

**Transportation News Digest**

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## 1.0 Introduction

The recovery of the economy in 2010 began to slowdown after the tsunami in Japan followed by other world problems, in particular the Euro crisis. With this, the Canadian transportation sector began to lose some of its upward momentum. Canadians also went to the polls in early 2011 and elected a new majority conservative government. The new government appointed Denis Lebel as the Minister of Transport, Infrastructure and Communities replacing Chuck Strahl the former minister who retired. [1]

## 2.0 Air Transportation

### 2.1 The State of the Industry - The Airlines

The Airline industry continued its upward flight throughout 2011 that it began in 2010. Air Canada's available seat miles and revenue passenger miles increased by 4.7% and 4.5% from the previous year though its load factor slipped by a mere 0.1 points. This was achieved above its all time record in 2010. Not surprisingly, Air Canada won recognition as being among the top five most attractive companies to work for in Canada according to a survey of 7,000 Canadian jobseekers and workers conducted by Randstad Canada and ICMA International. It was also voted the Best Airline in North America in *Global Traveler Magazine* and won two top honours in *Business Traveler's* "Best in Business Travel" award program (best in-flight service and the best for international travel). [2] Calin Rovinescu, President and Chief Executive Officer said "For both the month of December and the 12-month period, we experienced traffic growth in all markets Air Canada serves. These strong results underscore the effectiveness of our disciplined capacity management and award-winning product. I want to thank our employees whose professionalism and focus on taking care of our customers was recognized throughout the year." [3] WestJet's traffic results were even better with increases in its available seat miles and revenue passenger miles of 8.5% and 8.2% from the previous year, even though its load factor slipped by 0.2 points. WestJet President and CEO, Gregg Saretsky stated "We finished the year with strong traffic results confirming that our capacity continues to be absorbed by the market." [4] The company was given recognition as Canada's most admired corporate culture by Waterstone Human Capital for the fifth time in six years. Even more impressive than the two major Canadian airlines were the results of Porter Airlines, a Toronto-based regional carrier. On top of its stellar performance in 2010, its available seat miles, revenue passenger miles and load factor increased: 19.2%, 35.9% and 7.5 points. Robert Deluce President and CEO of Porter said "We're proud of what we've accomplished as a team and are ready to make our mark in 2012." [5]

At the financial level, however, the two airlines moved in diametrically opposite directions. Air Canada ended 2012 with a loss of \$249 million compared to \$24 million in 2010 and WestJet recorded net earnings of \$148.7 million an increase of 65% from the previous year.

The optimism for the world airlines at the international level that began in 2010 started to fade. IATA (International Air Transport Association) reported that its estimated profit would be \$6.9 billion in 2011 for a net margin of 1.2%, considerably less than its estimated profit of 15.1 billion in 2010 and net margin of 2.7%. This was forecasted to fall to \$3.5 billion in 2012 (0.6% net margin), but the association warned that the downside risk of the Euro-zone crisis failing to be resolved could lead to losses in excess of \$8 billion. [6]

## 2.2 Issues and Developments

**2.2.1 Air Liberalization.** The government of Canada continued its policy to liberalize air transportation. On August 8, 2011 it negotiated a new open skies agreement with Brazil; on August 12 it expanded its air transport agreement with Mexico and negotiated a new agreement with Costa Rica; and in October it expanded its agreement with Japan. In addition, on August 11, 2011, the Government of Canada announced that an aviation safety agreement with the European Union was now in force (July 26, 2011). The agreement will make reciprocal acceptance of aeronautical products and services easier, reducing costs for Canadian companies and increasing competitiveness. The airlines welcomed the new attempts at air liberalization. The government also announced the designation of Sunwing Airlines to operate scheduled international air services between Canada and Aruba, and Canada and the Bahamas, on September 2, 2011, providing travellers with direct flight choices between Canada and these two Caribbean markets.[7] However, addressing the concerns of air liberalization requires much more than removing regulatory barriers that restrict competition. It also requires ensuring that the playing field with airlines from other countries is level. A number of organizations in Canada (ATAC, Transport Canada, Tourism Industry Association of Canada, etc.) have been quick to point this out and have attributed the decline in the competitiveness of the airline and tourism sectors to high airport rents and taxes. Even, the CEO of IATA has highlighted these concerns stating “Canada's hefty airport-tax burden is seriously hobbling its attractiveness as a tourist destination, ... Compared to the U.S., a visit to Canada is \$160 more expensive.”[8] This not only results in a fall in the competitiveness of our key airports but also affects the present and future choice of airports by airlines.

**2.2.3 Labour Developments.** To ensure success of the plans introduced by Calin Rovinescu, Air Canada's President and Chief Executive Officer a few years ago, Air Canada attempted to introduce pension reform and other changes to the contracts with some of its unions that had come up for renewal. In brief, the pension reforms and changes were: introduction of dual pension plan (one for newly hired employees); a minimum 30 years service to qualify for retirement; and introduction of a discount leisure airline. But these reforms did not go down well with its unions. In May, Air Canada's Pilot Association rejected the reforms and the Canadian Auto Workers called for a strike vote. A week later the Canadian Union of Public Employees joined in the pension fight. On June 12, 2011, Air Canada's employees at the airline's call centre and airport check-in and gates (members of the Canadian Auto Workers) walked off the job over the pension issue. On June 16, 2010, the federal government introduced back-to-work legislation but just three hours later Air Canada and the Canadian Auto Workers reached a tentative agreement putting an end to the strike. The new four-year agreement provides for an increase in wages and “significant workplace changes — quality-of-life issues.”[9]

A similar saga occurred with regard to Air Canada's negotiations with the Canadian Union of Public Employees (CUPE), representing the airline's approximately 6,800 flight attendants. Air Canada reached a tentative agreement with CUPE on August 1, 2011 but it was not ratified by the members of the union. Strike notice was served on the airlines but Federal Labour Minister Lisa Raitt indicated that she would introduce back-to-work legislation in the event of a strike at Air Canada to protect the economy. The airlines and the union reached a second agreement but it too was not ratified and the union served strike notice on October 9, 2011. Following a one day

strike by screeners, the Minister did as she had indicated earlier and issued a statement saying that she expects the union to implement the decision of the Canada Industrial Relations Board [CIRB] on October 6, 2011 and refrain from any unlawful strike. Both Air Canada and the union agreed to resolve the impasse. On November 7, 2011, Elizabeth MacPherson, Chair of the Canada Industrial Relations Board (CIRB), handed down its ruling. The ruling orders the implementation of the second tentative agreement reached on September 20, 2011 as the new binding collective agreement between the airline and its flight attendants. CUPE national president Paul Moist said that “Flight attendants deserve better than this decision,” (i.e., better wage increases, voluntary separation packages and travel discounts for commuting staff and providing for empty seats). The ruling was described as “profoundly disappointing.” He blamed the government as extremely irresponsible, and their constant interference in collective bargaining for tipping the scales in favour of the company and against hardworking flight attendants.[10]

**2.2.4 Antitrust Issues.** Several antitrust issues surfaced in 2011: a. The Competition Bureau opposed the Air Canada-United Continental Holdings Inc. joint venture; b. The US DOJ launched an investigation into the anti-competitive behaviour in the time-sensitive parcel market; c. The air Cargo price fixing conspiracy continued; and d. The Competition Commission’s order to British Airport Authorities to sell British airports.

a. An application was filed with the Competition Tribunal by the Competition Bureau’s Commissioner opposing Air Canada’s joint venture with United Continental Holdings Inc. to coordinate scheduling, sales and pricing on trans-border routes between Canada and the United States in June 2011. If the joint venture were allowed, it would monopolize 10 important Canada/United States routes, and substantially reduce competition on nine additional routes, leading to increased prices and reduced consumer choice on key trans-border routes. In addition, high barriers to entry in the airline industry would likely keep any other carriers from flying the routes targeted in the joint venture. Further, they would obtain airport access, scale and control of major hubs, together with frequent-flier miles which would make it difficult for others to compete. Air Canada and United strongly disagreed with the Commissioner’s position. They believe in the merits and consumer benefits of the proposed trans-border joint venture and enhanced service. Air Canada also noted that trans-border relationships between the airlines had been reviewed and were granted immunity from U.S. anti-trust laws on the basis that “they promote competition and benefit consumers.” Pending further developments, Air Canada and United agreed to suspend the proposed trans-border joint venture. Two months later in mid August 2011, Air Canada indicated that the deal is crucial to Canadian aviation and that the agency’s attempt to block it is “misconceived.” Air Canada maintained that not to have the deal “would significantly impede Air Canada’s ability to compete and would have significant adverse effects on Canadian consumers. The two airlines urged the Bureau to drop its concerns about the airlines forging tighter ties. WestJet entered the argument indicating that the proposed venture would adversely affect WestJet and the agreement went far beyond code sharing. [11]

b. On March 1, 2011, the US Justice Department indicated that it was investigating possible anti-competitive behaviour in the time-sensitive parcel market. UPS and FedEx said they were being investigated. According to published reports, UPS and FedEx were accused of conspiring to prevent shippers from using the services of third-party rate negotiators in contract talks. [12]

c. The world air cargo conspiracy continued to unravel and in July 2011 Singapore Airlines Cargo – the 20<sup>th</sup> airline - agreed to pay a US\$48 million fine after pleading guilty to charges that the carrier conspired to fix air freight prices for shipments going to and from the United States. Two months later, on September 28, 2011, Kintetsu World Express, Japan's second-largest international forwarder, said it would pay a \$10.5 million fine to settle a U.S. antitrust case. Finally, in December, a U.S. federal judge sentenced the former CEO of Cargolux, Ulrich and his top deputy to 13 months in jail and fined them \$20,000 each for their role in the international conspiracy to fix air freight rates. [13]

d. In 2007, the Competition Commission in UK began an inquiry into the supply of airport services in the UK by the British Airport Authority (BAA). On July 18, 2011, the British competition authorities said that U.K. airport operator BAA must start selling London Stansted airport, the country's second largest cargo hub, and one of its Scottish airports, within three months. The order was the result of the Competition Commission's ruling that the British Airport Authority had a dominant position in the airport market as a result of its ownership of several airports in UK. [14]

**2.2.5 Bills or Regulatory Developments. *Safety/Full Price Disclosure:*** On December 2, 2011, the Honourable Denis Lebel, Minister of Transport, Infrastructure and Communities, announced proposed new regulations to enhance the safety of Canadian aviation. These regulations would require private and commercial airplanes with six or more passenger seats to be equipped with an alert system known as the "terrain awareness and warning system" (TAWS). TAWS provides acoustic and visual alerts to flight crews when the path of their aircraft is predicted to collide with terrain, water or obstacles. Two weeks later, on December 16, 2011, the Honourable Steven Fletcher, Minister of State (Transport), and Pierre Poilievre, Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities announced the coming into force of clause 27 of *An Act to Amend the Canada Transportation Act and The Railway Safety Act and to Make Consequential Amendments to Other Acts*. The Canadian Transportation Agency will now proceed with developing regulations regarding airfare advertising. The regulations will require Canadian air carriers to include all fees and taxes in their advertised prices. As a result, air travellers will have a simpler time determining the true price of airline tickets by December 2012. [15]

*Peanut Allergy:* The Canadian Transportation Agency issued its final decision on addressing Air Canada's accommodation of passengers disabled by an allergy to peanuts or nuts, and setting out its assessment of Air Canada's undue hardship arguments. In its January 2010 decision, the Agency found that buffer zones were the appropriate accommodation for persons aboard aircraft who are disabled due to their allergy to peanuts or nuts. In its October 2010 decision, the Agency provided further direction to Air Canada on how to accommodate travellers with a disability due to peanut or nut allergies. Air Canada filed undue hardship arguments with respect to the requirement to serve only peanut and nut-free foods within the buffer zone due to cross-contamination. The Agency agrees that passengers suffering from peanut allergies may prefer to bring their own meals but finds that Air Canada did not meet its burden of proof to demonstrate it would create undue hardship to Air Canada. While maintaining its requirement for a buffer zone, direction to passengers in the buffer zone, and absence of visible peanut or nuts in its snacks, Air Canada is now also required to implement new measures set out within 30 days

from the date of this Decision. Air Canada will address situations where passengers in the buffer zone refuse to comply by moving them or the person suffering from allergies. [16]

*International Regulatory Developments – Airport and Emissions Issues:* On December 1<sup>st</sup> 2011, the European Commission adopted a comprehensive package of measures to address capacity shortage at Europe's airports and improve the quality of services offered to passengers. The package contains three legislative proposals on slots, ground handling and noises, and communication on "Airport policy in the European Union – addressing capacity and quality to promote growth, connectivity and sustainable mobility". Three weeks later, on December 21, 2011, the Court of Justice of the European Union (CJEU) released its decision which upheld the European Union's (EU) plans to include international aviation in the EU emissions trading scheme (ETS) from 2012. The International Air Transport Association (IATA) expressed disappointment. The appellant's argued that the EU ETS contravened the Chicago Convention which prohibits such taxation of international aviation. The CJEU ruled that the Chicago Convention does not bind the EU which is not a signatory and that the ETS does not violate any other aspect of international law. [17]

### **3.0 Water Transportation**

#### **3.1 The State of the Industry - The Ports**

Movement through the major Canadian ports recorded decreases and increases in 2011. For the Port of Metro Vancouver, the number of containers (TEUs) moving through it decreased marginally by 0.289% to 2,507,032 in 2011 from 2,534,309 in 2010, imports increased 2% and exports decreased 3%. For the Port of Montreal, the number of containers (TEUs) increased by 2.4% to 1,362,975 for 2011 from 1,331,351 in 2010, imports increased by 3.1% and exports by 1.5%. For the Port of Halifax, the number of containers (TEUs) decreased by 5.7% to 410,469 in 2011 from 435,461 in 2010. For the Port of Prince Rupert, the number of containers (TEUs) increased 20% to 410,469 from 343,366 in 2010, imports increased by 21% and exports by 17%. The Port of Saint John reached its highest ever cargo of 31.01 million tonnes in 2011 and traffic on the St. Lawrence Seaway increased by 2.5%, to 37.48 million tonnes in 2011. [18] The following results were recorded by the cruise industry for various ports: for the Port of Metro Vancouver a 14.58% increase in 2011 compared to 2010; for the Port of Halifax a 6.8% decrease; for the Port of Montreal a 5.26% decrease; and for the Port of Prince Rupert a 2% decrease.

#### **3.2 Issues and Developments**

**3.2.1 Dwindling number of shipping companies on the Great Lakes.** Thirty years ago there were fifteen or more shipping companies on the Great Lakes – St. Lawrence Waterway in the dry-bulk freight business. The fall in the number of companies continued when in March 2011, Upper Lakes Group Inc. entered into a definitive agreement with Algoma Central Corporation to sell to Algoma its partnership interest in Seaway Marine Transport and related entities along with the vessels and assets owned by Upper Lakes Group and its affiliates and used by Seaway Marine in its Great Lakes - St. Lawrence Waterway dry-bulk freight business. The purchase price under this transaction was \$85 million. With this agreement there are only two Canadian shipping companies in this area: Algoma Central and the CSL Group. The decline in the number of companies suggests that competition in these waters is declining. This does not mean that

foreign carriers cannot provide transport services in this area but to do so they must first obtain a licence from the Canadian Transportation Agency. [19]

**3.2.2 Panama Canal Expansion – Game Changer for Halifax?** Improvements and changes in shipping routes usually have an effect on other ports, sometimes to its benefit and sometimes to its detriment. One recent major change was the improvement in the Panama Canal. This involved the expansion of the Canal through an extra lane and two sets of locks scheduled for completion in 2014. It is a \$5.25-billion expansion that will triple cargo capacity through the storied waterway. This will enable it to handle larger ships. The issue is whether this development could have a positive effect on Canadian ports. The Port of Halifax believes that it could see more activity because its deep-water harbour can accommodate larger ships. In 2010 (fiscal), more than 7.21 million long tons of cargo originating in Canada travelled through the Panama Canal, compared to 5.35 million in the previous year, making Canada the sixth-heaviest user of the canal for outgoing cargo and the 11<sup>th</sup> when cargo destined for Canada was added. In 2009, CKHY Alliance commenced service through the Panama Canal with Halifax Port using Panamax vessels. When the Panama expansion is completed, Post-Panamax vessels will likely replace the Panamax vessels to this Atlantic Canadian gateway port. To keep up with these developments, the Port of Halifax is investing in two additional Super post-panamax cranes (SPPX) and by 2012 it will feature four SPPX container berths equipped with seven SPPX cranes following the addition of these new cranes. As a result, its existing capacity will be able to accommodate three times the current container volume, keeping it prepared for any traffic through the Panama Canal port. [20]

**3.2.3 New Bridges.** Increased traffic and congestion over bridges usually raise cries for new bridges. However, at times they lead to quite different problems. If the owner of the bridge has monopoly control over the traffic crossing, it is expected that he will vigorously attempt to protect his monopoly. This is exactly what happened in the case of the Ambassador Bridge, the largest international bridge between Canada and the US. The fight has been going on for quite some time. In September 2011, Ottawa decided to lend \$550-million (U.S.) to Michigan to help build a new crossing at North America's busiest trade corridor. Supporters for the monopoly voiced their opposition of Ottawa's plans. They claim that the statistics do not support Ottawa's case and the government will lose money. They maintain that traffic is down from its peak in 1999, despite claims by users of continued traffic congestion on the bridge. The matter went to the Michigan Senate and on October 2011 the Senate denied the proposal to build the new bridge. This is the second time that it has been denied. It is still unclear whether the second bridge over Detroit has been killed. In another matter, there has been increasing concern about the traffic over the Champlain Bridge over the St. Lawrence River. It is the busiest vehicular bridge in Canada with an estimated 11 million public transit commuters, 60 million vehicles and \$20 billion in international trade. So, on October 31, 2011, the Minister of Transport, met with economic and business leaders in the Montreal region to hear their views on the requirements for a new bridge. [21]

### **3.2.4 Regulatory Developments**

Three noteworthy regulatory developments occurred in the last half of the 2011.

First, the *Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996* was signed at the International Maritime Organization in United Kingdom in October 2011. It will establish a global liability regime and further protect our environment from the risks of marine transport.

Second, *The Voyage Data Recorder Regulations* will require certain large passenger and cargo vessels (500 gross tonnage for passenger vessels and 3,000 gross tonnage or more for cargo vessels) to have voyage data recorders. Owners of existing passenger vessels have until July 1, 2015, to install the equipment, depending on their inspection schedule.

Third, the Government of Canada filed a submission to questions raised by the US Federal Maritime Commission's Inquiry about Canadian Port practices. In its submission, the Government of Canada: provided a fact-based overview of the Canadian transportation system; described the economic linkages that underpin the Canada-U.S. bilateral trading relationship; emphasized the importance of strategic and collaborative infrastructure planning and investment; highlighted the governance and financing characteristics of Canadian ports; provided supporting data; and stressed the importance of market-based business practices to transportation and trade policy. Other Canadian ports also filed submissions. Some submissions from importers indicated that they aren't shifting U.S-bound containers through Canadian ports because they want to avoid paying the US Harbor Maintenance Tax but because the routes are the shortest.[22]

## 4.0 Rail Transportation

### 4.1 The State of the Industry - The Railways

In 2011 the performance of the two major Canadian railways moved in opposite directions. For CP, net income for 2011 was C\$570 million compared to C\$650.7 million in 2010, a 12.4% decrease. Its operating ratio was 81.3 compared to 77.6 in 2010, an increase of 3.7 points. For CN, net income for 2011 was C\$2.457 billion compared to C\$2.104 billion in 2010, a 16.78% increase. Its operating ratio was 63.5 in 2011 compared to 63.6 in 2010, a decrease of 0.1 points. The operating ratios of the railways do not indicate an improvement in performance in general. CN succeed in maintaining its performance level but CP did not. The increase in the operating ratio of CP indicates that its performance is slipping downwards. It may be argued that this was due in part to the bad winter weather of 2011 but the argument does not hold after that period. Fred Green, President and CEO said "We exited 2011 having made meaningful progress on the three pillars of our Multi-Year Plan: driving growth, expanding network capacity to safely and efficiently support higher volumes and controlling costs. During the fourth quarter we delivered record asset velocity, a direct link to better service, positioning us for a lower operating ratio." [23] Mr Mongeau, CEO of CN said: "Solid operational and service performance helped CN deliver exceptional financial results for the fourth quarter and 2011 as a whole. Our broad-based service innovation benefited our customers and enabled us to grow our business faster than the overall economy and close the year with record car loadings and revenues. Moving forward, our goal of becoming a true supply chain enabler is the foundation of our commitment to deliver solid shareholder value." [24] For 2011, Canadian railroads reported cumulative volume of 3,927,217 carloads, up 3.4 percent from the same point last year, and 2,505,081 trailers and containers, up 2.4 percent from last year.



In the United States, the Association of American Railroads reported that 2011 saw annual total carload traffic on U.S. railroads increase 2.2 percent with 15.2 million total carloads, compared with 14.8 million carloads in 2010. Total annual intermodal traffic in 2011 increased 5.4 percent with 11.9 million total truck trailers and shipping containers, compared with 11.3 million trailers and containers in 2010. The largest American railways continued to report profit increases for 2011 after their exceptional year in 2010. But with the slowing down of world trade and the economy in 2012, continued growth in the fortunes of the railways may slow down.

## **4.2 Issues or Developments**

### **4.2.1 Rail Service Review – Supply Chain Developments Continue**

In 2008 the Government of Canada launched a comprehensive review of rail freight service in Canada and appointed a Panel to examine the matter. The Panel submitted its final report to the government in December 2010. After careful consideration, the government has accepted the panel's commercial approach and intends to implement the following steps to improve the performance of the entire rail supply chain: initiate a six-month facilitation process with shippers, railways and other stakeholders to negotiate a template service agreement and streamlined commercial dispute resolution process; table a bill to give shippers the right to a service agreement to support the commercial measures; establish a Commodity Supply Chain Table, involving supply chain partners that ship commodities by rail, to address logistical concerns and develop performance metrics to improve competitiveness; and in collaboration with Agriculture and Agri-Food Canada, Transport Canada will lead an in-depth analysis of the grain supply chain to focus on issues that affect that sector and help identify potential solutions.

Reaction to the Government's response was positive in general with a couple of misgivings. CP commended the Government of Canada for recognizing commercial principles but indicated that additional regulation outside commercial agreements is completely unwarranted. CN said that it is pleased with the government's acceptance of commercial resolutions as the best solution but disappointed that legislation is still needed. The Canadian Industrial Transportation Association's President said "The actions that the government proposes will, if implemented carefully, provide a framework that will help re-balance the market power between the buyers and sellers in the rail freight market and lead to improved commercial relations".[25]

On October 31, 2011, the Government of Canada appointed Mr. Jim Dinning to lead a six month facilitation process to enhance rail freight service. This process will bring together shippers, railways and other key players to develop a template for service agreements and a streamlined commercial dispute resolution process. These commercial measures are key steps that the Government of Canada has committed to, in order to enhance the effectiveness, efficiency and reliability of the rail freight supply chain. Once the process is complete the government will table a bill. [26]

### **4.2.2 Rail Reform in the United States**

The Surface Transportation Board was to hold a public hearing on May 3, 2011 to start the first review of the state of competition in the US railway industry and captive shippers. The hearing was re-scheduled for June 22 and June 23 into Panels – (Members of Congress, shippers, railways and the railroad industry). Senator Jay Rockefeller in his testimony said that the

Staggers Act's goal of restoring financial stability to the U.S. rail system has been achieved and that significant consolidation has occurred so that four Class I railroads dominate the industry, and one-sided policies whose sole focus is protecting the health of the railroads is outdated. "We need to restore balance to protect the shippers against the virtual monopoly of the railroads and modernize the STB's rules to reflect the railroads' profitability and new industry structure." These things can be done, he explained, by increasing competition and fixing current rules, laws, and policies to give captive shippers competitive service options as a method to control rates and improve service, improving the regulatory process to make the STB more accessible and more robust to resolve shipper-carrier disputes in a more timely and cost-effective manner. Rail shippers maintained that they are subject to monopoly-like practices by the railroads, with captive shippers saying they are forced to deal with a "take it or leave it" pricing approach by the railroads, coupled with poor service at times. Railroad executives at the hearing made their case for the current rate practices and operating network management practices. They explained that any attempt to "re-regulate" the industry would have a significant negative impact on the railroads ability to increase infrastructure and equipment. The railroads have repeatedly stated that the existing regulatory railroad environment has produced—for North American railroad shippers—a freight railroad system that is the best in the world.[27] Meanwhile, the National Industrial Transportation League has asked the Surface Transportation Board to order competitive switching of cargoes to a second rail line in limited situations i.e., captive shippers to improve rail access. It asked the STB to initiate a formal rule-making schedule, and proposes that shippers be allowed to individually seek agency orders that cargoes be switched to an alternative railroad within limited geographic areas. If adopted, the plan would trigger an STB competitive or reciprocal switching order only after a shipper demonstrates that a customer facility is served by just one railroad, that it has no effective means of shipping goods otherwise, and that there is a working interchange at the other railway.[28]

#### **4.2.3 Labour Developments**

In early 2011, the collective bargaining agreement between the two railways (CN and CP) and members of Canadian Auto Workers (representing four bargaining units of the railways - mechanical, clerical/intermodal, excavator operators, and owner-operator truck drivers) came up for renewal. Members of the CAW voted to strike if negotiations failed by deadlines in January and February. On February 5, 2011, the CAW and Canadian Pacific reached a tentative contract settlement for the next four years which was ratified on February 24 by the CAW. In late January, the CAW gave CN notice of its intention to strike the railway at 0001 hours Eastern time Jan. 25, 2011. Just hours before the strike, Canadian National Railway and the Canadian Auto Workers reached a tentative contract deal. The new contract was ratified by the CAW members till the end of 2014.[29]

#### **4.2.4 Change at Canadian Pacific Railway?**

In late October 2011, it was rumored that a major reorganization or a potential sale of Canadian Pacific Railway Ltd. (CP) was being contemplated. This was not surprising as CP did not do well due to the harsh winter climate it experienced in 2010. At that time, it was not known who the purchaser of CP would be. In November, it was learnt that Mr Ackman's hedge fund Pershing Square Capital Management owns about 12.4 percent of CP shares. Bill Ackman is pushing for strategic, executive and board changes at CP, according to a regulatory statement filed on

November 30, 2011. The Board has attempted to fight Mr Ackman's proposal and wrote a letter to shareholders revealing a plan on how it will lower its operating ratio. Not to be daunted, Mr Ackman indicated that he would launch a proxy contest to replace members of the Board. During the last few years, it appears that large interests in the two major Canadian Railways has fallen into US hands and some of the US billionaires are showing a growing interest in owning railways.[30]

## **5.0 Highway Transportation**

### **5.1 The State of the Industry - The For-hire Trucking Carriers**

The top four for-hire trucking companies in 2011 were Transforce Income Fund, Vitran Corporation Inc., Mullen Group Inc., and TransX according to the 100 top Annual Survey for hire-trucking companies. Statistics on the state of industry for 2011 is not yet available other than for the first half of 2011. Statistics Canada reports that for the second quarter of 2011, trucking businesses earned operating revenue of \$10.5 billion, up 5.9% from the same quarter a year ago. These firms reported operating expenses of \$9.4 billion in the second quarter of 2011, compared with \$8.8 billion in the same quarter of 2010, an increase of 6.8%. As a result, the operating ratio (operating expenses divided by operating revenue) increased to 0.90 for this period from 0.88 for the same period a year ago. This impacted the operating profit which fell 8.3% to \$1.03 billion. The cause of the overall increase in expenses was rising fuel expenses which increased 19.4% in the second quarter of 2011. [31] Trade using surface transportation and the number of trucks crossing the US-Canada international bridges also provide a good indication of trucking activity in 2011. Data from the US Bureau of Statistics indicates that surface transportation between the United States and its neighbours, Canada and Mexico, was 12.7% higher in November 2011 than in October 2010, totalling \$76.7 billion. If Mexico is excluded, U.S.-Canada surface transportation increased 12.2% totalling 44.3 billion.

Financial data from the largest trucking companies (at least until the third quarter of 2011) indicate that they fared very well and heavy truck demand in the US in 2012 is expected to be strong.

### **5.2 Issues or Developments -**

#### **5.2.1 Biodiesel Mandate Controversy Finally Over**

On July 1, 2011, Canada's two percent biodiesel mandate went into effect. It means that all diesel and heating oil sold in Canada, with some exceptions, will have to have two percent biodiesel. Curbing green house gas (GHG) emissions was the prime driver in issuing this mandate. It was expected to bring Canada closer to its goal of reducing GHG emissions by 17% in 2020, compared to the 2005 levels. The biodiesel issue was a subject of study for years and led to the release of the Regulatory Impact Assessment Statement (RIAS) by the Government of Canada. The Assessment led to calls by the Canadian Trucking Alliance and the Canadian Trucking Association (CTA) for the government to re-think its approach to the mandate. They claimed that the Assessment found that costs outweigh the benefits (by \$2.4 billion over 25 years) and the greenhouse gas emission reduction would be marginal (1 Mt CO<sub>2</sub> per year). It would mean that cost to consumers would increase through higher pump prices and reduced fuel efficiency. The CTA further argued that low-quality biofuel for blending processes increases the

cost to the trucking industry and provides biofuel producers a captive market and massive subsidies. However, the views of the CTA were challenged by the Canadian Renewable Fuels Association (CRFA). The CRFA claims that its experts indicate that the government estimates were flawed (it should result in a benefit of \$1.66 billion over 25 years) and prices will go down. Further, biodiesel represents a net public benefit since it brings tangible environmental benefits and has proven to work well with engines. The CTA replied by saying that the government's report raises sufficient doubt whether we should go in that direction and they are not opposed to creating new markets for farmers but they do not want this to be at the expense of the trucking industry.[32] The Conference Board of Canada also studied the matter and published its report *Ethanol's Potential Contribution to Canada's Transportation Sector*. The report examines four questions regarding ethanol in Canada: what are the economic impacts of manufacturing and using ethanol in Canada?; how green is ethanol?; what is the impact of ethanol on Canadian public health?; and what is the energy balance in producing ethanol?

Finally the controversy is over. Effective 60 days from July 20, 2011, diesel fuel sold in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario will have to contain an average annual biofuel blend of 2 per cent. Diesel fuel sold in Quebec and the Maritimes will be exempt until December 31st 2012 and there is a permanent exemption for Newfoundland and Labrador. This puts an end to the controversy of whether this requirement should go into effect. The Canadian Renewable Fuels Association (CRFA) has lauded the final release of the national 2% biodiesel mandate in Canada as good news for consumers, farmers and energy diversity in Canada. "This will be a special Canada Day for the renewable fuels industry in Canada," said Gordon Quaiattini, CRFA president in reacting to the federal government's announcement of a July 1 start date for biodiesel blends in Canada. "Homegrown biodiesel is a cleaner alternative to conventional diesel. It will help moderate price by adding to our fuel supply, create new jobs, and benefit farmers and drivers alike." The Canadian Trucking Alliance will be monitoring its impact.[33]

### 5.2.2 Recent Mergers

As the economy slowly improved after the recession and cramped companies looked to expand, acquisitions and mergers were expected in the trucking and logistics industry. This expectation was realized and the year will be remembered for the number of mergers reported in the industry. The merger by the largest companies (by order of rank in 2011) and others will be briefly mentioned.

*TransForce* in February, announced it has completed its acquisition of same-day delivery and logistics provider *Dynamex* for US\$248 million. In April, *TransForce Inc.*, indicated it would buy the assets of *DHL Express Canada's* domestic business, to boost its presence in package and courier services. Then in August 2011, *Transforce* purchased Toronto-based *Concord Transportation Inc.*, an expedited carrier. In November, it acquired *Quik X Transportation*, an expedited less than truck load carrier, known for providing high-quality service through leading-edge technology. In the same month, it reached an agreement to acquire all the shares of *I.E. Miller Services*, a provider of rig relocation services, including disassembly, transportation and reassembly of oil and gas drilling rigs.

*Vitran Corporation* in January acquired Tennessee-based *Milan Express LTL* division to expand its presence in the southeast U.S. *Mullen Group* in May, announced that it had entered into an agreement to acquire *Hi-Way 9* and its subsidiaries (*Load-Way*, *Streamline Logistics* and

1006213 Alberta Ltd.) and in September Mullen Group announced it closed a deal to acquire fluid hauler Polaris Petroleum. *Bison Transport* in April, acquired Grand Forks, N.D. in the US. *Hub Group* purchased Exel Transportation Services (ETS) for \$83 million in April. Exel operates independently under the name Mode Transportation. *Armour Trucking Systems* in February, acquired Hillman's Transfer of Sydney, N.S. *Manitoulin Transport* in March expanded its western presence by acquiring Exalta Transport in Medicine Hat. It also acquired the less-than-truckload (LTL) business of Penner International. *Trimac Transportation* Western Canada's bulk hauling company in June acquired Benson Tank Lines' assets and business for \$4 million. *Contrans Group* in July acquired the trucking operations of Enterprises S&S and Logistique Barthelemy located in St. Barthelemy, Que. It also acquired the pneumatic trucking business of Edmonton, Alta.-based TBM. It is interesting to note that many of the above mergers involved acquisition by the top twenty-five trucking companies in Canada.[34]

Other mergers were also reported: International Truckload Logistics (ITS), a Belleville carrier, made a strategic acquisition of CSI logistics (in February); Titanium Logistics acquired Flex Mor Industries (in May); Big Freight System purchased Paramount Storage (in July); Portage Transport of Southern Manitoba acquired Lark Transport of Portage La Prairie (in September); Entrec Transportation Services of Alberta acquired Alberta trucking firms Trak Equipment Haulers and Jay Reid Trucking (October); and the Advantage Group of Companies added TMN Logistics to its family of companies (in September).

As a result, there's been a 32-percent spike in North American truck, leasing, and transport-services acquisitions. According to a report by Bloomberg, North American buyers or targets involving at least \$2.7 billion in revenues were announced in 2011. At the same time, Transport Capital Partners' (TCP) Third Quarter 2011 Business Expectation Survey, indicated that if volumes don't increase in the next six months, a fair number of companies (20% with less than \$25 million in revenues and 11.8% with more than \$25 million in revenues) will consider leaving the trucking business.[35]

### **5.2.3 Regulatory Barriers – Canada/US**

In recognition of Canada's 1 trillion dollar trade and investment, two major regulatory developments have occurred.

First, US President Obama and Canada's Prime Minister Harper directed the creation of a United States-Canada Regulatory Cooperation Council (RCC) to secure economic benefits through smarter, more effective approaches to regulation that increase cooperation. On June 3, 2011, Canada-US published the terms of reference of the RCC. In its submission to the Canadian negotiators on Regulatory cooperation, the Canadian Trucking Alliance brought forward three priority issues to the RCC to remove costly regulatory barriers to the efficient movement of goods. The three issues were: 1. Streamline the process for moving "in-transit" goods. The US treats them as international shipments which basically shuts down in-transit movements; 2. Provide the trucking industry on both sides of the border with greater flexibility to re-position foreign empty trailers using foreign drivers - which is not permitted; and 3. Cooperate on the establishment of a North American standard for a proven fuel saving device, the "boat-tail", which saves fuel and is approved by the Environmental Protection Agency. The removal of these regulatory barriers would improve efficiency and reduce cost.[36]

Second, Beyond the Border Accord was unveiled and signed in the White House on December 7, 2011. This Accord will benefit travellers and trade in several ways. First, it agrees to create a continental security perimeter to deter criminals and terrorists. Second, it agrees to sweep away many of the obstacles that make crossing the 49th parallel a hassle. Third, it seeks to ensure that manufacturers can make and sell a product in either country without having to make changes. The Canadian Trucking Alliance hailed this Canada-US border agreement announced by Prime Minister Stephen Harper and US President Barack Obama as an historic achievement that takes meaningful steps to bringing the Canada-US border into the 21st century.[37]

## **6.0 Other Transportation Matters**

### **6.1. Greenhouse Gas Emission - Ontario**

On May 31, 2011, the Environmental Commissioner of Ontario (ECO) issued its annual greenhouse gas progress report. As part of its 2007 Climate Change Action Plan, the Ontario government established three targets for reducing greenhouse gas (GHG) emissions. The targets are: 6 per cent below 1990 GHG emission levels by 2014; 15 per cent below 1990 levels by 2020; and 80 per cent below 1990 levels by 2050. In previous reports, the ECO expressed concern about the government's ability to meet these GHG emission reduction targets. While laudable progress has been made in the electricity sector with the phase-out of coal-powered generating plants, there is a lack of correspondingly ambitious policy tools in other large emitting sectors, such as transportation and industry. The report believes that routes to success are: carbon pricing; sectoral targets that are more precise; transportation changes – road pricing or tolls and policies on urban sprawl, transit, etc.; landfill diversion – keeping organic waste out of landfills; black carbon reduction; and storing gas in the soil through improved agricultural practices. Since, some of the Commissioner's concerns were with regard to road transport, the report attracted the attention of the trucking industry. The Ontario Trucking Association (OTA) was concerned about road pricing via either a cap and trade system or a carbon tax. It accordingly opposed this proposal. However, it found the Commissioner's suggestions on incentives for the purchase of fuel efficient vehicles and the mandatory activation of speed limiters (a law already in force in Ontario) interesting and accordingly supported them.[38]

### **6.2 General Prospects**

In sum, the information to date indicates that the transportation sector fared better than the rest of the economy. Whether this will continue into the future is doubtful. Transportation is closely tied to domestic economy activity and world trade and with forecasts that growth in Canada and the world economy are slowing down, the transportation sector may be in for some turbulence. The recovery that began in 2010 may be short lived.

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