

CANADA'S TRANSPORT MINISTER APPROVES AIR TRANSAT'S TAKE-OVER BY AIR CANADA

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In a long-awaited decision, on February 11, 2021, Canada's newly appointed Transport Minister [approved](#) Air Canada's acquisition of rival Air Transat on public interest grounds. The approval comes after an 18-month assessment into whether the combination of Canada's largest and third-largest carriers should be allowed to proceed. Despite [objections](#) from the Commissioner of Competition that the merger would substantially lessen competition on 83 routes originating in Canada with destinations in Europe, Mexico, Central America, the Caribbean and Florida, the Minister granted his approval, subject to certain terms and conditions.

The approval has three main implications for the airline industry in Canada.

1. Despite an extensive assessment by Canada's Competition Bureau predicting substantial effects on many of the routes flown by the parties, the Minister decided nevertheless to approve the merger without requiring substantial remedies. This is the second airline merger approved by Canada's Transport Minister on public interest grounds without a divestiture remedy. This decision, along with the [prior one \(which approved the merger of First Air with Canadian North in 2019\)](#), demonstrates that competition considerations will not necessarily be a determinative factor in the Minister's public interest assessment. This might be relevant in the event that Canadian or international airlines decide to seek the Minister's approval for future code-sharing agreements or metal neutral joint ventures on public interest grounds.
2. The Transport Minister's explanatory note indicated that he took into consideration the greater operating and network efficiencies from the merger, including enhanced connectivity, time savings and cost savings achieved by eliminating the double marginalization when passengers take different carriers for different legs of their journeys. Unlike the Competition Bureau's preferred approach to assessing efficiencies on a market-by-market basis, the Minister looked at efficiencies across the whole network. This suggests that even when an airline merger is likely to result in high market shares on some routes, the Minister might take into account the perceived benefits created by the combination across the whole network in weighing the public interest considerations.
3. The Minister also took into account Air Transat's extensive operating losses attributable to COVID-19. The

Competition Bureau released its initial report just days after the COVID-19 pandemic took hold in Canada and thus the report did not factor in the impact of COVID-19 on Air Transat's viability. Nonetheless, the Minister appears to have been persuaded that Air Transat would not continue to be as viable a competitor to Air Canada today and going forward, compared to when the parties announced the transaction in June 2019.

Despite receiving approval from Canada's Transport Minister, the parties still require approval from the European Commission, which is continuing to investigate the merger. Indeed, the Canadian Competition Bureau's concerns about the merger and the adequacy of the remedies may yet find resonance with the EC's Directorate-General for Competition.

For more information about this matter, or if you have any questions about competition in the airline industry, please do not hesitate to reach out to us.

by [Joshua Krane](#) & [Éric Vallières](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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