier started a discount carrier service in eastern Canada prior to 30 September 2000, Air Canada would not be able to offer similar services in eastern Canada prior to 30 September 2001.

#### Financial support and state aid

**33** Are there sector-specific rules regulating direct or indirect financial support to companies by the government or government-controlled agencies or companies (state aid) in the aviation sector? If not, do general state aid rules apply?

There are no sector-specific rules concerning financial support in the aviation sector. The primary vehicle for providing financial assistance to Canadian exporters is Export Development Canada (EDC), which operates pursuant to the Export Development Act (Canada). EDC is a Crown corporation that provides financing and risk management services to Canadian exporters and investors. EDC operates a 'Corporate Account' as well as a 'Canada Account'. The Corporate Account is used to assist the majority of exporters seeking support. The Canada Account is a special account used to support large transactions that are deemed to be of national interest by the minister of international trade. All risks under the Canada Account are assumed by the government of Canada. Since 2001, there have been 11 transactions supported by the Canada Account, four of which related to Bombardier Inc, a Canadian manufacturer of aircraft. Each of the Bombardier transactions involved EDC financing in excess of C\$100 million.

**34** What are the main principles of the state aid rules applicable to the aviation sector?

EDC supports export trade transactions based on their potential benefits to Canada. EDC's stated goal is to ensure exporters are able to compete on quality, service and price, rather than on the basis of which country provides the most favourable export credit support. Canada Account financing is structured according to the Organisation for Economic Co-operation and Development guidelines.

**35** Are there exemptions from the state aid rules or situations in which they do not apply?

The Canada Account is only used when EDC is unable to support a transaction by its conventional Corporate Account due to risk or capacity reasons. A transaction will first be rejected by EDC under the Corporate Account before being referred to the minister of international trade for eligibility for the Canada Account.

**36** Must clearance from the competition authorities be obtained before state aid may be granted?

Clearance is not required.

**37** If so, what are the main procedural steps to obtain clearance?

Not applicable.

**Update and trends**

Bill C-310, being a proposed Act to Provide Certain Rights to Air Passengers, addresses passenger rights to timely information, punctuality, cancelled flight rights, denial of boarding rights and similar rights. It is being decried by the major Canadian carriers on the basis that the legislation would impose severe penalties against carriers in the event of delays and encourage risk-taking to avoid penalties as well as resulting in increases in the prices of passenger tickets.

If passed into law, the Bill would supersede the government's 'Flight Rights Canada', a non-binding set of guidelines adopted in late 2008 to protect air travellers. Certain Canadian carriers have proposed their own 'bill of rights' for passengers by submitting revised tariffs to the Agency.

In December 2008, Canada and the European Union reached an understanding to 'deregulate' trans-Atlantic air travel between European Union countries and Canada. As late as May 2009, the Canadian government reaffirmed its intention to sign a Comprehensive Air Transport Agreement with the EU and announced the signing of a separate agreement to harmonise civil aviation safety regimes.

When and if the deal is ratified, phase 1 will permit unrestricted direct services between Canada and the EU, phase 2 will involve European investors having the ability to own up to 49 per cent of a Canadian air carrier's voting equity while phase 3 will enable investors to establish and control airlines in each other's markets with full rights of EU and Canadian carriers to operate within each other's territories.

- 38** If no clearance is obtained, what procedures apply to recover unlawfully granted state aid?

Not applicable.

**Miscellaneous**

- 39** Is there any aviation-specific passenger protection legislation?

Part V of the Air Transportation Regulations requires air carriers operating to and from or within Canada to file tariffs with the Agency. The tariffs must contain certain terms and conditions, including the air carrier's policy in respect of carriage of persons with disabilities, acceptance of children, compensation for denied boarding and so forth. Additionally there are specific regulations under the Canada Transportation Act addressing training for the assistance of persons with disabilities and part V of the Canada Transportation Act also addresses issues of air travel accessibility. The Agency handles general consumer issues, and complaints related to travel and fares on 'monopoly' and other routes.

- 40** Are there mandatory insurance requirements for the operators of aircraft?

The Air Transportation Regulations address insurance requirements. Pursuant to section 7 of the Regulations, no carrier shall operate a domestic or international air service unless for every accident or incident related to the operation it has liability insurance covering risks of injury to or death of passengers and public liability insurance based on the maximum certificated take-off weight (MCTOW) of the aircraft, in each case in amounts and upon terms set forth in the Regulations.

- 41** What legal requirements are there with regard to aviation security?

Following 9/11, the Canadian aviation security system underwent significant changes, culminating in the enactment of the Canadian Air Transport Security Authority Act (Canada) and the establishment of the Canadian Air Transport Security Authority (CATSA) as a new Crown corporation. While Transport Canada, under the Aeronautics Act (Canada) continues to focus on regulatory aspects of security, CATSA takes responsibility for several air security functions, including the screening of passengers and baggage. The Public Safety Act (Canada), which came into force in 2004, grants the minister of transport authority the power to make confidential security measures, to take responsibility for security clearances and to obtain passenger information from air carriers and others. The minister may also assign other air transport security functions to CATSA (eg, random screening of persons accessing restricted airport areas).

- 42** What serious crimes exist with regard to aviation?

Section 7 of the Criminal Code (Canada) refers to crimes committed on aircraft. It provides that anyone who, on or in respect of a Canadian registered aircraft while the aircraft is in flight or on any aircraft on a flight terminating in Canada, commits an act or offence in or outside Canada that, if committed in Canada, is an indictable criminal offence, is deemed to have committed such offence in Canada. Sections 76, 77 and 78 of the Criminal Code (Canada) respectively address the criminal offences of aircraft hijacking, endangering safety of an aircraft or airport and the carrying of offensive weapons or explosive substances on an aircraft without the aircraft operator's consent.

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