

Competition Bureau Expresses Serious Concern About Canadian Airline Merger

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The Ontario Court of Appeal in *Rivers v. Waterloo Regional Police Services Board* has upheld the Superior Court of Justice's determination that it was without jurisdiction to hear a proposed class action on behalf of current and former female officers with the Waterloo Regional Police Service against the Waterloo Regional Police Services Board and the Waterloo Regional Police Association. The claim alleged systemic gender-based discrimination, Charter breaches, and sexual harassment by male members of the Service, over a 30-year period.

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The proposed merger of two northern-Canada focused airlines, First Air and Canada North, has been criticized by the Competition Bureau. The Bureau has raised concerns that the proposed transaction, if completed, will represent a merger to monopoly resulting in higher prices and reduced air services in the north.

Because the airline merger involves a federal transportation undertaking, the Bureau does not have the authority to block the transaction. It has, however, sent a report to the Minister of Transport outlining its assessment of the impact of the proposed merger on the public. This is the first time that the Competition Bureau has issued such a report to the Minister.

According to the report, First Air and Canada North are each other's closest competitors in areas of Canada where travel by air is sometimes the only means of transportation. Based on its economic assessment, the Bureau warns that combining these two airlines could result in the new entity offering a service with no limits on the prices charged for passenger and cargo routes therefore negatively impacting businesses and communities in the north that are reliant on the essential aviation service. The Bureau also identified the presence of high barriers for entry into the air transportation industry, particularly in the Canadian north, due to different demand dynamics including significant cargo routes, reliance on large contracts, and challenging operating conditions. According to the Bureau, these barriers make it extremely unlikely that a new

competitor would enter any of the markets served by First Air and Canada North post-merger to dismantle the monopoly in a timely manner.

The owners of the airlines, Makivik Corporation and Inuvialuit Development Group, have publicly responded, claiming that the Bureau’s report demonstrates a southern-led institution’s ignorance of northern business. They say that the proposed merger was an Inuit-led solution developed through hundreds of hours of discussion among Inuit and northern-elected leaders to create efficiencies for northern transportation. As well, they claim that the report showcases only a superficial understanding of the Inuit organizations’ constitutional mandate of representing the rights and interests of Nunavik and the Inuvialuit Region.

Ultimately, whether the merger can proceed will be a decision left to the Federal Cabinet, based on recommendations from the Minister of Transport. How the government proceeds will be closely watched given the importance of the issues raised for aviation and transportation in Canada’s north.

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