Transportation News Digest

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1.0 Introduction

The fortunes of the transport industry in 2008, in nearly every sub-sector, witnessed a complete reversal towards the end of the year. The fifth horseman of the Apocalypse—the extraordinary price of fuel—began eroding the recovery of the industry towards the end of the second half of the year. All of a sudden, the unknown sixth horseman—the financial crisis—destroyed whatever gains the industry had achieved, sending it into a tail spin, with little prospects of recovery until 2010.

2.0 Air Transportation

2.1 The State of the Industry - The Airlines

In 2008, unlike 2007 the fortunes of the air industry began to deteriorate but the structure of the Canadian airlines did not change. Air Canada recorded a loss of $1.025 billion compared to a profit of $429 million a year earlier. In contrast, WestJet recorded a profit of $178.1 million, though it was a 6.8% decline from a year earlier. Air Canada succeeded in increasing its load factor to 81.4 points from 80.6 in 2007 but its available seat miles and revenue passenger miles fell by 1.2% and 0.2%. Air Canada's President and CEO stated: "These traffic results reflect effective capacity management that, combined with the decline in fuel prices, positions Air Canada well to manage through these challenging economic times."[1] To provide additional protection, Air Canada concluded financing arrangements. Canada's popular airline, WestJet, reported that traffic for 2008 featured a load factor of 80.1 compared with 80.7 for 2007, a marginal decline of 0.6 points given that its available seat miles increased by 17.8% and its revenue passenger miles increased by 17%. WestJet President and CEO commenting on the first six months said "Despite huge challenges in the airline industry, due to unprecedented and unrelenting fuel prices and an overall environment of economic uncertainty, WestJet continues to lead in terms of growth and demand for our service [2]. Commenting on the year end results he stated "WestJet demonstrated its ability to deliver strong traffic results while maintaining its commitment to guest service."[3]

The evidence suggests that Air Canada and WestJet appear to be on two different flight paths. Air Canada plans to reduce capacity and focus on profitability whereas WestJet plans to increase capacity and increase market share. WestJet has a cost advantage of 30% over Air Canada. If these observations hold, this advantage of WestJet and its plan should enable it to increase its market share from 37% and to ultimately become the country's leading carrier by 2013 [4].

2.2 Collusive Activities

Collusive activities, outlawed for nearly a century, continued to be the focus of attention in 2008. The origins of this illegal global cartel activity are alleged to have begun in 1999/2000 under the auspices of the IATA. From 2000 to 2006, the airlines imposed agreed fuel surcharges. IATA sought anti-trust immunity but was refused, however, certain airlines continued to impose an agreed surcharge which increased by as much as 20 times in certain instances. The investigation by the US Department of Justice which began in February 2007 over cargo and passenger air fuel surcharges resulted in fines totalling $1.275 billion. The Australian Competition and Consumer Commission instituted proceedings in the Federal Court in Sydney which to-date have resulted in fines of $25.2 million. The European Commission, the New Zealand Commerce Commission and the Japan Fair Trade Commission have not concluded their investigations [5].

2.3 Competitiveness of the Aviation Sector

Competitiveness concerns in the aviation sector in Canada have been reiterated from time to time. Several factors have contributed to this concern. These are: the duopoly of the two major carriers, the absence of the right to allow foreign companies to establish airlines in Canada that operate only within the country, foreign ownership, the far greater number of open skies agreement signed by the US in comparison to Canada, airport rents, other charges, etc. If progress could be made on these issues it could mean lower airfares. The Competitiveness Panel recently made recommendations to shake up the airlines. At a time when prospects for the airline industry are not too bright changes are needed to stimulate the industry. Bright changes in this direction might be just what the doctor ordered to stimulate the industry.

2.5 Air Liberalization

Progress towards air liberalization occurred through two fronts. First, the EU talks, and second the new liberal air agreements. On December 9, 2008, Canada's Transport Minister John Baird, announced that Canada has successfully concluded negotiations with the European Union (EU) on a comprehensive air transport agreement. It allows for the development of new markets, new services and greater competition. For the moment it includes: unrestricted direct air services between Canada and EU Member States; flexible pricing arrangements; and improved flexibility for cargo. Vice-President Tajani of the *European Commission* referred to it as a milestone in EU-Canada relations and groundbreaking in the aviation world. WestJet applauded the Canada-European Union air transport agreement and Air Canada welcomed the successful conclusion of the agreement. The *Canada Airports Council* congratulated the government and called it a landmark agreement. It is expected to open up a realm of new commercial opportunities and to generate major benefits for both consumers and airlines together with other economies. After the foreign ownership limits are raised, the pact would allow European investors to take control of 49% of any Canadian airline. The pact would also enable investors to set up and control new airlines in each others' markets, and to fly onto a third country. Finally, the pact would eliminate so-called "cabotage" laws and allow airlines to fly between two points in each others' markets [6].

3.0 Water Transportation

3.1 The State of the Industry - The Ports

In 2008, movement of containers through the two major ports of Canada moved in opposite directions. The Metro Port of Vancouver recorded a small decline in the total number of TEUs by 0.01% to 2.492 million in 2008 from 2.495 million in 2007, imports decreased by 0.05% and exports increased by 0.028%. In contrast to expectations, the Port of Montreal recorded an increase in the total number of TEUs for the first eleven months of 2008 by 8.2% to 1,370, 471 from 1,266, 268 in 2007. Patrice Pelletier, president of the Montreal Port Authority, called the achievement "an exceptional result," despite the economic slowdown in the later part of 2008. For the Port of Halifax, the number of containers moved was terribly disappointing, recording a double digit (21%) decrease for 2008 compared to 2007. The only positive news in 2008 from the Port of Halifax was a record for its cruise industry with 125 vessels calling and the number of passengers reaching 228, 000 [7].

3.2 Cabotage

The cabotage issue in shipping has been receiving increased attention. The issue has arisen with regard to shipping containers and with regard to shortsea shipping. Regarding shipping containers, there are restrictions concerning the movement of international containers in Canada. Canada

Customs and Revenue Agency's tariff 9801.10 restricts the use of international marine containers to 30 duty free days in Canada with one incidental move (inward or outward) for domestic carriage following international traffic. In contrast, the US allows containers 365 days of unrestricted duty-free freight movement and the containers do not have to leave by the port through which it entered. This has contributed to the shortage of containers in early 2008 and inefficiency in their movement, placing Canada at a competitive disadvantage compared to the US. After hearing the testimony of the witnesses, the Standing Senate Committee on Transport made two recommendations: harmonize the container regulations with those of the US; and remove the Customs Tariff on the point-to-point movement of containers in Canada. Regarding shortsea shipping, the Standing Senate Committee on Transport was told that "Unless cabotage is permitted for shortsea shipping, foreign shortsea shippers will be limited to operating shuttle operations and will not be able to triangulate business to make the service more economic the way the trucking industry can." It accordingly recommended that the government negotiate multilateral cabotage exemptions for shortsea container shipping operations [8].

3.3 Antitrust Immunity

Shipping conferences became illegal on October 18, 2008 in Europe, a major victory for advocates calling for an end to the antitrust immunity of these conferences. The conferences have enjoyed anti-trust immunity for over a 100 years and have been in existence for over 125 years. Whether this will spark a chain reaction and lead the way for other countries to emulate the EC is yet to be seen. In the US, the House Transportation and Infrastructure Committee has brought antitrust immunity to congressional attention but action is not expected soon. FMC Commissioner F. Dye thinks its time to consider the next stage in ocean transportation deregulation; Commissioner H. Creel wants to wait and see what happens in Europe; and Commissioner J. Brennan is philosophically opposed to antitrust immunity. The industry is also divided on the issue. Marine terminal operators want it retained and shippers want it removed. Elsewhere Japan, Korea and other Asian countries are considering abolishing the antitrust immunity. The removal of antitrust immunity has also created the need for guidelines on what carriers can do. The European Competition Commission has released guidelines but there is still disagreement over the guidelines as shippers view sharing of information on supply and demand as an invitation to collude. This is expected to make negotiations over rates and surcharges more difficult initially and to make freight rates more volatile in the future. It has also raised a number of questions. What will happen to freight rates? Will carriers be able to negotiate their individual surcharges for fuel and other fluctuating costs that were once determined by conference tariffs? Will customer service improve as carriers try to differentiate their services on more than price alone? [9]

3.4 Bills Introduced

The Honourable Lawrence Cannon, the former Minister of Transport, Infrastructure and Communities, announced on April 16, 2008 the coming into force of the new Administrative Monetary Penalties Regulations. The regulations establish a comprehensive and consistent method outside the courts for penalizing marine safety violations across Canada. The regulations demonstrate the government's commitment to safety. The maximum penalty for a serious violation is $25,000 [10]. Two months later, on June 18, 2008, he announced that Bill C-23, which amends the *Canada Marine Act*, received Royal Assent. This Bill strengthens the operating framework for Canada Port Authorities by modifying the current borrowing regime, providing for access to contribution funding, and clarifying some aspects of governance [11]. A couple of weeks later, he announced on July 3, 2008 amendments to the Vessel Operation Restriction Regulations, which improve safety and protect the environment by restricting vessel navigation. The specific areas impacted are: the Columbia Wetlands in south-eastern British Columbia; Lac Nairne, Lac Bleu, Lac Saint-François-Xavier and Lac des Becs-Scie in Quebec; and Kempenfelt Bay, Lake Simcoe, in Ontario.

The Honourable John Baird, Minister of Transport introduced in the House of Commons on December 4, 2008, amendments to the *Arctic Waters Pollution Prevention Act*, to enhance Canada's sovereignty over Arctic waters and to protect them from pollution. It will give Canada greater and more effective control over marine activity in the Canadian Arctic while enhancing environmental protection in Canada's North. The definition of "arctic waters" was extended from 100 nautical miles to 200 nautical miles [12].

4.0 Rail Transportation

4.1 The State of the Industry - The Railways

There were minor changes to the structure of the Canadian railways in Canada in 2008. CN acquired Elgin, Joliet and Eastern Railway Co. and CP acquired Dakota, Minnesota and Eastern Railroad Corporation and its subsidiaries both in the U.S. The railways operating performance in 2008 revealed the pressures of the economic downturn. For CP, net income for 2008 was C$619 million compared to C$946.2 million in 2007, a 34.6% decrease. Its operating ratio was 78.6 in 2008 compared to 75.3 in 2007, an increase of 3.3 points which means a decrease in productivity. For CN, net income for 2008 was C$1.895 billion compared to C$2.158 billion in 2007, a 12.2% decrease. Its operating ratio was 65.9 in 2008 compared to 63.6 in 2007, an increase of 2.3 points. Mr Harrison, CEO of CN said he would be "shooting in the dark" to offer any guidance for 2009, given the uncertainty in the economy. However, he noted the railway is focused on improving productivity and containing costs, and has laid off 600 to 650 employees and reduced its fleet to that end [13].

4.2 Grain Transportation

Grain rates have always been a passionate issue in Canadian history. A recent study commissioned by the Canadian Wheat Board argues that Canadian National and Canadian Pacific Railway, have taken more than $100-million a year in "unreasonably excessive returns" for transporting Prairie grain to port. Bob Friesen, President of the Canadian Federation of Agriculture says that they're victimized by the railway monopoly. Jim Feeny, a spokesman for CN, said his company disputes the conclusions reached in the consultant's report [14]. To fan the flames, the Canadian Transportation Agency (CTA) in mid-February cut rail grain rates by eight per cent under the revenue cap retroactive to August 1, 2007. CN sought leave from the Federal Court to appeal the February 19, 2008, decision. Shortly thereafter, E. Hunter Harrison, president and chief executive officer, said: "With the latest CTA decision, the government of Canada is effectively transferring income from one sector of the economy – railways – to another – farmers – in what we believe is an unfair ruling on rate cap inputs." Later, CN called for a fully de-regulated grain transportation environment to drive innovation and investments critical for increased efficiency in the system [15]. In the US too, agricultural shippers took aim at rail captivity. They expressed their frustration in their testimony before the House of Small Business Committee on May 1, 2008. They endorsed bills offering improved oversight and commercial protections to shippers with limited rail access (H.R. 2125 and S. 953) and called for the elimination of several antitrust exemptions for the railroads (H.R. 1650 and S.772) [16].

In the latest turn of events, the two railways have exceeded the western grain revenue cap for the second time by an amount ($58 million) far greater than they expected. CN exceeded it by $25 million and CPR exceeded it by $33 million, and have to repay the excess plus a 15% penalty to the Canadian Grain Research Foundation. Both the railways expected the overcharge to be about $23 million ($7 million for CN and $16 million for CP). This has undoubtedly affected the 4th quarter earnings of the two railways. To add to their problems, the volume of traffic expected to be moved by the two railways is likely to be down by about 10% in the near future due to the economic downturn. Further, they do not expect any recovery before 2010, news disappointing to shareholders [17].

4.3 Acquisitions

On September 26, 2007, Canadian National Railway Co. reached an agreement to buy a major part of the Elgin, Joliet and Eastern Railway Co. (EJ&E), a Class 2 railway, from U.S. Steel for US$300 million. The deal had to be approved before the end of 2008. EJ&E operates over 198 main line miles of track encircling Chicago. Just before Christmas 2008, it appeared that CN was able to breath a sigh of relief as the U.S. Surface Transportation Board (USSTB) unanimously approved the plan by CN and its Grand Trunk Corp. affiliate to purchase EJ&E, subject to a number of Board-imposed conditions. The conditions basically are environmental mitigation requirements to deal with the adverse environmental impacts. The STB said the transaction will not result in a substantial lessening of competition, the creation of a monopoly, or a restraint of trade, and that "any minor anti-competitive effects that may result will be outweighed by the overall transportation benefits."[18] Attempts to get this merger approved appear to have placed a great deal of pressure on CN as it had to make more than ten agreements before it could satisfy the USSTB.

4.4 Bills Introduced

The former Minister of Transport, Infrastructure and Communities, Honourable Lawrence Cannon, announced on February 29, 2008 that Bill C-8, *An Act to Amend the Canada Transportation Act (railway transportation)*, has received Royal Assent [19].

5.0 Highway Transportation

5.1 The State of the Industry

The top four for-hire trucking companies in 2008 were Transforce Income Fund, Vitran Corporation Inc., Mullen Group Inc., and Trans X according to the 100 top Annual Survey of for hire-trucking companies. These companies posted record results for the first half of the year. For the industry, the operating revenues of the top 97 for-hire trucking companies (with revenues of $25 million or more) for the first nine months of 2008 was $2.6 billion with operating expenses of $2.4 billion. The operating ratio was .95 indicating a slight deterioration in performance from the same period in 2007. The operating revenues and expenses of the for-hire trucking companies (with revenues of $1 million or more) for the first half of 2008 was $7.4 billion with operating expenses of about $ 7.05 billion. The former increased by slightly less than 7% and the latter increased by nearly 7.5%. With the onset of the recession the statistics for the second half are likely to reflect a different picture as suggested by the sharp drop in trucks crossing over the major bridges into the US and the drop in surface trade. The only positive note was the increase in large urban transit ridership which increased by about 7 % in 2008 compared to the same period in 2007 [20].

5.2 Enhancing Border Travel and Interprovincial Trade Barriers in Trucking

Every day, 92,000 cars and over 22,300 trucks carrying almost $650 million in goods cross the Ontario-U.S. borders. Cross-border truck trips between Ontario and the U.S. have fallen to the lowest level in a decade. This is having an effect on the Ontario economy. The Ontario Trucking Association President, David Bradley, said the numbers are "clear and unequivocal evidence of the extent to which Ontario's export based economy has been battered by the combination of a high dollar, high fuel costs, the ever-increasing thickening of the border, and slackening U.S. demand." He has called on the government to stimulate growth. To add to these concerns, the U.S. government will require all visitors to prove their citizenship at the border beginning June 1, 2009. Initiatives nationwide such as an enhanced driver's licence as an alternative to a passport could alleviate this problem [21]. There is also need to harmonize transportation regulatory codes and eliminate those standards and regulations that are unjustifiable barriers to trade in the transportation sector. The Canadian Transport Association says that the lack of harmonization in trucking regulations is most harmful in three key areas. One is the National Safety Code for Trucks; two is truck weights and dimensions standards; and three is different tax regimes for tractors and trailers. The CTA says that it looks forward to some progress in modernizing the rules [22].

5.3 Speed Limiters

Even though Ontario is the first to pass legislation on speed limiters, the controversy continues. There does not appear to be a national approach to ensure national consistency. Studies on speed limiters confirm support for the main argument of proponents - environmental benefits. The safety report does not serve to break the deadlock on this debate as the gains for safety depend on traffic congestion. On the minus side, small fleets and independent owner-operators could be placed at a slight competitive disadvantage to larger operations where speed limiters already govern their operations, further it could affect some regions more than others. On the plus side, the recent findings that speed limiters on large trucks could result in diesel fuel savings could be a key argument in resolving this issue. For example, if speed limiters had been in effect in 2006, 228.6 million litres of diesel fuel would have been saved, representing 1.4 per cent of the total on-road diesel consumption. Nevertheless, the Truck Manufacturers Association and Engine Manufacturers Association (EMA) indicated that equipment suppliers are against such a policy, as it leads to increasing costs, tampering, setting speeds for different jurisdictions and enforcement problems. Notwithstanding the above, the Minister of Transport indicated that his department was considering fuel consumption regulations for new cars and light-duty trucks [23].

5.4 Regulatory Issues

A Senate committee on transportation in its report - *Time for a New National Vision* - is recommending that the federal government approve several crucial trucking initiatives urged by the industry. The report supports the adoption of new environmental technologies as demanded by the trucking industry through tax incentives and accelerated depreciation. It also suggests that Citizenship and Immigration Canada classify long-distance truck drivers as skilled labour to allow entry of more foreign workers into Canada. In addition, the Canadian Council of Motor Transport Administrators (CCMTA) should harmonize trucking regulations across the country which affects labour productivity. It also called for swift action in case of labour problems as occurred at the Port of Vancouver in 2005. Further, the marketplace should establish compensation rates for container trucking and the trucking officials made it clear that they do not approve of the way in which industry participants were driven to the licensing regime [24].

5.5 Bills Introduced

The Honourable Lawrence Cannon, the former Minister of Transport, Infrastructure and Communities, announced proposed regulations on March 20, 2008, that would support the *International Bridges and Tunnels Act* by introducing requirements for owners of Canada's 24 vehicular international bridges and tunnels to inspect and report to the Minister of Transport on the safety of their structures on a regular basis [25].

The Ontario government on June 3, 2008 introduced legislation, *Photo Card Act*, which would allow Ontarians to use an enhanced driver's licence as an alternative to a passport when crossing Canada-U.S. borders by land and sea, if passed. Starting June 1, 2009, the U.S. government will require all visitors to prove their citizenship at the border. With more than 92,000 cars and over 22,300 trucks carrying almost $650 million in goods crossing the Ontario-U.S. borders daily, the new card will ensure that those without a passport can cross the border using the enhanced card [26].

The Ontario legislature on June 16, 2008 passed a bill mandating speed limiter use on most large trucks to cap speeds at 105 kilometres per hour to reduce pollution and improve road safety. The new regulation was adopted and took effect on January 1, 2009 and is expected to lower maintenance costs and improve fuel economy by 100 million litres of diesel fuel annually. It will also reduce greenhouse gas emissions by 280,000 tonnes annually [27].

Ontario is proposing a ban on the use of hand-held devices to talk, text or e-mail while driving. Under a bill introduced on October 28, 2008, police would be able to charge drivers who use a hand-held cell phone, send e-mail or text messages, or use other hand-held electronic devices while driving. The use of hands free devices would be permitted. Ontario Trucking Association applauded the bill. It follows the ban adopted in the Provinces of Quebec, Nova Scotia and Newfoundland [28].

6.0 Other Transportation Matters

6.1 Regulations

The federal government has proposed an amendment to the *Canadian Environmental Protection Act* (CEPA) that would allow the use of temporary fuel waivers during times of short-term supply constraints. The Canadian Trucking Alliance is in general supportive of the amendment. However, it is concerned that by making the authority to issue a waiver contingent on the declaration of an emergency by the federal or provincial government, the proposed regulation sets an impractically high threshold [29].

On February 20, 2008, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities at that time, announced that the Transportation of Dangerous Goods Regulations have been amended, in the interest of public safety, to reflect the re-classification of anhydrous ammonia (fertilizer) from non-flammable, non-toxic gas, to toxic gas. On May 26, 2008, he tabled amendments to the *Transportation of Dangerous Goods Act, 1992* in the House of Commons. The amendments would enhance security and safety in the transport of dangerous goods [30].

6.2 Prospects

In sum, a year which began with a ray of hope ended without any bright prospects at least until 2010. This could have an effect on policy for the near future.

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